signor, unless void for want of delivery of the chose of action assigned to the assignee."

In *Gregg* v. *Sloan*, 76 Va. 497, debtors of North Carolina conveyed their property in trust to secure the payment of their debts, including a debt due them from a citizen of Virginia. The deed was properly recorded in North Carolina, but before it was recorded in Virginia, a Virginia citizen attached the debt, and the land securing it. It was held that the assignee had the prior title. See *Richardson* v. *Rogers*, 45 Mich. 591.

The recent case of *Atherton* v. *Ives*, 20 Fed. Rep. 894, fully sustains this principle. In that case the deed of assignment was legally executed in New York, by residents of that state, and included personal property in the state of Kentucky. After the assignment was made, this property was attached by a citizen of Kentucky. It was insisted that the assignment should not be sustained against a resident attaching creditor, because it was invalid by the laws of Kentucky, inasmuch as it gave preferences, and that whether invalid or not, comity did not require that it should be sustained against a citizen of Kentucky. The assignee's title was held to prevail over that of the attaching creditor, and it was held that the assignment was not invalid by Kentucky's laws because of preferences, and would have been valid if it had been made in Kentucky, and that comity required that assignments made in other states should be respected, unless contrary to some positive law of Kentucky. The court was also of the opinion that no distinction should be taken between "home creditors" and non-resident ones, unless compelled by legislative will, clearly expressed.

EUGENE MCQUILLIN.
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ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ARKANSAS.[2]
SUPREME COURT OF ILLINOIS.[3]
COURT OF CHANCERY OF NEW JERSEY.[4]
SUPREME COURT OF RHODE ISLAND.[5]

ACTION.

Damages to Adjacent Property Owners from Public Improvement in a Street—Liability therefor, upon whom it Rests—Contribution of Railroad Company to Cost.—The mere contributing of material aid by a private individual to a city, to enable the latter to execute a public work not unlawful in itself, is not necessarily attended with liability on the part of him who extends such aid, for injury that may thereby

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1884. The cases will probably appear in 114 U. S. Rep.

[2] From B. D. Turner, Esq., Reporter; to appear in 44 Ark. Rep.

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

[4] From Hon. John H. Stewart, Reporter; to appear in 39 N. J. Eq. Rep.

[5] From Arnold Green, Esq., Reporter; to appear in 14 R. I. Rep.

result to private rights: *Culbertson and Blair Packing and Provision Co.* v. *City of Chicago*, 111 Ill.

So, where a railway company entered into a contract with a city, by which the former agreed to pay a given sum on the cost of a viaduct proposed to be constructed in a street, there being no illegal motive in tendering such aid to the city, it was *held*, that the railway company could not be held jointly liable with the city in tort for a private injury to adjoining property caused by the viaduct: *Id.*

A city alone has authority to construct a viaduct in a street, and when one is so constructed by the city, even when done under the joint superintendence of a public official of the city and a chief engineer of a railroad company, and the company paid a part of the price of the improvement, it was *held*, that the viaduct was still public property belonging to the city alone. The aid furnished by the railway, in such case, may be treated as a mere private donation: *Id.*

ARBITRATION.

Submission to Two Arbitrators and Disagreement—Necessity of a New Hearing on Selection of a Third Arbitrator.—Where a controversy is submitted to two arbitrators, under an agreement for the selection of a third one in case the two are unable to agree, and after a hearing and disagreement the two first appointed select a third man, an award made by two of them, without giving the party against whom it is rendered an opportunity of being heard, is void, and no recovery can be had upon it: *Alexander* v. *Cunningham*, 111 Ill.

Award—Extent of—Items not considered.—An award cannot be extended beyond the things submitted; and even if the language of the submission be broad enough to cover a claim subsequently sought to be enforced, yet, if it be clearly made to appear that the claim was not before the arbitrators, and was not passed upon by them, the award will not bar it: *Exec. of Lee* v. *Admr. of Dolan*, 39 N. J. Eq.

ASSIGNMENT.

Unrecorded Mortgage—Validity against Assignee.—A. executed a mortgage to B. of certain personalty. The mortgage was made and received in good faith. The mortgagee never recorded the mortgage nor took possession of the property, but there was no collusion between the parties nor design to give the mortgagor a fictitious credit. A. subsequently made an assignment "of all his estate and property" for the benefit of his creditors; on a bill of interpleader brought by the assignee: *Held*, that the mortgagee was entitled to the proceeds of the mortgaged property: *Held, further*, that the creditors were entitled only under the assignment, and that the assignee succeeded only to the rights of the assignor: *Held, further*, that Pub. Stat. R. I., cap. 176, § 9, which provides that "no mortgage of personal property hereafter made shall be valid against any other person than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee, or unless the said mortgage be recorded," must be construed in accordance with the above holding: *Wilson* v. *Esten*, 14 R. I

ATTORNEY.

