entity and rested in almost total disability; but all of this has been changed by the statute, and to-day, in our state, "her brain and hands and tongue are her own, and she should alone be responsible for slanders uttered by herself:" *Martin* v. *Robson*, *supra*. We think the provisions of our statute change the common-law rule, and thereby discharge the husband from liability for the torts of the wife committed when he is not present and with which he has no connection. The wife stands upon an equality, in this state, in all respects, with the husband. She is alone responsible for her contracts, and should be alone responsible for her words as well as her acts.

We have examined the various authorities conflicting with these views, but, owing to the provisions of our statute, we are not inclined to follow them, and, therefore, think it unnecessary to refer to them.

The judgment of the District Court will be affirmed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF GEORGIA.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME JUDICIAL COURT OF MAINE.[4]
SUPREME JUDICIAL COURT OF WISCONSIN.[5]

ACTION. See *Officer*.

Homicide committed in another State—Administrator.—The homicide of a person in another state on a line of railroad purchased, owned and worked by a railroad company in this state, is actionable in this state, if the action be brought by a person entitled to recover: *Central R. R.* v. *Swint*, 71 or 72 Ga.

For a homicide done by a railroad company of this state upon a line owned and controlled by it in Alabama, the administrator of the deceased in Alabama for the use of the widow and children, could bring suit in this state by complying with the statutory requirements thereof, and thus having his appointment *quoad hoc* ratified in Georgia; but not otherwise. And if an administrator of the decedent be appointed in Georgia, he may bring the suit for the like uses: *Id.*

[1] Prepared expressly for the American Law Register, from the original opinion filed during Oct. Term 1884. The cases will probably appear in 112 U. S. Rep.

[2] From J. H. Lumpkin, Esq., Reporter. The cases will probably appear in 71 or 72 Ga. Rep.

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

[4] From J. W. Spaulding, Esq., Reporter; to appear in 76 Me. Rep.

[5] From Frederic K. Conover, Esq., Reporter; to appear in 61 Wis. Rep.

Suit for Overcharge by Carrier—Trustee.—One with whom a contract for the carriage of goods is made, and who is described therein as the consignor, consignee and sole owner, may maintain an action to recover an overcharge exacted by the carrier as a condition of the delivery of the goods, although he was not in fact the owner and did not personally furnish and pay the overcharge: *Waterman* v. *C., M. & St. P. Ry. Co.*, 61 Wis.

ADMIRALTY. See *Constitutional Law.*

AGENT. See *Bank.*

ASSIGNMENT.

Future Wages.—Future wages to be earned under a present contract imparting to them a potential existence, may be assigned although the contract may be indefinite as to time and amount, unless affected by the statute requiring registration: *Wade* v. *Bessey*, 76 Me.

To an Agent or Trustee—Change of Possession.—Where a party made a writing purporting to convey all his real and personal estate to a trustee for the purpose of sales and collections for the benefit of the maker, the trustee to be paid a commission on all moneys by him received and paid over as directed, and afterwards executed and delivered to another person an assignment of a bond and mortgage securing the same, and delivered the bond and mortgage to the assignee, and there was no proof that the trustee ever had possession of the same, it was *held* that the assignment and delivery passed the beneficial title to the assignee: *Wellington* v. *Heermans*, 110 Ill.

ATTORNEY. See *Partnership.*

BANK.

Liabilities for Negligence of its Correspondents in regard to Collections.—A bank in Pittsburgh sent to a bank in New York, for collection, eleven unaccepted drafts, dated at various times through a period of over three months, and payable four months after date. They were drawn on "Walter M. Conger, Sec'y Newark Tea Tray Co., Newark, N. J.," and were sent to the New York bank as drafts on the tea tray company. The New York bank sent them for collection to a bank in Newark, and, in its letters of transmission, recognised them as drafts on the company. The Newark bank took acceptances from Conger, individually, on his refusal to accept as secretary; but no notice of that fact was given to the Pittsburgh bank until after the first one of the drafts had matured. At that time the drawers and an endorser had become insolvent, the drawers having been in good credit when the Pittsburgh bank discounted the drafts. *Held*, that the New York bank was liable to the Pittsburgh bank for such damages as it had sustained by the negligence of the Newark bank: *Exchange Nat. Bank* v. *Third Nat. Bank*, S. C. U. S., Oct. Term 1884.

