relator do exist, they are not enforceable by mandamus. To this we cannot agree. To our mind it is the duty of respondent to furnish the transmitter and telephone to the relator as it does to its other subscribers, without discrimination; that this duty arises from the trust or station assumed by respondent, and that relator has no adequate remedy at law. The duty is of the same nature as the duties of common carriers. Respondent is a common carrier of news, the same as a telegraph company. The duty of common carriers is one of law, growing out of their office, and not of contract: Redf. Carr., p. 30, § 40; *Western Transp. Co.* v. *Newhall*, 24 Ill. 466. The remedy by mandamus is the appropriate one. The duty is of a public character, and there is no other adequate mode of relief: *Vincent* v. *Chicago & A. R. Co.*, *supra*; *State* v. *Hartford & N. H. R. Co.*, 29 Conn. 538; *People* v. *Albany & V. R. Co.*, 24 N. Y. 261; 2 Shelf. Railw. 864; Moses, Mand. 155, 168, 171, 176; 2 Redf. Railw. 257, 275, 294; *Chicago & N. W. Ry. Co.* v. *People*, 56 Ill. 365; *State* v. *Bell Telephone Co.*, *supra*.

A peremptory writ of mandamus must be allowed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ARKANSAS.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME COURT OF KANSAS.[4]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[5]

ACTION.

Conspiracy to Prevent the Collection of a Special Tax.—The plaintiff obtained a judgment against a county and obtained a mandamus thereon commanding the levy and collection of a special tax. In obedience to this and other like writs the County Court levied a special "judgment tax." Defendants and their confederates conspired to prevent the collection of this tax, and, by assembling in great numbers and by threats

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1884. The cases will probably appear in 113 U. S. Rep.

[2] From B. D. Turner, Esq., Reporter; to appear in 43 Ark. Rep.

[3] From Hon. N. L. Freeman, Reporter; to appear in 111 Ill. Rep.

[4] From A. M. T. Randolph, Esq., Reporter; to appear in 33 Kans. Rep.

[5] From John Lathrop, Esq., Reporter; to appear in 137 Mass. Rep.

and hostile demonstrations, prevented any bidding at an advertised sale of horses and mules levied upon by the collector, and overawed and intimidated the taxpayers of the county so that they did not pay the tax. *Held*, on demurrer, that plaintiff had a right of action against the defendants: *Findlay* v. *McAllister*, S. C. U. S., Oct. Term 1884.

Foreign Administrator—Action for Tort.—An administrator appointed in another state cannot maintain an action in this state, where the law of the state from whence he derives his appointment prohibits him from instituting, maintaining or prosecuting an action in his own state for damages resulting from the wrongful act or omission of another in causing the death of his intestate: *Limekiller* v. *Hannibal & St. J. Railroad Co.*, 33 Kas.

Kansas Pacific Railway Co. v. *Lydia H. Sutter*, 16 Kas. 568, referred to and distinguished; *Perry, as administrator, etc.*, v. *St. Joseph & Western Railway Co.*, 29 Kas. 420, referred to and commented upon: *Id.*

What constitutes Loan—Right of Action.—If A. borrows money for B., the payment of which is secured to the lender by a transfer of stock furnished by B., to whom the money so borrowed is paid by A., this does not constitute a loan by A. to B., to recover which A. can maintain an action against B., before A. has repaid the money which he borrowed, or has sustained some loss: *Reeve* v. *Dennett*, 137 Mass.

ASSIGNMENT. See *Bills and Notes.*

Validity in other State.—An assignment of property, executed in another state, by a debtor domiciled there, for the benefit of his creditors, which provides that certain creditors shall be paid in full before the others are paid anything, and which is assented to by creditors holding claims exceeding in amount the value of the property assigned, if valid by the law of that state, will be upheld in this commonwealth, as against an attaching creditor of the assignor domiciled here: *Train* v. *Kendall*, 137 Mass.

