The learned attorney-general, counsel for the defendants, has strongly argued that to determine the *situs* or location of the rolling stock assessed with tax is in the city of Baltimore, and therefore not liable to such assessment, would be to allow foreign corporations to evade the tax laws of the state of Virginia, and to escape the burthens borne by the railroad companies chartered by that state. The answer is, that is a question to be dealt with by the legislature of Virginia.

The opinion of the court is that the *situs* or location of the rolling stock employed by the Baltimore and Ohio Railroad Company in operating the said railroads leased by it in the state of Virginia is in Baltimore city, state of Maryland, and the same is not liable to assessment for taxes under the tax laws of Virginia. That the motion to dissolve the injunction order heretofore awarded the complainant must be overruled, and that said injunction order be perpetuated.

There are some questions of minor importance raised in the pleadings, but as they do not affect the merits of the controversy it is not necessary for the court to pass upon them.

A decree will be passed in accordance with this opinion.

BOND, J., concurred.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

COURT OF ERRORS AND APPEALS OF NEW JERSEY.[2]

SUPREME COURT OF KANSAS.[3]

SUPREME COURT COMMISSION OF OHIO.[4]

SUPREME COURT OF VERMONT.[5]

ATTACHMENT. See *Corporation.*

BILLS AND NOTES.

Material Alteration of Note—Right of one of several Makers paying same.—The erasure of the name of the payee of a promissory note, and

[1] From Hon. N. L. Freeman, Reporter; to appear in 110 Ill. Rep.

[2] From A. M. F. Randolph, Esq., Reporter; to appear in 32 Kans. Rep.

[3] From G. D. W. Vroom, Esq., Reporter; to appear in 17 Vroom.

[4] From E. L. DeWitt, Esq., Reporter; the cases will probably appear in 40 or 41 Ohio St. Rep.

[5] From Edwin F. Palmer, Esq., Reporter; to appear in 56 Vt. Rep.

the substitution of another name after its delivery by a party interested in the instrument, is a material change, and avoids the instrument as to a maker not assenting to the alteration: *Davis* v. *Bauer*, 40 or 41 Ohio St.

Where one of several makers of a promissory note given for the accommodation of the payee, and so altered after its delivery, voluntarily pays the same at maturity, he cannot recover on it against another maker thereof who has not consented to or ratified the alteration: *Id.*

Boundaries.

Settlement of by Parol.—The owners of adjoining tracts of land may, by parol agreement, settle and permanently establish a boundary line between their lands, which, when followed by possession according to the line thus agreed upon; is binding and conclusive, not only upon them, but also upon their grantees: *Grim* v. *Murphy*, 110 Ill.

Conflict of Laws.

Insolvency Laws of another State.—The courts of this state will not enforce the insolvent laws of another state by giving effect to a statutory assignment of the effects of a debtor residing in such other state, even as against an attaching creditor of the same state of the debtor: *Rhawn* v. *Pearce*, 110 Ill.

Constitutional Law. See *Municipal Corporation.*

Local and Special Laws—Salaries of Officers—Internal Affairs of Counties.—A statute which has for its object the abolition of the system of remunerating prosecutors of the pleas by fees and the substitution therefor of fixed salaries, but which carries out that general design by fixing salaries of different amounts in all counties in which the fee system remained, the difference in the amounts of the salaries fixed being arbitrary and not regulated by any general rule or according to population, is a local or special act: *Freeholders of Passaic* v. *Stevenson*, 17 Vroom.

While the prosecutor of the pleas represents the state in the administration of justice, the amount which he is to receive from the county treasury concerns the county alone, and a statute fixing the salaries of such prosecutors is, therefore, an act regulating the internal affairs of counties: *Id.*

Special Legislation—Act applying to three Cities.—Where an act of the legislature attempting to confer corporate powers is so special in its provisions that it can apply only to three certain cities, and cannot possibly at any time apply to any other corporation, public or private, it is unconstitutional and void, being in contravention of sect. 1, art. 12, of the constitution, which provides that "the legislature shall pass no special act conferring corporate powers:" *City of Topeka* v. *Gillett*, 32 Kans.

An act of the legislature may be special where it applies to many particular and existing persons or things, as well as where it applies to only one; and it may be special where it simply describes such particular persons or things, so that they may be known as well as where it gives their particular names or distinctive appellations: *Id.*

CONTRACT. See *Covenant; Patent.*

CORPORATION.