BILLS AND NOTES.

Assignment after Maturity—Mortgage.—Where the holder and owner of two notes endorsed in blank, the one over-due and the other not, placed them in the hands of an agent to receive payment of them only,

and the latter sold and delivered them to an innocent purchaser having no notice, in fact, of the agent's want of authority to negotiate the same, it was *held*, that the purchaser, as to the note past due, was put on inquiry to ascertain whether the agent had authority to negotiate the same, and took no title as to said note, but as to the note not due the purchaser acquired the legal title: *Towner* v. *McClelland*, 110 Ill.

While a purchaser in good faith of a note before its maturity, which is endorsed in blank, acquires the legal title, and may enforce his rights in a court of law, yet if the note is secured by mortgage on real estate, and he resorts to a court of equity to foreclose the mortgage, that court will let in any defence which would have been good against the mortgage in the hands of the mortgagee: *Id.*

A mortgage, not being assignable at law, the assignee takes it subject to equities between the parties; and the fact that he takes the note secured by the mortgage by assignment before maturity, free from all defences at law, does not protect the mortgage against equitable defences: *Id.*

Common Carrier.

Special Contract limiting Liability to a Certain Amount—Valid even in case of Loss through Negligence of Company's Servants.—Where a contract of carriage, signed by the shipper, is fairly made with a railroad company, agreeing on a valuation of the property carried, with a rate of freight based on the condition that the carrier assumes liability only to the extent of the agreed valuation, even in case of loss or damage by the negligence of the carrier, the contract will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, and of protecting himself against extravagant and fanciful valuations: *Hart* v. *Pennsylvania Railroad Co.*, S. C. U. S., Oct. Term 1884.

H. shipped five horses, and other property, by a railroad, in one car, under a bill of lading, signed by him, which stated that the horses were to be transported "upon the following terms and conditions, which are admitted and accepted by me as just and reasonable: *First*, to pay freight thereon" at a rate specified, "on the condition that the carrier assumes a liability on the stock to the extent of the following agreed valuation: If horses or mules, not exceeding two hundred dollars each. * * * If a chartered car, on the stock and contents in same, twelve hundred dollars for the car-load. But no carrier shall be liable for the acts of the animals themselves, * * * nor for loss or damage arising from condition of the animals themselves, which risks, being beyond the control of the company, are hereby assumed by the owner, and the carrier released therefrom." By the negligence of the railroad company or its servants, one of the horses was killed and the others were injured, and the other property was lost. In a suit to recover the damages, it appeared that the horses were race-horses, and the plaintiff offered to show damages, based on their value, amounting to over $25,000. The testimony was excluded, and he had a verdict for $1200. On a writ of error, brought by him, *held*, (1) the evidence was not admissible, and the valuation and limitation of liability in the bill of lading was just and reasonable, and binding on the plaintiff; (2) the terms of the limitation covered a loss through negligence: *Id.*

Railroads—Stop-over Tickets — Negligence of Conductor—Damages. —A passenger who, through the negligence of one conductor, is not furnished with a stop-over ticket to which he is entitled, and who, on attempting to resume his journey after a stop, is required by a second conductor to pay additional fare or leave the train, may elect to leave the train, and in that case may recover from the railroad company not merely the amount of the additional fare which he is subsequently obliged to pay in order to reach his destination, but all damages sustained by him an the direct and natural consequence of the fault of the first conductor: *Yorton* v. *M. L. S. & W. R. W. Co.*, 61 Wis.

Connecting Lines—Coupon Ticket—Loss of Baggage.—Where a passenger purchased a through ticket over a line of railroads, having a coupon attached for each road, and checked his baggage through to his destination, if, upon his arrival, it was found to be lost, he could hold the last road of the line responsible therefor: *Savannah T. & W. R. W.* v. *McIntosh*, 71 or 72 Ga.

CONSTITUTIONAL LAW.