ATTACHMENT. See *Assignment.*

Residence.—"Residence," in the attachment laws generally, implies an established abode, fixed permanently for a time, for business or other purposes, although there may be an intent existing all the while to return at some time to the true domicile. An actual resident in this state, having a domicile in another, cannot be attached here as a non-resident: *Krone* v. *Cooper*, 43 Ark.

"Domicile is of broader meaning than residence." It includes residence: but actual residence is not indispensable to retain a domicile after it is once acquired. It is retained by the mere intention not to change it: *Id.*

ATTORNEY.

Unauthorized Release of Judgment.—A release of a judgment was entered upon the appearance docket by a person who signed the release as "attorney of record," but he was not an attorney of the judgment-creditor, and had no authority from the judgment-creditor to enter such release, and the judgment had never been paid or satisfied. *Held*, that

the release was void: 1st. Because the person entering the release had no authority therefor from the judgment-creditor. And 2d. Because an attorney at law has no power, except by special authority from his client, to release his client's judgment where the judgment has not been paid or satisfied: *Rounsaville* v. *Hazen*, 33 Kas.

Bills and Notes.

Bill of Exchange—Payable out of Particular Fund.—A draft for a certain sum, drawn by one person upon another, payable at sight to the order of a bank named, and containing the direction to charge the same to a certain account, is a negotiable bill of exchange, not payable out of a particular fund, and does not constitute an assignment of the fund: *Whitney* v. *Eliot Nat. Bank*, 137 Mass.

Burglary. See *Criminal Law.*

Common Carrier.

Special Contract limiting Liability.—A stipulation in a shipping contract, voluntarily and understandingly entered into by a shipper of live stock for transportation, that in consideration of a reduced rate no claim for damages accruing to the shipper shall be allowed or paid by the carrier, or sued for in any court, unless a claim for such loss or damage shall be made in writing, verified by the affidavit of the shipper or his agent, and delivered to the general freight agent of the carrier, at his office, within five days from the time such stock is removed from the cars, will be binding upon the shipper, and is not void as being contrary to any law or to public policy: *Black* v. *Wabash, St. L. and Pac. Railway Co.*, 111 Ill.

Where a party of mature years and sound mind, being able to read and write, without any imposition or artifice to throw him off his guard, deliberately signs a written agreement without informing himself of the nature of its contents, he will nevertheless be bound by it, for the reason the law will not permit him to allege, as a matter of defence, his ignorance of that which it was his duty to know, particularly when the means of information are within his immediate reach, and he neglects to avail himself of them: *Id.*

Negligence—Making up Train—Ownership of Cars by different Companies.—If a railway company receives a passenger in one of its cars for passage before making up the train of which such car is to be a part, the law requires the company to make up its train, couple, manage and control its cars and engines, in such a careful, skilful and prudent manner as to carry the passenger with reasonable safety, and it will be liable for an injury to the passenger resulting from its neglect of this duty, when such passenger is not wanting in ordinary care: *Hannibal and St. J. Railroad Co* v. *Martin*, 111 Ill.

Where a passenger in a railway coach which was overcrowded, was informed, by the announcement of the conductor in charge, that another car had been added in front, and the adding of the car had been felt when it was pushed back, and it was found in proper position for the reception of passengers, though in fact not securely coupled, so that just as such passenger was in the act of stepping from the platform of the rear coach to the forward one, the latter moved forward suddenly,

causing him to fall to the ground, whereby he received a serious injury, it was *held*, that the passenger had the right to assume he could pass from the one car to the other with safety, and in so attempting was not chargeable with want of ordinary care: *Id.*

Where the trains of a railway corporation are made up by the employees of another railroad company, and on the track of the latter, and cars used to make up the same belong to other companies, if the use of the cars and tracks and labor in making up such trains is to enable such first-named corporation to exercise its function and perform its duty as common carrier, such cars, tracks and servants, so far as the rights of its passengers who may receive an injury are concerned, must be regarded as the cars, tracks and servants of the company so using the same: *Id.*

Railroads—Limited Tickets—Obligations of Purchaser and Carrier —Continuous Journey—Ejection of Passenger—Damages.—A passenger on a limited railroad ticket is bound to use it within the time specified in the ticket, and to observe the reasonable regulations of the carrier for the running of trains and for facilitating the business of the carriage of passengers; and the company is bound to afford him the opportunity to do so, by running its trains within the time; and if in this it fail, though the last day be a Sunday, it cannot refuse the ticket afterwards, at least when offered on the first train after the expiration of the time. *L. R. and F. S. Railway* v. *Dean*, 43 Ark.