Trading Corporation—Ultra vires—When it may secure Private Debt of President to third person.—In determining whether an act of a trading corporation is *ultra vires*, regard is to be had to its effect and the real object in view: *Merchants' Nat. Bank* v. *Pomeroy Flour Co.*, 40 or 41 Ohio St.

Accordingly: Although such corporation may not with its own means pay or secure a private debt of its president to a third person; yet, where he is its creditor, it may rightly pay or secure such private debt, when the real object and effect is to pay or secure the indebtedness of the company to him in the same amount: *Id.*

Stockholder's Individual Liability—Set off of Debt due to him by Corporation—Preference to Creditors who are most Diligent.—In an action by a creditor of a corporation against a stockholder to enforce his individual liability to creditors for an amount equal to his stock in the corporation, the stockholder will not be allowed to set off against his liability an indebtedness of the corporation to him: *Thebus* v. *Smiley*, 110 Ill.

The creditor of the corporation first suing a stockholder in respect to his individual liability acquires by his suit a preference over other creditors, which neither they nor the stockholder can defeat unless possibly by bringing a bill for a general closing up of the affairs of the corporation. Such action is in the nature of an equitable attachment of the stockholder's liability to the extent of the plaintiff creditors' claim. The stockholder, after notice of such suit against him, can not defeat the action by paying other creditors to the extent of his liability: *Id.*

COVENANT.

Evidence—Proof of Execution—Impossibility of Performance.—In covenant, if *non est factum* is not pleaded, the plaintiff need offer no proof of the execution of the instrument: *Wharton* v. *Stoutenburgh*, 17 Vroom.

Where a mining lease stipulated for raising annually a specified quantity of ore or to pay a stipulated rent: *Held*, under the provisions of the instrument in question, that the non-existence of the quantity of ore to be taken out was no defence to an action for the rent: *Id.*

CRIMINAL LAW.

Refusal of Challenge of Juror for Cause.—The better rule is, though not universal, that a respondent in a criminal trial has no ground of complaint, when he challenges a juror for cause and is refused, and then challenges peremptorily, if he has challenges left when the panel is filled: *State* v. *Gaffney and Fields*, 56 Vt.

Challenge to an Array of Jurors.—A challenge to an array of jurors ought not to be sustained on account of mere irregularities in the drawing of the jurors, or mere informalities on the part of the officers charged with the drawing of the same; yet, where the statute specifically prescribes the class or list of persons from which the jurors are to

be selected, the failure on the part of the officers to draw the jurors from the class or list prescribed, is a sufficient ground to sustain a challenge to the array: *The State* v. *Jenkins*, 32 Kans.

Return of Verdict on Sunday in absence of Defendant and his Counsel.—The jury returned their written verdict in a criminal case to the judge of the court on Sunday, in the absence of the defendant and his counsel, and without either of them being called or notified; the judge received the verdict and discharged the jury from further consideration of the case; at the opening of the court on the next day, Monday, the defendant asked the court to recall the jury and allow him the opportunity of having the jury polled in his presence; the court denied the application; the defendant also moved that the verdict be set aside and stricken from the files; that the jury be recalled and directed to return a proper verdict, all of which motions, as well as the motion for a new trial, were overruled. *Held*, that neither the defendant nor his counsel, in the absence of notice, were bound to be in attendance upon the court on Sunday on the coming in of the jury; and *held further*, that on account of the action of the court in discharging the jury and refusing to poll the jury in the presence of the defendant, the judgment must be reversed and a new trial granted: *The State* v. *Muir*, 32 Kans.

Homicide—Encouraging commission of unlawful Act resulting in.—Several persons of a party passing along a highway got out of the wagon in which they were travelling and went into an orchard without permission. The owner ordered them to leave, which they refused to do, when others from the wagon entered the orchard armed with clods of dirt, and assaulted the owner, using very offensive language to him, and one of the party struck the owner with a clod upon the back part of the neck, felling him to the ground, from which blow death ensued in a few minutes. It appeared that one of the intruders, who was tried separately, took a part in the affray, and tried to kick the deceased while lying prostrate from the blow. It was *held*, that it was not necessary to show that he threw the missile which caused the death, in order to sustain his conviction for manslaughter. It was sufficient that he was present, encouraging the perpetration of the offence, to make him equally guilty with the party who struck the fatal blow: *Ritzman* v. *The People*, 110 Ill.