Attachment for Maritime Tort—Jurisdiction of State Court.—While state courts can exercise no jurisdiction in cases peculiarly cognisable in admiralty, yet the statute of the United States which confers upon the district courts authority to hear and determine "all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and of all seizures on land and on water not within the admiralty and maritime jurisdiction; and such jurisdiction is declared to be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit court," does not preclude a suitor from proceeding by attachment in a state court for an injury done to a dredge, because the remedy by attachment did not exist at common law, but has been conferred by statute. The intention of the statute was to confer exclusive admiralty and maritime jurisdiction upon the district courts, at the same time leaving to the suitor his option of seeking redress at the common law, when it could be so obtained: *Walter* v. *Kirstead*, 71 or 72 Ga.

CONTRACT. See *Guaranty.*

CORPORATION.

Misrepresentation of Capital—Action against Stockholders—Receiver. —A creditor who has been defrauded by misrepresentations of the real capital of a bank has his remedy in an action of tort against all who participated in the fraud, but the wrong done him cannot entitle the entire body of creditors who have not suffered from the alleged fraud to recover of the entire body of stockholders who have taken no part in it. Each case stands, in this respect, upon its own particular circumstances; and it is essential to an action on account of the wilful misrepresentation of a fact made to induce a party to act, that he should have acted on it to his injury: *Fouche* v. *Brower*, 71 or 72 Ga.

Even where the suit is prosecuted for creditors by a receiver, acting under the appointment of the court, it is essential that the pleadings should set forth the facts entitling each of the creditors to maintain his action: *Id*

Criminal Law.

Extradition—Illegal Capture in Foreign Country—Jurisdiction over Fugitive when brought back.—The rule at common law is, that the court trying a party for crime committed within its jurisdiction, will not investigate the manner of his capture in a foreign state or country, though his capture and return may have been plainly without authority of law: *Ker* v. *The People*, 110 Ill.

A fugitive from justice has no asylum in a foreign country when he is guilty of an offence for which he is liable or subject to extradition, by treaty between this and the foreign government. If he is illegally and forcibly removed from such foreign country, that country alone has cause of complaint, and he cannot complain of it: *Id.*

Where no treaty exists between two governments for the extradition of criminals fleeing from justice, there is no obligation existing that can be insisted upon to surrender them for trial to the government from which they have fled; but as a matter of comity between friendly nations, great offenders are usually surrendered on request of the government claiming the right to punish them: *Id.*

Where a fugitive from justice has been brought back to the country from which he has fled, on a warrant of extradition in conformity with the terms of a treaty existing between two governments, he cannot be proceeded against or tried for any other offences than those mentioned in the treaty, and for which he was extradited, without first being afforded an opportunity of returning. But this doctrine has no application where the fugitive has been brought back forcibly, and not under the terms of the treaty, or under an extradition warrant: *Id.*

Witness—Co-defendant—Separate Trial.—In the separate trial of one or two persons jointly indicted for murder, the other defendant, even while the indictment is still pending against himself on a plea of not guilty, may with his own consent, be called as a witness and allowed to testify against his co-defendant: *State* v. *Barrows*, 76 Me.

Reasonable Doubt.—The term, reasonable doubt, implies that there may be doubts which are not reasonable or rational. It is not a vague or whimsical or merely possible doubt, but an actual, substantial and well-founded doubt: *State* v. *Rounds*, 76 Me.

It is not legally erroneous to say to a jury that the proof of guilt must be to a moral certainty. Still the phrase may mislead, because moral certainty in the popular sense may be taken to be more than moral certainty in the legal sense: *Id.*

A ruling that the law only requires that degree of certainty in the minds of jurors before rendering a verdict of guilty, as would exist in their minds in coming to a conclusion on matters of grave interest and importance to themselves, is not to be commended for judicial use. It is aided in the present case by additional definition of reasonable doubt: *Id.*

Damages. See *Insurance; Negligence.*

Assault and Battery—Punitive Damages—Evidence of Wealth of Defendant.—In an action for assault and battery where punitory damages are recoverable, the financial condition of the defendant may be shown by evidence of his reputed wealth: *Draper* v. *Baker*, 61 Wis.