A purchaser of a limited ticket over several connecting lines of railroads is not bound to make a continuous journey over all, but is bound to make it continuous over each coupon of the ticket; and over the last within the time limited: *Id.*

A limited railroad ticket over several connecting lines expired on Sunday; the last line ran no train on that day, and the passenger offered the ticket on the train the next day. It was refused, and the passenger, under protest and under threat of ejection by the conductor, paid his fare to a further station, and there, for want of money, was put off, and walked to his destination. *Held*, that the extra fare paid, the humiliation of being put off the train, and the inconvenience of reaching his destination by walking, were proper elements of damage to be considered by the jury: *Id.*

Ejection of Passenger—Liability of Company.—If the ticket seller of a railroad corporation delivers to a passenger a ticket with a hole punched in it, and assures him that the ticket entitles him to be carried to his place of destination, when in fact, by the rules of the corporation, it does not, and the passenger is expelled by the conductor from the train of cars, for refusing to pay additional fare, he may maintain an action therefor against the corporation: *Murdock* v. *Boston & Albany Railroad Co.*, 137 Mass.

CONFLICT OF LAWS. See *Action; Assignment.*

CONSPIRACY. See *Action.*

CONSTITUTIONAL LAW.

Regulation of Commerce—Navigable Waters—Power of a State over. —The commercial power of Congress is exclusive of state authority only

when the subjects upon which it is exerted are national in character: when they are local in their nature or operation, or constitute mere aids to commerce, the states may provide for their regulation and management until Congress intervenes and supersedes their action: *Cardwell* v. *American Bridge Co.*, S. C. U. S., Oct. Term 1884.

The clause in the act of September 9, 1850, admitting California as a state into the Union, which declares "that all the navigable waters within the said state shall be common highways and forever free, as well to the inhabitants of said state as to the citizens of the United States, without any tax, impost or duty therefor," does not lessen the power over such navigable waters which the state would have if the clause had no existence; notwithstanding it, the state can authorize the construction of bridges over navigable streams whenever they would promote the convenience of the public: *Id.*

Escanaba Co. v. *Chicago*, 107 U. S. 678, commented on: *Id.*

Eminent Domain—What is not a Public Use.—The general grant of legislative power in the constitution of a state does not authorize the legislature, in the exercise either of the right of eminent domain or of the right of taxation, to take private property without the owner's consent, for any but a public object; as by authorizing a city to issue its bonds by way of donation to a private manufacturing corporation: *Cole* v. *La Grange*, S. C. U. S., Oct. Term 1884.

Deprivation of Property without due Process of Law—Eminent Domain—General Mill Act.—A statute of a state, authorizing any person to erect and maintain on his own land a water-mill and mill-dam upon and across any stream not navigable, paying to the owners of lands overflowed, damages assessed in a judicial proceeding, does not deprive them of their property without due process of law, in violation of the fourteenth amendment of the constitution of the United States: *Head* v. *Amoskeag Manufacturing Co.*, S. C. U. S., Oct. Term 1884.

Whether the erection and maintenance of mills for manufacturing purposes under such a statute can be upheld as a taking, by delegation, of the right of eminent domain, of private property for public use, not decided; but, *held*, that such a statute, considered as regulating the manner in which the rights of proprietors of lands adjacent to a stream may be asserted and enjoyed, with a due regard to the interests of all, and to the public good, is within the constitutional power of the legislature: *Id.*

Act not Embracing more than one Subject.—An act of the legislature of Iowa, entitled "an act to authorize independent school-districts to borrow money and issue bonds therefor, for the purpose of erecting and completing school-houses; legalizing bonds heretofore issued, and making school-orders draw six per cent. interest in certain cases," is not in violation of the provision in the constitution of that state which declares that "every act shall embrace but one subject, and matters properly connected therewith, which subject shall be expressed in the title:" *Ackley School District* v. *Hall*, S. C. U. S., Oct. Term 1884.