Contract for Conditional Fee.—Under the statute authorizing the assignment of counsel to indigent suitors, the complainant was assigned to assist the defendant in a suit to recover from a life insurance company the amount of a policy on her husband's life. The complainant thereupon made an agreement with her to prosecute the claim, and, if successful, to receive one-half of the amount recovered, and if not successful, to receive nothing. He did prosecute the suit, paid the costs incurred, and recovered the amount of the policy, $1000, besides $339.27 interest thereon: *Held*, that he was entitled to one-half of this whole amount: *Hassell* v. *Van Houten*, 39 N. J. Eq.

BANKRUPTCY. See *Debtor and Creditor.*

CONSTITUTIONAL LAW.

Commerce between the States—Tax on.—The state of Pennsylvania having attempted to collect a tax on the capital stock of a New Jersey corporation, running a ferry between the two states, on the river Delaware, on the ground that the corporation was doing business in Pennsylvania, *Held*, that such tax was illegal and void as an attempted exaction upon inter-state commerce: *Gloucester Ferry Co.* v. *Pennsylvania*, S. C. U. S., Oct. Term 1884.

Sidewalk—Removal of Ice and Snow—Public Burden laid on Citizen—Police Power.—A city has not the constitutional power to require the owner or occupant of premises to keep the sidewalk and gutters in front thereof free from snow and ice, or to sprinkle the same with ashes or sand where the snow and ice cannot be removed without injury to the pavement, and inflict a fine on him for a neglect or failure to do so. The ruling in *Gridley* v. *City of Bloomington*, 88 Ill. 554, adhered to: *City of Chicago* v. *O'Brien*, 111 Ill.

A sidewalk in a city, though devoted to the use of pedestrians, is nevertheless a portion of a public highway, as much so as the street. They are both free to be properly used and enjoyed by the entire public, and are constructed alike for their use: *Id.*

The police power of a state, comprehensive as it is, has its limitations. It cannot be held to sanction the taking of private property for public use without just compensation, however essential it may be for the public health, safety, &c. Upon the like principle, a purely public burden cannot be laid upon a private individual except as authorized in cases to exercise the right of eminent domain, or by virtue of proper proceedings to enforce special assessments or special taxation: *Id.*

Statute compelling Owners of Dams to place Fishways therein.—The legislature may impose a duty on owners of dams to place therein suitable fishways, in order that the free passage of fish may not be obstructed. And the owner of the dam cannot by occupancy or user for any length of time, acquire a prescriptive right as against the public, so as to prevent the enforcement of the provisions of the statute against him: *Parker* v. *The People*, 111 Ill.

Sidewalks—Ordinance requiring Owner to keep in Repair.—A city cannot, by ordinance, prescribe a fine or penalty to be imposed on the owner or occupant of a lot for a failure to repair the sidewalk in front

of the same. Keeping sidewalks in repair is referable to the same power as for constructing new improvements, and cannot be required to be done by the abutting owner or occupant, at his own expense, either by the exercise of the police power, or by fines and penalties prescribed by ordinance, or by direct legislative action: *City of Chicago* v. *Crosby*, 111 Ill.

CONTRACT. See *Sunday*.

Subject to Approval—Failure to Approve.—A statute provided that the Board of Public Works in the city of Providence might hire such employees as it deemed needful, "and agree with them for their compensation, provided, however, that when such compensation shall exceed the sum of $1000 per annum, such compensation shall be subject to the approval of the city council * * * which said compensation shall be paid out of the city treasury:" Of the employees so hired, the city council approved the compensation of all except two, who were hired at more than $1000 per annum, and in regard to whom the council took no action: *Held*, that these two were entitled to the pay agreed on with the Board of Public Works: *Held*, *further*, that the city council could disapprove the compensation agreed on by the Board of Public Works or approve it with a reduction in amount, but could not, by mere non-action, defeat the agreement made by the board: *Mathewson* v. *Tripp*, 14 R. I.

By Letter or Telegraph—When completed—A contract by letter is completed the instant the letter accepting the offer is mailed, and is valid and binding whether the letter of acceptance is received or not. But where anything else is left to be settled in respect to an offer by mail or telegraph, the acceptance of the offer by telegraphing will not complete the contract where the dispatch does not reach its destination: *Haas* v. *Myers*, 111 Ill.