A verdict of $1200 damages for an assault and battery upon the

plaintiff by spitting in her face, is held not so large as to induce this court to believe that the jury were actuated by passion, prejudice, or other improper motive: *Id.*

DOMICILE. See *Parent and Child.*

EQUITY. See *Bills and Notes.*

Cross-Bill—Effect of Demurrer to Original Bill.—Where a defendant in a bill of equity demurred thereto and also filed a cross-bill, if his demurrer was sustained and the bill dismissed, it carried the cross-bill with it; and it was error in the court to dismiss the bill but retain the cross-bill for trial: *Johnamsen* v. *Tauer*, 71 or 72 Ga.

EVIDENCE. See *Damages; Trial.*

Pedigree—Declarations.—On the question of pedigree, declarations are admissible, (1) When it appears by evidence *dehors* that the declarant was lawfully related by blood or marriage to the person or family whose history the facts concern. (2) That the declarant was dead when the declarations were tendered, and (3) That they were made *ante litem motam: Northrop* v. *Hale*, 76 Me.

Thus, in determining who are the rightful distributees of an intestate estate, the declarations of the intestate's sister (since deceased) in whose family the claimant was not only born and brought up, but in which the intestate herself also lived, when the claimant was born, and for several years thereafter, are admissible, when made *ante litem motam*, for the purpose of showing that the claimant was the natural son of the intestate, who had not then been married: *Id.*

EXECUTION. See *Judicial Sale.*

FRAUDS, STATUTE OF.

Memorandum in Writing—What Sufficient.—The Statute of Frauds does not require that all the terms of the contract shall be agreed to or written down at one and the same time, nor on one piece of paper; but where the memorandum of the bargain is found on separate pieces of paper, and where these papers contain the whole bargain, they form together such a memorandum as will satisfy the statute, provided the contents of the signed paper makes such reference to the other written paper or papers as to enable the court to construe the whole of them together as containing all the terms of the bargain. If, however, it be necessary to adduce parol evidence, in order to connect a signed paper with others unsigned by reason of the absence of any internal evidence in the signed papers to show a reference to, or connection with the unsigned papers, then the several papers taken together do not constitute a memorandum in writing of the bargain, so as to satisfy the statute: *North* v. *Mendel*, 71 or 72 Ga.

Contracts not to be Performed in a Year—Pleading.—When the Statute of Frauds is relied upon in defence to an action for breach of contract, on the ground that it was not to be performed within a year, it should be pleaded specially: *Farwell* v. *Tillson*, 76 Me.

To defeat the application of the Statute of Frauds by the happening of a contingency, it must be such a contingency as renders performance of the contract possible within the year: *Id.*

Effect is to be given to an oral contract if proved, unless upon the whole case it appears affirmatively that it is not to be fully performed within a year: *Id.*

The Statute of Frauds does not apply to contracts which simply may not be performed within the year, even if they probably will not or are not expected to be so performed, but it does apply to those which are not to be performed within that time; it includes any agreement, which by a reasonable construction of its terms, and in view of all the circumstances existing at the time, does not admit of performance according to its language and intention, within that period: *Id.*

In determining the question of the time of the performance of a contract, it is proper to consider the circumstances and situation of the parties, so far as known to each other, and the subject-matter of the contract: *Id.*

GUARANTY.

Continuing Contract.—K. wrote to H. the following letter:—"Gentlemen,—The bearer of this letter, my son-in-law, * * * wishes to place a stock of groceries in his provision and meat store, in this place. To enable him to do this, I am willing to be responsible to you for the amount of groceries he may order of you." *Held*, that the letter did not create a continuing liability; that when the stock of groceries had been selected, and, with the aid of K., had been paid for, the latter's liability ended: *Knowlton* v. *Hersey*, 76 Me.

Release—Failure of Principal to realize on Collaterals.—In a suit upon the guaranty of the payment of a note owned by a bank, the fact that the bank held, before the suit, an assignment, through a trustee, of a patent right, and some claims for damages for an alleged infringement of the patent, and was offered more for such patent and claims than enough to have paid the note, such assignment having been made by the principal debtor, and the patent and claims afterwards prove valueless from an adverse ruling of the courts, will not operate to discharge the guarantor, although he may have urged the bank to accept the offer for the patent. It was the duty of the bank, as a trustee, to obtain the largest sum that could be realized, and the making of a mistake, while acting in good faith, will not subject the bank to a loss: *Kaufman* v. *Loomis*, 110 Ill.