Liquor—Traffic is controlled by the Legislature.—In the absence of constitutional restraints, the regulation of the traffic in liquors is wholly within legislative control. The legislature may entirely prohibit it, or

empower municipal corporations to do so within their limits. But neither counties, cities nor towns can impose a tax upon the privilege not authorized by the legislature: *Drew County* v. *Bennett*, 43 Ark.

Healing Acts—Change of Law pending Suit.—The legislature has power to pass healing acts which do not impair the obligation of contracts nor interfere with vested rights: *Green* v. *Abraham*, 43 Ark.

The rule in regard to healing acts is this: if the thing omitted or failed to be done, and which constitutes the defect in the proceedings, is something which the legislature might have dispensed with by a previous statute, it may do so by a subsequent one. And if the irregularity consists in doing some act, or in the mode or manner of doing it, which the legislature might have made immaterial by a prior law, it may do so by a subsequent one: *Id.*

The bringing of a suit vests in a party no right to a particular decision. His case must be determined on the law as it stands at the time of the judgment—not at the bringing of the suit; and if pending an appeal the law is changed, the appellate court must determine the case under the law in force at the time of its decision: *Id.*

Special Legislation—Municipal Corporations—Exemption from Costs.—An act allowing municipal corporations to appeal without giving an appeal bond, as in other cases, is not unconstitutional, as being either a local law or special legislation: *Holmes* v. *Mattoon*, 111 Ill.

Public municipalities, such as counties, cities, villages, towns and school districts, and all officers suing for or defending the rights of the state, or acting for or instead of the state in respect of public rights, being only instrumentalities of the state, may constitutionally be authorized to sue without the payment of costs, or conforming to all the requirements imposed by the law upon natural persons or corporations formed for private gain: *Id.*

Corporation. See *Receiver*.

Expulsion—By-Law—Special Meeting.—A by-law of a religious society provided as follows: "Any member who shall either cease to regularly worship with the society, or who shall fail to contribute to the support of its public worship for the term of one year, shall have his or her name dropped from the list of members." *Held*, that a member could be deprived of his membership only by a vote of the society, after a hearing: *Gray* v. *Christian Society*, 137 Mass.

A by-law of a religious society provided that the object for which a special meeting was called must be stated. Another by-law provided that a new member must be approved by a vote of the society. The warrant which called a special meeting of the society, at which several persons were admitted to membership and allowed to vote, contained no article for the admission of new members, but contained the general article, "To transact any other business that may legally come before said meeting." *Held*, that the election of such persons was invalid: *Id.*

Criminal Law.

Evidence—Accomplice.—The confession of a prisoner accompanied with proof that the offence was actually committed by some one, will warrant his conviction: *Melton* v. *State*, 43 Ark.

A defendant cannot be convicted of a crime upon the testimony of a partaker in the crime, whether his guilt be in the same degree or not, unless corroborated by evidence tending to connect the defendant with the commission of the offence; the corroboration is not sufficient if it merely prove the *corpus delicti* and the circumstances thereof, and one accomplice cannot corroborate the testimony of another: *Id.*

Reversal of Judgment— Verdict against the Evidence.—This court will reverse a judgment of conviction, in a case of felony, where the evidence on which it is based is all circumstantial and of an unsatisfactory character, and which, when all considered, leaves a serious and grave doubt of the guilt of the defendant: *Mooney* v. *People*, 111 Ill.

While this court recognises the rule that jurors are judges of the facts and the weight of evidence in all criminal cases, yet the law has imposed upon the court the solemn and responsible duty to see that no injustice has been done by hasty action, passion or prejudice, or from any other cause, on the part of the jury: *Id.*

Burglary— What constitutes Breaking.—The lifting of a latch of a closed door, and the pushing open of the door, with the intent expressed in the statute, is a sufficient breaking within the meaning of the law, to constitute burglary: *State of Kansas* v. *Groning*, 33 Kas.