What constitutes an attempt to commit Larceny.—An attempt to steal, accompanied by an overt act or acts towards its commission, constitutes an attempt to commit larceny: *Sipple* v. *The State*, 17 Vroom.

The overt act or acts must be such as will apparently result, in the usual and natural course of events, if not hindered by extraneous causes, in the commission of the crime itself: *Id.*

Mere preliminary preparations are not the overt acts required: *Id.*

Damages.

Interest in ascertaining in Actions of Tort.—Whether interest, *eo nomine*, is allowable in ascertaining the damages in actions of tort or not, all the authorities agree that the lapse of time from the commission of the wrong to the time of the recovery, may be considered in determining the damages: *Clement* v. *Spear*, 56 Vt.

Measure of when Passenger is unlawfully ejected from Ferry-boat.—A passenger upon a ferry-boat, who has paid his fare and is forcibly and unlawfully ejected by an agent of the company, is entitled, by way of damages, to a reasonable compensation for the indignity and consequent injury to his feelings on being thus treated: *Allen* v. *Camden & Philadelphia Ferry Co.*, 17 Vroom.

DEED. See *Mines and Mining.*

ELECTION.

Intention of the Voter—How ascertained.—Where the question is for what or for whom a ballot should be counted, the intention of the voter should, if possible, be ascertained, and when ascertained it must control: *McKinnon* v. *The People*, 110 Ill.

Where there is a mistake or imperfection in the ballots cast at an election, extraneous evidence is admissible in a contest to show what was intended. So where ballots were cast at an election for Henry M., and also some for Joseph M., it was proved in a contest of the election that Henry M. was the democratic nominee, and another the republican nominee, to be voted for at that election for the office of town clerk, and that there were no other candidates for that office at that election, and that no person by the name of Joseph M. resided in the town or was known to the witnesses, residents of such town, and also that the name of Joseph M. was printed on a number of democratic ballots and voted by mistake. *Held*, that the evidence was properly received, and the ballots cast for Joseph M. counted for Henry M.: *Id.*

Where a patent ambiguity is raised in respect to the name of the candidate upon a ballot, the voter casting the same may, if he so elects, be allowed to testify for whom he intended to vote, or what he intended by the ballot: *Id.*

EVIDENCE. See *Covenant; Election.*

EXECUTION.

Liability on Receipt to Sheriff for Property attached.—The defendants gave a receipt of certain property to the plaintiff, which he had attached as a sheriff on a writ in favor of an attorney, who subsequently brought another suit on a note owned by a married woman, but in his own name for convenience only, giving the writ to another officer, who, without directions as to attachment or knowledge of the attorney, attached the receipted property. The property was afterwards sold to T., who sold it to a company in which the attorney was interested, the attorney being ignorant of the sale. *Held*, that the defendants are liable in action on the receipt. *Beach* v. *Abbott*, 4 Vt. 605, and *Rood* v. *Scott*, 5 Id. 263, distinguished: *Rider* v. *Sheldon*, 56 Vt.

FRAUDS, STATUTE OF.

Promise when not within.—A surety on a non-negotiable note conveyed his real and personal estate to the defendant in consideration of the grantor's future support and payment of his debts. Subsequently the defendant made a verbal promise to the plaintiff, who became the owner of the note by inheritance, that he would pay it if the principal on the note did not. *Held*, that the promise was valid and not within

the statute; that the conveyance of the property was a sufficient consideration: *Bailey* v. *Bailey*, 56 Vt.

HIGHWAY.

Oath of Commissioners to Survey and Locate—Necessity for—Recital of taking of in Report.—A special act of the legislature appointing three commissioners to locate a certain road, required the commissioners, or a majority of them, to meet at a place named before the first day of August thereafter, and after being duly sworn before some justice of the peace faithfully to review, mark and locate the road, proceed to lay out and locate the same. *Held*, that in order to show a legal road under such act by the action of the commissioners, it was necessary to prove that they took the oath before proceeding to make the location: *Crossett* v. *Owens*, 110 Ill.

In such case, a recital in the commissioners' report that they were duly sworn, without stating they were sworn to perform the duties imposed by the act, or to perform any duty whatever, is insufficient to prove that the commissioners were legally sworn before acting, and fails to show their authority to locate the road and make the field notes or report: *Id.*

HOMESTEAD.