GUARDIAN AND WARD.

Guardian appointed in a different State from that of the Domicile of the Ward.—When the domicile of the ward has always been in a state whose law leaves much to the discretion of the guardian in the matter of investments, and he has faithfully and prudently exercised that discretion with a view to the pecuniary interests of the ward, he will not, in the absence of an express statutory requirement, be charged with the amount of the moneys invested merely because has not complied with the more rigid rules of the courts of the state of his appointment: *Lemar* v. *Micon*, S. C. U. S., Oct. Term, 1884.

INSURANCE.

Who entitled to Payment—Legal Representatives—Change of Beneficiary—Insurable Interest.—An insurance policy taken by the assured

provided for the payment of a certain sum within thirty days after due notice and satisfactory evidence of h s death, to his wife, or the legal representatives of the assured: *Held*, that the intention of the assured was, that his wife should have the proceeds in case she survived him, but in case she did not, such proceeds were to go to his executor or administrator, to be distributed in the due course of administration: *Johnson* v. *Van Epps*, 110 Ill.

The words "legal representative," in a policy of insurance, as designating the beneficiaries, when there is nothing in the context or surrounding circumstances to indicate a contrary intention, mean "executors or administrators." A policy of insurance payable to the legal representatives of the assured, is the same as if made payable to himself: *Id.*

Where a policy of insurance is made payable to the wife of the party procuring the same, or his legal representatives, whatever may be the right of the assured during the lifetime of his wife, after her death he will have the same power over it as if it had been originally payable to himself, his executors and administrators, and with the consent of the insurer he may surrender the same, and take out a new one payable to another person: *Id.*

The insurance of one's own life by a party, for the benefit of one not a relative, is not void on grounds of public policy, as tending to encourage the commission of crime. But if it were, no one but the insurer can raise the question. That cannot be urged by the heirs of the person insured: *Id.*

Non-Payment of Premium—Waiver of Forfeiture—Damages.—Although notices issued by a life insurance company required the premiums to be paid at 12 o'clock M., on the day they fell due, yet where there was no such stipulation in the policy itself, and according to the course of all previous dealings between it and the assured, a literal compliance with this requirement had not been exacted, if the right to do so existed at all, it was waived, and the company could not exist on a strict and literal compliance without notifying the assured, before the day of payment, of an intention to do so: *Alabama Gold Life Ins. Co.* v. *Garmany*, 71 or 72 Ga.

Where a policy of life insurance provided for the payment of premiums annually, and gave the assured the right to continue the insurance, if, after the policy had been continued for several years, the company improperly refused to receive further premiums or to continue the insurance, on a suit brought therefor by the assured, the measure of his damages was the amount of premiums paid, with interest on each from the time such payment was made: *Id.*

JUDICIAL SALE.

Execution pending Appeal—Sale Irregular not Void.—The issuing of an execution on a judgment of the circuit court pending an appeal from the same, is irregular, but the execution is not void; and a sale of land under such execution is subject to be set aside on motion by the defend ant, made in proper time, but by no one else; and if not so set aside, the sale will pass the defendant's title to the land: *Shirk et al.* v. *Metropolis and New Columbia Gravel Road Co.*, 110 Ill.

No one but the defendant in an execution can question a sale of his land under the same for an irregularity. If he fails to have the same set aside, and acquiesces in the sale, no one acquiring a title from or through him can question the validity of the sale, especially in a collateral proceeding: *Id.*

Limitations, Statute of.

Malicious Prosecution—Termination of Prosecution.—In cases of malicious prosecution on the criminal side of the court, the right of action does not accrue until the prosecution terminates; and so, by analogy, the rule should be the same in malicious prosecutions on the civil side of the court, in respect to the time when the right of action accrues and the statute begins to run, except in cases of seizure of personalty under execution, where the litigation is protracted by a claim interposed by the person whose property is seized. In that case the right of action would accrue whenever the personalty was seized, and the statute would then begin to run, and four years after that time would bar the action: *Printup* v. *Smith*, 71 or 72 Ga.