Where a defendant was charged with burglary, under sec. 68 of the crimes act, and it was shown upon the trial that the outside door of the building or granary, which it was alleged the defendant broke and entered in the night time, was closed and latched a few hours before the crime was committed, and the next morning was found open, and certain oats and rye taken. *Held*, that the jury was justified in finding, upon this evidence, that there was an actual breaking and entry into the building, within the meaning of the law: *Id.*

In Jeopardy—Discharge of Juror.—A prisoner is in jeopardy from the time that the jury is impanelled and sworn in a court of competent juisdiction upon an indictment sufficient in form and substance to sustain a conviction; and the entry of a *nolle prosequi*, or discharge of a juror, after that, without his consent, operates as an acquittal, except in cases of overruling necessity, as the death or illness of the judge or a juror, or inability of the jury to agree on a verdict: *Whitmore* v. *State*, 43 Ark.

DAMAGES. See *Common Carrier.*

DIVORCE. See *Husband and Wife.*

ERRORS AND APPEALS. See *Criminal Law.*

Evidence—Res Gestæ.—In prosecutions for assault words uttered during the continuance of the main transaction or so soon thereafter as to preclude the hypothesis of concoction or premeditation, whether by the active or passive party, become a part of the transaction itself and if they are relevant may be proved as any other fact, without calling the party who uttered them: *Flynn* v. *State*, 43 Ark.

ESCAPE.

Voluntary Escape— Whether a Discharge from Imprisonment.—The ancient rule that a debtor in execution, by a voluntary escape became

discharged both from imprisonment and the debt, leaving the creditor to look to the sheriff alone for his debt, is no longer in force, and upon such escape he may be lawfully re-arrested and imprisoned: *The People* v. *Hanchett*, 111 Ill.

Where a debtor has been legally arrested by a sheriff under a *ca. sa.* running in the name of the people, and is enlarged on bond for his appearance on the day set for the hearing of his application for a discharge, the court, on refusing a discharge, may order him back into the officer's custody without process in the name of the people, and this may be verbally done: *Id.*

EVIDENCE. See *Criminal Law.*

EXECUTORS AND ADMNISTRATORS. See *Action.*

EXECUTION.

Exemption—Time—Assignment without Claim—Mortgaged Property.—A merchant tailor, who is the head of a family and a resident of the state, is entitled to an exemption of such portion of his stock in trade as he may select up to the statutory limit of value; and this right is absolute, and does not depend upon any claim or selection to be made by him: *Rice* v. *Nolan*, 33 Kas.

The mere failure of the debtor to claim his exemption until the morning preceding a sale made by an officer upon an order of attachment does not operate as a waiver of such right: *Id.*

Where the stock in trade of a debtor, some of which is exempt, is mortgaged, he cannot be compelled to accept as his exemption that which is subject to the mortgage at its full value, but he is entitled to an exemption of his own selection, free of all liability from debt, up to the full value of $400: *Id.*

Where the exempt property of the defendant has been levied on by attachment, and a few days before the sale thereof the defendant makes an assignment for the benefit of his creditors, with no reservation of the exempt property so levied on, but no other or further proceedings are taken under such assignment, and where the plaintiffs do not claim the property thereunder and are not influenced or prejudiced thereby, the defendant is not estopped as against such plaintiffs from thereafter claiming the attached property as exempt from sale under such attachment process: *Id.*

EXEMPTION. See *Execution.*

FRAUD.

Fraudulent Representations—Who may sue for.—It is not necessary to support an action for false representation, that the representation be addressed directly to the plaintiff. If it be made with the intent to influence every person to whom it may be communicated, or who may read or hear of it, it is sufficient. Nor is it essential to the right of action that the misrepresentation be the sole inducement to a purchase: *Carvill* v. *Jacks*, 43 Ark.