Effect of Death within Five Years and before a Patent was issued on entry of Land under Homestead Law of the U. S.—A. entered a quarter section of government land under the homestead law of the United States, and died before the expiration of five years thereafter, and before a patent was issued, leaving a will by which he, in form, devised his interest in the land to his executors in trust, to perfect his title and sell the land, pay his debts and burial expenses and divide the balance of the proceeds among his heirs. Plaintiffs, as the executors of the will of A., commenced suit in the District Court for the recovery of the possession of the lands entered by him, and for damages for withholding the possession, claiming to recover as the owner of the legal title of the land, and show by their petition that under the entry of A., the land has been patented to his heirs, and that they are now the legal owners of the land. *Held*, that A. had no interest in the land that could pass by, or be affected by his will, and that the executors named in it took no title to, or interest in the lands under the will, and could not maintain ejectment for possession; that the petition did not state facts sufficient to constitute a cause of action, and that the demurrer to it for that reason was properly sustained: *Chapman et. al., Executors*, v. *Price*, 32 Kansas.

INSOLVENCY. See *Conflict of Laws.*

INTEREST. See *Damages.*

JUROR AND JURY. See *Criminal Law.*

When Misconduct for Jurors to Examine Real Estate, value of which is in Controversy—In the trial of an appeal from the determination of the commissioners as to the value of real estate appropriated by a railroad company, it is misconduct for two of the jurors, without the direction or consent of the court, after the evidence has been submitted and before the argument of counsel in the case, to go together to the real

estate in controversy and examine it in order that they might have a better understanding of the case they are trying and be the better enabled to fix a value thereon: *Ortman* v. *Union Pacific Railway*, 32 Kansas.

LACHES. See *Mortgage.*

LANDLORD AND TENANT.

Occupation of House by Servant—Sub-letting by Servant.—Where a person occupies a house as a servant of another, it must appear that the occupancy is for the benefit of the master and as an accessory or aid to the performance of his duties as a servant: *Snedaker* v. *Powell*, 32 Kans.

Where B. employs P. to labor for him on a farm for eight months from March 6, 1883, at fifty dollars per month and agrees to furnish him a house from March 6, 1883, to March 1, 1884, free of charge and subsequently permits P. to transfer his interest and sub-let the house to S., P. is no longer a servant of B. after the eight months have expired and his occupancy of the house thereafter is that of a tenant and not of a servant, and S. holds under P. and not under B. and therefore is liable to P. for the rent of the house: *Id.*

LEASE. See *Covenant.*

LEGACY. See *Will.*

LIMITATIONS, STATUTE OF.

Residence—Debtor moving into State—Knowledge of Creditor.—If a debtor, residing out of the State when the cause of action accrues against him, comes to dwell and reside permanently in the State, it is not necessary that the creditor have knowledge of this fact in order to set the Statute of Limitations in operation; it is enough if he can acquire such knowledge by the exercise of reasonable diligence: *Davis* v. *Field*, 56 Vt.

Due-bill for Work—Demand—When Statute begins to Run.—A due-bill or contract in the following terms:

LEAVENWORTH CITY, October 22d 1873

Due J. C. Douglass five hundred dollars in brickwork at ten ($10) per thousand, measured in the usual way.

(Signed) SARGENT & BRO.

Is payable at once without demand, so that the statute of limitations runs from its execution; and an action thereon against the makers is barred by the statute if not brought within five years after its date: *Douglass* v. *Sargent*, 32 Kans.

Payment by Copartner after Dissolution.—The payment of interest on the promissory note of the firm by a copartner, after dissolution of the copartnership, but within six years after the maturity of the note, the payment having been made within six years before the bringing of the suit, takes the note out of the statute of limitations: *Casebolt* v. *Ackerman*, 17 Vroom.

MASTER AND SERVANT. See *Landlord and Tenant.*

MINES AND MINING.

Grant of right to Mine and remove Coal.—A deed giving the grantee the right to mine, excavate and remove coal under a certain tract

of land, carries with it, as an incident, the right to go upon the land and dig for coal or to sink a coal shaft: *Ewing* v. *Sandoval Coal and Mining Co.*, 110 Ill.

MORTGAGE.

Sale under Trust Deed—Bill to set aside—Laches.—A delay of four years in filing a bill by the former owner to set aside a sale of his real estate under a deed of trust, on the ground of alleged irregularities and inadequacy of price, when he knew of such sale shortly after it was made, and neglected to redeem the property by paying the sum due from him, such privilege having been offered him by the purchaser, and he allowed the taxes to accumulate against the property to a large amount, was held such laches as to bar the relief sought. A party, to avoid a sale of his land for mere irregularities, must act with promptness, and not wait to speculate upon the chances of a rise in the value of the property: *Hoyt* v. *Pawtucket Institution for Savings*, 110 Ill.