Malicious Prosecution. See *Limitation, Statute of.*

False Arrest—Warrant Issued by Inferior Court.—An action for false arrest does not lie against an officer for serving a precept issued by an inferior magistrate, if the magistrate has jurisdiction of the offence alleged, and the precept upon its face discloses that he has jurisdiction of the person of the offender: *Elsemore* v. *Longfellow*, 76 Me.

The process discloses jurisdiction of the person against whom it runs, if a proper cause is indicated, though it may be ever so irregularly and imperfectly expressed. Amendable irregularities do not vitiate. To render the officer liable the precept must be absolutely void: *Id.*

Master and Servant.

Injury to Servant—Negligence of Fellow-Servant—Master and Mate of Vessel.—The owners of a vessel are not liable for an injury to the mate resulting from the negligence of the master, the latter being a fellow-servant of the mate engaged in a common employment: *Thompson* v. *Herman*, 47 Wis., distinguished: *Mathews* v. *Case*, 61 Wis.

Negligence—Who is Fellow-servant.—A crew of men were engaged under a foreman or superintendent in repairing a dam for a log-driving company, incorporated by the laws of the state, when one of the laborers was injured by the carelessness of another who acted under the direction and immediate observation of the foreman in doing the particular act complained of: *Held*, That the foreman and laborers were fellow-servants within the rule exculpating the company from liability: *Doughty* v. *Penobscot Log Driving Co.*, 76 Me.

Negligence—Fellow-servant.—One who contracts with a mining company to break down rock and ore for a certain distance to disclose the vein, at a stipulated price per foot, the company to furnish steam drill and keep the drift clear of rock, as the contractor broke it down, is to be regarded as a contractor with and not a servant of the company. He is not a fellow-servant with the superintendent of the company under whose direction his work is performed: *Mayhew* v. *Sullivan Mining Co.*, 76 Me.

MECHANICS' LIEN. See *United States Courts.*

MORTGAGE. See *Bills and Notes; Notice.*

NEGLIGENCE. See *Action; Master and Servant; Telegraph; Trial.*

Railroad Crossings—Accidents—Contributory Negligence—Damages —Jury.—It is settled in this state that in actions against railroad companies for injuries to persons, whether in form civil or criminal, the burden is upon the party prosecuting to show that the person injured or killed, did not by his want of ordinary care contribute to produce the accident: *State* v. *Maine Central R. Co.*, 76 Me.

One in the full possession of his faculties, who undertakes to cross a railroad track at the very moment a train of cars is passing, or when a train is so near that he is not only liable to be, but is in fact struck by it, is *prima facie* guilty of negligence; and, in the absence of a satisfactory excuse, his negligence must be regarded as established: *Id.*

In a prosecution, by indictment, against a railroad company for negligently causing the death of a person at a crossing, the amount of the forfeiture between the minimum and maximum sums fixed by the statute, should be assessed by the jury: *Id.*

Railroad—Failure to Stop and Listen at Crossing—Evidence—Proof of Usage of Company at other Crossings.—A person approaching a railway crossing with a team and having reason to suppose that a regular passenger train has recently passed from one direction, is not guilty of negligence if he fails to look constantly in that direction, especially when it would be impossible to see or hear an approaching train because of an embankment or other obstruction to sight and sound: *Bowen* v. *C., M. & St. P. R. Co.*, 61 Wis.

An instruction that it was the duty of a person approaching a railway crossing to have looked up the track if by so doing he could have ascertained the approach of a train at a *sufficient distance* to have avoided it, is *held* proper. The question what was such sufficient distance was for the jury: *Id.*

The question being whether the bell was rung and the whistle blown as a locomotive approached a highway crossing, evidence that those things were not done at a similar crossing three miles distant was admissible: *Id.*

NOTICE.

Mortgage—Record—Unrecorded Deed.—When the record of a mortgage is defective it is not notice of such mortgage. Thus, a mortgage for the security of two thousand dollars was recorded as one for two hundred dollars. *Held*, that the record was no notice of the two thousand dollar mortgage: *Hill* v. *McNichol*, 76 Me.