Negligence in Signing a Contract without Reading it.—In an action upon a written contract, which the defendant sought to avoid on the ground of an alleged fraudulent statement that it was a copy of an original draft except in a matter which did not concern him, the court,

at the instance of the plaintiff, instructed the jury that a party executing a written contract should exercise reasonable care and prudence to learn its nature and contents before signing it, by reading the same, if capable of reading, and that he would not be excused for his want of care and prudence in signing without so reading the same, unless induced to do so by *wilfully* false statements of the party procuring his signature: *Held*, that the use of the word "wilfully," in the connection it was employed, did not render the instruction erroneous: *Linington* v. *Strong*, 111 Ill.

What is negligence in signing a contract without reading the same, is not a question of law, but one of fact for the jury, to be judged of from the peculiar facts and circumstances of each case. In such a case it is not proper to select certain of the facts, and tell the jury in an instruction that they afford no evidence of negligence or a want of proper and reasonable care: *Id.*

Husband and Wife.

Divorce—Extreme Cruelty.—Any unjustifiable conduct on the part of the husband which so grievously wounds the mental feelings of the wife, or so utterly destroys her peace of mind as to seriously impair her bodily health or endanger her life, or such as utterly destroys the legitimate ends and objects of matrimony, constitutes extreme cruelty, although no physical or personal violence is inflicted or even threatened: *Avery* v. *Avery*, 33 Kas.

Interest. See *Usury.*

Intoxicating Liquor. See *Constitutional Law.*

Lien. See *Shipping.*

Mandamus.

Railroad Company—Construction of Bridge.—Where a duty rests upon a railroad company to construct a viaduct over its railroad tracks where the same cross a public street in a city, mandamus will ordinarily lie to compel the railroad company to so construct such viaduct: *State* v. *Mo. Pac. Railroad Co.*, 33 Kas.

And the action may in some cases be prosecuted in the name of the state by the county attorney: *Id.*

Master and Servant.

Liability of Master for Injury to Servant caused by Defective Materials.—In an action by a workman against his employer, for personal injuries caused by the fall of a staging upon which he was at work, it was in dispute whether the defendant undertook to furnish the staging as a completed whole, or whether he undertook merely to provide, and did provide, a quantity of staging materials from which fellow servants of the workman erected the staging. The judge instructed the jury that a master is liable to his servant for injuries resulting from defective materials negligently furnished by him, although the negligence of a fellow-servant contributes to the accident; and, on the question whether the obligation of the master extended to the furnishing of the staging

as a completed structure, read the instructions requested by each party. and instructed the jury, that, if the plaintiff's theory was correct, the instructions he asked for were law; and that, if the defendant's theory was correct, the instructions he asked for were law. *Held*, that the plaintiff had no ground of exception: *Clark* v. *Soule*, 137 Mass.

Who are Fellow-Servants.—A person in the employ of a railway corporation as a head blacksmith, was with a number of other employees, directed to proceed on a wrecking train of the company to a place where a train of cars had been wrecked, for the purpose of assisting in removing the rubbish and obstructions. The train carrying them was under the charge of the engineer, who acted also as conductor, and by his neglect to obey instructions the train collided with another, resulting in the death of the blacksmith. *Held*, that the blacksmith, and all the other employees on the train, including the engineer and fireman, were fellow-servants of a common master, engaged in the same line of employment, within the rule excluding a right of recovery by one servant for the negligence of a fellow-servant: *Abend* v. *Terre Haute & Indianapolis Railroad Co.*, 111 Ill.

Injury to Employee—Defective Machinery.—A railroad corporation is liable to one of its employees for an injury occasioned to him by being struck by a bridge-guard, if the guard is out of its proper position, and this is caused by the wearing out of the rope attached to the guard, and the corporation has not made suitable provision to have notice of, and to remedy, defects liable to be occasioned by its use: *Warden* v. *Old Colony R. R.*, 137 Mass.

MUNICIPAL CORPORATION. See *Constitutional Law; Taxation.*

Bond of, when a Negotiable Security—Right of Holder to Sue in United States Courts.—A municipal bond issued under the authority of law for the payment, at all events, to a named person or order, a fixed sum of money at a designated time therein limited, being endorsed in blank, is a negotiable security within the law-merchant: *Ackley School District* v. *Hall*, S. C. U. S., Oct. Term 1884.