A. and B. contemplated making a large purchase of cattle in the West, and it was agreed that A. should go to see the cattle, and telegraph back to B. the price per head if a purchase was made, when B. was to reply by telegraph, without delay, saying "yes," if he was willing to take a third interest in the purchase, and then A. was to telegraph back to B. the estimated amount required to pay a third interest, which B. was to place to the credit of A. and his brother, in a Chicago bank, so that the latter might draw on the same, and cause the bank to telegraph that fact to A. A. bought the cattle for $55,000, and telegraphed B. the price per head, and he answered "yes," which dispatch never reached A. Later, B. sent another dispatch to A., saying if the cattle were good there was no danger in buying them, which was received on the same day that A. and another had concluded the purchase by paying the necessary advance. On the next day B. arrived, and offered to pay his share of the price, which was declined: *Held*, that under the circumstances the sending of the first dispatch accepting a share in the purchase, which never reached its destination, did not complete the contract and make A. and B. partners in the purchase, there being something else to be done besides a mere acceptance, to carry out the contract, and also that B.'s offer to pay on the day after the purchase, and payment of the price, was too late: *Id.*

CRIMINAL LAW.

Larceny—Possession of Property—Evidence.—Possession of stolen property is a fact from which the possessor's complicity in the larceny may be inferred; but possession alone is not sufficient to sustain a conviction. It must appear that the property was recently stolen; the possession must be unexplained, and in some form involve an assertion of property in the possessor: *Shepherd* v. *The State*, 44 Ark.

DEBTOR AND CREDITOR. See *Assignment; Payment.*

Holding of Legal Title—Right of Creditor obtaining Judgment for Tort—Estoppel.—The complainant recovered a judgment at law against the defendant's brother for false imprisonment, and afterwards filed a creditor's bill to set aside, as fraudulent, two conveyances of land by the brother to the defendant. The evidence showed satisfactorily that the lands in question, in fact belonged to the defendant, although the legal title thereto had been in the name of his brother: *Held*, that, as the cause of the action at law had been a tort, there was, against the defendant, no ground of estoppel such as sometimes exists where the cause of action is founded on a contract, and the credit has been given under the belief that the debtor was the true owner of the property, of which he had the legal title only, but not the equitable title: *Lillis* v. *Gallagher*, 39 N. J. Eq.

Fraudulent Conveyance—Subsequent Bankruptcy—Exclusive right of Assignee.—The right to recover property conveyed in fraud of creditors by a debtor subsequently adjudicated a bankrupt, is vested in his assignee alone, and the failure of his assignee to bring an action to recover the property within the time limited by the bankrupt law, does not transfer the right to bring such action to the creditors of the bankrupt: *Exrs. of McCartin* v. *Perry*, 39 N. J. Eq.

Fraudulent Conveyance—Right of Execution Purchaser to Avoid.—A purchaser of real estate at an execution sale may in equity avoid conveyances previously made by the judgment-debtor in fraud of his creditors: *Belcher* v. *Arnold*, 14 R. I.

DEED. See *Gift.*

DURESS

Fear of Prosecution of Son.—When a son had been guilty of embezzlement and his mother made a note and executed a mortgage to the employer from whom he had embezzled, and the court was satisfied that the mother's controlling motive was to protect her son from exposure and prosecution: *Held*, that she was not a free agent and that the note and mortgage should be annulled and cancelled: *Foley* v. *Greene*, 14 R. I.

The maxim *In pari delicto potior est conditio defendentis*, does not apply to such a case: *Id.*

EJECTMENT. See *Municipal Corporation.*

EQUITY. See *Notice; Specific Performance.*

Policy of Insurance—Reformation after Loss—Mistake.—A policy of insurance issued in the name of the agent of the owner of the vessel

insured, instead of in the name of the principal, through the mistake of the insurance company's agent in preparing the application for the policy, without any representation or mistake of the owner or applicant for such insurance, may be rectified after the loss of the vessel, the act of the company's agent in such case being that of the company and not of the insured, notwithstanding the fact that he signed the application with his own name "for applicant:" *Hill* v. *Millville Mut. Mar. and Fire Ins. Co.*, 39 N. J. Eq.

Ne exeat—Holding of Defendant in Custody.—Statements by a defendant who was subsequently arrested on a *ne exeat*, made to complainant's lawyer, that if suits should be begun against him, and he should be likely to get the worst of it, or if any order should be made against him by any court, his (defendant's) lawyer would find it out beforehand and would let him know, so that he could and would leave the state before they could do anything with him, accompanied by other statements, that complainant and her father were both poor, and that he would law them both to death, if they attempted any suits against him, and that he had put all his property out of his hands, but still had the benefit of it, are sufficient, on an application for his discharge, to hold him in custody under the *ne exeat: Cary* v. *Cary*, 39 N. J. Eq.