When a purchaser of real estate, without notice of a prior unrecorded deed, for a valuable consideration conveys to one who had notice thereof, the title of the latter is not impaired by the notice: *Id.*

OFFICER.

Assumpsit—School Agent—Compensation for Official Duties.—A school agent's mere election and performance of official duties, raise no implied promise on the part of the town to pay him for such services: *Talbot* v. *Inhabitants of East Machias*, 76 Me.

In the absence of any implied contract or statutory provision entitling him to pay for official duties rendered, a school agent can maintain no action therefor against his town: *Id.*

Parent and Child.

Domicile of Child of a Widow who Re-marries.—Although a widow by marrying again, acquires the domicile of her second husband, she does not, by taking the children of her first husband to live with her there, make the domicile which she derives from her second husband their domicile; but they retain the domicile which they had, before her second marriage, acquired from her or from their father: *Lamar* v. *Micon*, S. C. U. S., Oct. Term 1884.

Partnership.

Liability for Acts of Partner after Dissolution—Attorneys.—Where a note and mortgage have been intrusted to a firm of attorneys for collection, the mere dissolution of the firm will not release one partner from responsibility to the client for money subsequently collected by the other partner to whom that business was, by the terms of the dissolution, transferred. Such release could be brought about only by the express contract of the parties or by a contract fairly implied from the circumstances and transaction after the dissolution. Instructions in such a case giving too much importance to the mere fact of dissolution are *held* to have been misleading: *Waldech* v. *Brand*, 61 Wis.

Patent.

Re-issue for the Purpose of Enlarging the Claim—Time of Application for.—A patent cannot be lawfully re-issued for the mere purpose of enlarging the claim, unless there has been a clear mistake inadvertently committed in the wording of the claim, and the application for re-issue is made within a reasonably short time. Whether there has been such an inadvertent mistake is, in general, a matter of fact for the commissioner to decide; but whether the application is made in reasonable time is matter of law, which the court may determine by comparing the re-issued patent with the original, and, if necessary, with the records in the patent-office, when presented by the record: *Maher* v. *Harwood*, S. C. U. S., Oct. Term 1884.

The principles announced in the case of *Miller* v. *Brass & Co.*, 104 U. S. 350, in reference to re-issuing patents for the purpose of enlarging the claims, reiterated and explained: *Id.*

No invariable rule can be laid down as to what is a reasonable time within which the patentee must seek for the correction of a claim which he considers too narrow. It is for the court to judge in each case, and it will exercise proper liberality towards the patentee. But as the law charges him with notice of what his patent contains, he will be held to reasonable diligence. By analogy to the rule as to effect of public use before an application for a patent, a delay of more than two years would in general, require special circumstances for its excuse: *Id.*

As, in the present case, there was a delay of nearly four years, and the original patent was plain, simple, and free from obscurity, it was *held* that the delay in seeking a correction by re-issue was unreasonable, and that the commissioner had, therefore, no authority to grant it; and the

patent was held invalid so far as the claims were broader than those in the original patent: *Id.*

RAILROAD. See *Common Carrier; Negligence.*

RECEIVER. See *Corporation.*

SET-OFF.

Physician's Account—Negligence.—Where suit was brought on a physician's account for services and medicine, it might be pleaded that he did not do his work skilfully, or a plea of recoupment might be filed, springing out of the contract; but a plea of set-off, based on a tort in giving defendant too large a dose of medicine, which injured him to the amount of two hundred dollars, was not proper as matter of defence; nor does it matter whether the defendant was insolvent or not: *McLeroy* v. *Sewell*, 71 or 72 Ga.

SURETY. See *Guaranty.*

TELEGRAPH.

Negligence—Cipher Dispatch—Delay in Delivery—Damages—Evidence.—Where a telegraphic message was sent by cable, and suit was brought for damages resulting from a failure to deliver it, after its receipt at its point of destination, within a reasonable time, the copy message written by the telegraph operator at the point of destination and eventually delivered was admissible in evidence, without producing the original message written out at the point of transmission, there being no claim that the message delivered differed from that sent: *West. Un. Tel. Co.* v. *Fatman*, 71 or 72 Ga.