Its negotiability is not affected by a provision of the statute, under which it was issued that it should be "payable at the pleasure of the district at any time before due:" *Id.*

Consistently with the act of March 3, 1875, determining the jurisdiction of the circuit courts of the United States, the holder may sue therein without reference to the citizenship of any prior holder, and unaffected by the circumstance that the municipality may be entitled to make a defence based upon equities between the original parties: *Id.*

NEGLIGENCE. See *Common Carrier*; *Fraud*; *Master and Servant.*

Contributory Negligence—What constitutes.—Where an employee of a railroad company was sent on a wrecking train to assist in removing the *debris* of a wrecked train from the track, and instead of taking his seat in the car, in violation of a published rule of long standing entered the locomotive and took a seat with the fireman, just in front of the latter, where he remained until a collision took place with a freight train, and he was killed, it was *held*, that he was guilty of such negligence in

taking an extra-hazardous place, as to bar any right of action by his personal representative, notwithstanding the negligence of the servant in charge of the train: *Abend* v. *Terre Haute and Indianapolis Railroad Co.*, 111 Ill.

It is not true, as a general proposition, that in actions for personal injuries caused by the defendant's negligence, the contributory negligence of the injured party will constitute no defence except when the latter's negligence is an element or factor in producing the force causing the injury complained of. It is sufficient if his negligence materially contributes to the injury, whether it contributes to the force causing the injury or not: *Id.*

A person who voluntarily and unnecessarily places himself in a well-known place of danger to life or body, but for which position he could not have been injured, and he is injured or killed in consequence of such exposure, even through gross negligence of the defendant, if the act of the latter is not wanton or wilful, is guilty of such contributory negligence as to preclude any recovery by him or his personal representative: *Id.*

Patent.

What constitutes Invention.—Novelty and increased utility do not necessarily constitute invention: *Hollister* v. *Benedict Manufacturing Company*, S. C. U. S., Oct. Term 1884.

That which is but the display of the expected skill of the maker's calling, and involves only the exercise of the ordinary faculties of reasoning upon the materials supplied by a special knowledge, and the facility of manipulation which results from its habitual and intelligent practice, is in no sense a creative work of that inventive faculty which it is the purpose of the constitution and the patent laws to encourage and reward: *Id.*

Expiration of Patent during Pendency of Suit—Practice.—Suits in equity having been begun, in 1879, for the infringement of two patents, and the Circuit Court having dismissed the bills, the Supreme Court of the United States, in reversing the decrees, after the first patent had expired, but not the second, awarded accounts of profits and damages as to both patents, and a perpetual injunction as to the second patent: *Consolidated Valve Co.* v. *Crosby Valve Co.*, S. C. U. S., Oct. Term 1884.

Railroad. See *Common Carrier.*

Receiver.

Of Corporation—May be appointed before Court acquires Jurisdiction over Corporation—Real Estate.—The court may, on a proper showing, appoint a receiver to take charge of the assets of an insolvent corporation, to save the same from destruction or waste, before acquiring jurisdiction to adjudicate upon the rights of such corporation. In such case the receiver may be authorized to hold the property until the rights of the parties are determined. Placing property in the hands of a receiver is in the nature of an equitable attachment, whereby the court, through its officer, acquires the custody of such property: *St. Louis*

and Sandoval Coal and Mining Co. v. *The Sandoval Coal and Mining Co.*, 111 Ill.

In the absence of any statutory provisions on the subject, real estate cannot be vested in the receiver, except by a conveyance to him : *Id.*

Removal of Causes.

Proceeding against an Administrator—Removals on the Ground of Prejudice or Local Influence.—A proceeding in a state court against an administrator, to obtain payment of a debt due by the decedent in his lifetime, is removable into a court of the United States when the creditor and the administrator are citizens of different states, notwithstanding the state statute may enact that such claims can only be established in a probate court of the state, or by appeal from that court to some other state court: *Hess* v. *Reynolds*, S. C. U. S., Oct. Term 1884.