MUNICIPAL CORPORATION.

Unconstitutional Assessment for Sidewalks.—A statute empowering the authorites of a city to construct sidewalks, and make local assessments on the property fronting the same, "for so much of the expense thereof as they shall deem just and equitable," is unconstitutional: in that there is no fixed, certain and legal standard for assessment. Such assessments should be made in view of the benefit to the abutting land; but under this statute they may be made in view of the defendant's ability to pay: *Barnes* v. *Dyer*, 56 Vt.

Not liable for Negligence of Driver removing Ashes.—A municipal corporation is not liable for an injury occasioned by the negligence of a driver employed by its board of public works to remove ashes and refuse from boxes and barrels placed on the sidewalks, to a public dumping-ground, though the driver was at the time driving a horse and cart owned by the city, and his negligence was in making a dump from the cart: *Cordict* v. *Jersey City*, 17 Vroom.

OATH. *Highway.*

OFFICER. See *Execution.*

PARTNERSHIP. See *Limitations, Statute of.*

NEGLIGENCE. See *Railroad.*

PATENT.

Construction of License contemplating Decision sustaining the Patent.—By the terms and conditions of a license to manufacture and sell kerosene oil stoves, under certain letters patent of the United States, if the royalties on stoves manufactured and sold during each month, were paid by the licensee on or before a given day in the succeeding month, the owner of the patent was to make a reduction of sixty per centum, on the amount of the royalties then due and payable, "until such time as a decision of the United States Circuit Court" might be had, "sustaining such letters patent;" and after such decision, the reduction was to be only twenty-five per centum, on the amount of such royalties. *Held,*

1. That in a suit in a Circuit Court of the United States, to restrain by injunction the making, using, or vending of the patented article, a decree *pro confesso*—upon failure of the defendants to plead, answer or demur to the bill of complaint—with a reference to a master to ascertain the profits and the damages, and report the same to court, was not a decision of the court sustaining the letters patent, within the terms and conditions of the license. 2. A decision of the court within the purview of the license, contemplated the establishment of the patent by a judgment or decree, after a judicial investigation: *Kerosene Lamp Heater Co.* v. *Monitor Oil Stove Co.*, 40 or 41 Ohio St.

Practice.

Service of Process.—Sect. 14 of the act of March 13th 1853 (S. & C. 773) regulating the jurisdiction and procedure before justices of the peace, provides that summons must be served by delivering a copy thereof with the endorsements thereon duly certified to the defendant, or leaving the same at his usual place of residence: *Held*, that a return by the constable of service of summons in these words, "served on the second day of January 1861, by reading," shows a want of service and not merely a defective service or return; and where the record does not otherwise show that jurisdiction of the defendant was obtained, a judgment by default is a nullity and may be attacked collaterally: *Robbins* v. *Clemmings*, 40 or 41 Ohio St.

Railroad.

Neglect to maintain lawful Fence—Contributory Negligence.—The plaintiff's horse escaped from his adjoining meadow directly on to the track, and was there killed by a passing train. The defendant had neglected to maintain a lawful fence. *Held*, that the company was liable, although the owner knew of the defect in the fence, that his horse was breachy, and although there was no neglect in running the train: *Congdon* v. *The Cent. Vt. Railroad Co.*, 56 Vt.

The doctrine of contributory negligence is not applicable: *Id.*

Sale of Ticket fraudulently obtained—Agent exceeding his Powers.—When the possession of a railroad passenger ticket, which entitles the holder to one first-class passage between points named therein, has been fraudulently obtained from the company, a person purchasing such ticket from the holder thereof, although for value and without notice of equities, acquires no title thereto: *Frank* v. *Ingalls*, 40 or 41 Ohio St.

An agent authorized to sell such tickets and stamp and deliver the same upon receiving pay therefor, cannot bind his railroad company by stamping and delivering such tickets without the knowledge or consent of its proper officers, to a third person to be sold by him, and to be paid for when sold: *Id.*

Set Off. See *Corporation.*

Sunday. See *Criminal Law.*

Tax and Taxation. See *Municipal Corporation.*

Tort. See *Damages.*

United States. See *Homestead.*