Where a ship broker, whose office was near that of a telegraph company, had sent other messages by cable through such company, and a cipher message from a company in Liverpool was sent to him, there was enough to put the telegraph company on notice that it was a matter of important commercial business, and required reasonable and ordinary dispatch in delivery; and the party injured by a failure to use such dispatch would not be limited to recovering nominal damages: *Id.*

Telegraph companies and common carriers are not identical as regards notice, or notice of value of the dispatch: *Id.*

If a telegraph company receives a cipher dispatch, and undertakes to carry it and deliver it to the person to whom directed, in consideration of money paid to them, it is their duty to make such delivery within a reasonable time: *Id.*

If a message sent by cable was received at the office of the telegraph company at the point of destination at 10.24 A. M., and was not delivered until 11.55 A. M., the office of the person to whom it was directed being within five minutes' walk from that of the company, and, in the meantime, loss occurred by reason of this failure to deliver, there was enough to warrant the jury in finding that the delay was unreasonable: *Id.*

Where, by reason of the failure on the part of a telegraph company to deliver a message directed to a ship broker, he lost a contract by which he would have made certain commissions, had the message been promptly delivered, a recovery of the amount of such commissions was not too remote or speculative a measure of damages: *Id.*

TRIAL.

Injuries to Person—Examination by Physician at Trial.—In an action for personal injuries the court may, in a proper case, at the trial direct the plaintiff to submit to a personal examination by physicians on behalf of the defendant: *White* v. *Milwaukee City R. R. Co.*, 61 Wis.

TRUST AND TRUSTEE. See *Action.*

Execution of Power of Appointment—Necessity of Deed by Trustee.—S., the wife of B., joined with him in a deed to H. of land of B., in trust, for the use of S. during her life, and at any time, to convey it to such person as S. might request or direct in writing, with the written consent of B. Afterwards B. made a deed of the land to W., in which H. did not join, and in which B. was the only grantor, and S. was not described as a party, but which was signed by S. and bore her seal, and was acknowledged by her in the proper manner. *Held*, that the latter deed did not convey the legal title to the land, and was not made in execution of the power reserved to S.: *Batchelor* v. *Brereton*, S. C. U. S., Oct. T. 1884.

UNITED STATES.

Effect of Seizure of Buildings by United States Marshal upon Right to proceed under Mechanics' Lien in State Court.—A building was commenced June 25th 1872, from which time the mechanics' liens dated, although the first of them was filed and action to enforce it commenced February 21st 1873. On January 24th 1873, the buildings were seized for a forfeiture under the internal revenue laws of the United States; process of attachment was issued to the marshal February 5th 1873, and after condemnation and forfeiture he sold the premises in May 1883. The sheriff of the county also sold the premises in September 1873, under judgments on the mechanics' liens obtained in June 1873. *Held*, that the sheriff's sale was nugatory and void, because based upon proceedings instituted while the *res* was in the exclusive custody and control of the United States Court: *Heidritter* v. *Elizabeth Oil-Cloth Co.*, S. C. U. S., Oct. Term, 1884.

Semble, that the mechanics' lien creditors might, without prejudice to the jurisdiction of the United States Court, have commenced their actions, so far as that was a step required by the state law, for the mere purpose of fixing and preserving their rights to a lien; provided, always, they did not prosecute their actions to a sale and disposition of the property, which, by relation, would have the effect of avoiding the jurisdiction of the United States Court under its seizure: *Id.*

UNITED STATES COURTS.

Jurisdiction—Suit by a National Bank in the Name of its President. —Practice.—The bill in this case was filed by H. B. "in his capacity of president of the New Orleans National Bank," against a citizen of Louisiana, and the defendant, on appeal, assigned as error, the want of the proper citizenship to give the United States Circuit Court jurisdiction. Upon an inspection of the whole record it appeared that the suit was treated by both parties and by the circuit court as the suit of the bank and not of Baldwin. *Held*, that the defendant will not be allowed on final hearing, in order to defeat the jurisdiction, to assert, for the first time, that Baldwin, and not the bank, was the complainant: *Fortier* v. *New Orleans Nat. Bank*, S. C. U. S., Oct. Term, 1884.