The act of March 3, 1875, to determine the jurisdiction of the circuit courts, and regulate the removal of causes from state courts, does not repeal or supersede all other statutes on those subjects, but only such as are in conflict with the latter statute. The third clause of section 639 of the Revised Statutes (authorizing removals on the ground of prejudice or local influence), is not therefore abrogated or repealed: *Id.*

An application for removal under that clause is in time, if made before the trial or final hearing of the cause in the state court: *Id.*

Shipping.

Lien for Construction.—If the hull and spars of a vessel are completed at one port, and sufficient rigging is put on her, and a sufficient cargo for the necessary ballast is taken, to enable her to go to another port, where materials necessary to the rigging and equipment of a vessel, and the first put upon her, are procured, the materials so furnished at the latter port are furnished in the "construction" of the vessel: *McDonald* v. *The Nimbus*, 137 Mass.

Statute. See *Constitutional Law.*

Taxation.

Construction of Sewer—Assessment—Notice—What Property liable.—Where sewers are constructed under authority of a city, and afterwards special taxes are levied upon the adjacent property owners to pay for the same, only those individuals who can use such sewers should be taxed specially to pay for their construction or maintenance, and each should be taxed specially only for the amount of the special benefits which the sewers might confer upon him, and each should be taxed specially precisely in proportion to the benefits which he might individually receive: *Gilmore* v. *Hentig*, 33 Kas.

Also in such cases, before special taxes can be made a fixed and permanent charge upon the property of such individuals they must have notice, with an opportunity to be heard, and an opportunity to contest the validity and fairness of such taxes: *Id.*

It is not necessary, however, in any case that the notice should be personally served upon the property owner, or that the proceeding should be a judicial proceeding, or that the notice should be given before the taxes are levied; but any notice that will enable the property owner to

procure a hearing before some officer, board or tribunal, and to contest the validity and fairness of the taxes assessed against him, before the same shall become a fixed and established charge upon his property, will be sufficient: *Id.*

TRESPASS.

License from Life-tenant—Entry under License of Tenant for Life.—The entry upon premises by a railway company, and the construction of a railroad over the same, which is no injury to the inheritance, under the verbal license of the tenant for life, is not a trespass or an unlawful entry. Such entry will not subject the party so entering to either an action of trespass or ejectment on the part of the remainder-man: *The Chicago and Alton Railroad Co.* v. *Goodwin*, 111 Ill.

TRIAL.

Sealed Verdict—Not final until recorded.—The determination of a jury, although formally stated in a verdict, and signed and sealed, is not final, but remains within the control of the jury, and is subject to any alteration or amendment by the jurors until it is actually rendered in court and recorded, and up to that time any member of the jury is at liberty to withdraw his consent from a verdict previously agreed upon: *Bishop* v. *Mugler*, 33 Kas.

A sealed verdict should be presented by the full jury in open court, so that the parties may avail themselves of the right of polling the jury, and until the verdict is regularly received and filed it is without force or validity: *Id.*

UNITED STATES COURTS. See *Municipal Corporation.*

USURY.

Who may avail of the Defence.—A party not injuriously affected by an usurious transaction, is not allowed to complain or take advantage of the usury. So if a party sells land subject to a mortgage thereon, which is given to secure a debt, with usury reserved, and the purchaser assumes the payment of the debt as a part of the purchase-money, such purchaser or those claiming under him, cannot interpose the defence of usury to a bill to foreclose the mortgage: *Stiger* v. *Bent*, 111 Ill.

VERDICT. See *Trial.*

WILL.

Construction—Heirs.—A testator, after giving several legacies by his will, directed that the residue of his property should "be equally divided among my brothers and sisters and their heirs." When the will was made, and at the testator's death, there were living three brothers, one sister, and children and grandchildren of two deceased sisters. The testator knew of the decease of his two sisters, and of the existence of their issue. *Held*, that the testator intended that the heirs of his deceased sisters should take, by right of representation, equally with his surviving brothers and sister: *Huntress* v. *Place*, 137 Mass.