Practice—Decree Pro Confesso—Delay in Application for Re-issue of Patent cannot be set up after such Decree.—By the practice of the United States Supreme Court, a decree *pro confesso* is not a decree as, of course, according to the prayer of the bill, nor merely such as the complainant chooses to make it; but it is made (or should be) by the court, according to what is proper to be decreed upon the statements of the bill assumed to be true: *Thomson* v. *Wooster*, S. C. U. S., Oct. Term 1884.

After the entry of such a decree and while it stands unrevoked, the defendants are barred from alleging anything in derogation of it; or from questioning its correctness on appeal, unless on the face of the bill it appears manifest that it was erroneously and improperly granted: *Id.*

Although a delay of fourteen years in the application for the re-issue of a patent is strongly presumed to be unreasonable, yet the court cannot say, as a matter of law, that it is not susceptible of explanation; and this defence cannot be set up after a decree *pro confesso: Id.*

Errors and Appeals.

What is a Final Judgment.—The judgment of the state Supreme Court was, that the judgment of the state District Court "be, and the same is hereby reversed with costs, with directions to the Superior Court of Los Angeles county to enter judgment upon the findings for plaintiff, as prayed for in his complaint:" *Held*, to be final for the purpose of a writ of error to the Supreme Court of the United States: *Mower* v. *Fletcher*, S. C. U. S., Oct. Term 1884.

Evidence. See *Criminal Law.*

Fraud. See *Husband and Wife.*

FRAUDS, STATUTE OF.

Tenants in Common—Contracts.—The doctrine of part performance to take a parol contract for the sale of land out of the operation of the Statute of Frauds, does not apply to contracts between tenants in common for the sale of one tenant's interest to the other. Each tenant is already in possession, and one cannot assume exclusive possession under and in pursuance of the contract. Their contracts with each other must be in writing duly signed: *Haines* v. *McGlone*, 44 Ark.

Where one tenant in common by parol contract sells his moiety of the land to his co-tenant, and afterwards repudiates the contract and conveys his interest to another purchaser with notice of the facts, the latter cannot recover it in equity from the co-tenant purchaser except upon return to him of his purchase-money and half of all taxes and cost of improvements paid by him, and interest from the time of their payment: *Id.*

GIFT.

Donatio causa mortis—Essentials.—To establish a gift *causa mortis*, the evidence must show not only that the person *in extremis* designated with proper distinctness the thing given and the donee, but it must also show that the property was presently to pass, and that the intention was carried into effect by an actual or effective delivery: *Newton* v. *Snyder*, 44 Ark.

Delivery to a third person for a donee, is as effective as delivery to the donee; but delivery to an agent as agent for the giver to perform the act or make delivery only after the giver's death, would amount to nothing: *Id.*

Delivery of Deed—Distinction between a Deed and a Will—Voluntary Settlement.—A testamentary disposition of property is ambulatory until the death of the testator, when it takes effect; but a deed for an interest in land must take effect upon its execution or not at all. A party cannot make a deed for land and retain its custody, and have it operate as a conveyance only after his death. It takes effect at once or not at all: *Cline* v. *Jones*, 111 Ill.

A conveyance of land or a deed may be good as a voluntary settlement, however, though it be retained by the grantor in his possession until his death, when the circumstances, aside from the retention of the deed, do not show the grantor did not intend it to operate immediately: *Id.*

A father having previously made gifts of property to all of his children except a daughter, went before a justice of the peace and executed a deed of conveyance of a tract of land to her, and acknowledged the same, stating that it would make all his children equal; but he retained the deed in his possession, with no present intention it should take immediate effect, but to be operative only at his death, or on the daughter moving upon and occupying the property, which she never did. It was *held*, after his death, that the deed never took effect, and that the land therein described passed to his heirs, generally: *Id.*

HUSBAND AND WIFE. See *Insurance.*

Contract between—Fraud.—The legislation of this state, enlarging the capacity of a married woman to acquire and dispose of property,

does not give her capacity to make a legal contract with her husband: *Executor of Farmer* v. *Farmer et al.*, 39 N. J. Eq.

A wife may bestow her property, by gift, on her husband, or she may make a contract with him which will be upheld in equity, but the courts always examine such transactions with an anxious watchfulness and dread of undue influence: *Id.*

Where a contract is made by parties holding confidential relations, so that it is probable that they did not deal on terms of equality, but that unfair advantage might have been taken by the stronger party of the weaker, there the burden, if the contract is assailed, rests on the stronger party to show that no advantage was taken, otherwise fraud will be presumed: *Id.*

Infant.

Avoidance of Deed—Covenants—Subsequent Quit-claim Deed.—A deed executed by an infant may be avoided by him after maturity, by any act unequivocally manifesting an intention to avoid it; and a reconveyance to another not in privity with the first grantee, is conclusive evidence of such intention, and disaffirms the first deed; and this, whether the last be a quit-claim deed or a deed with covenants of warranty: *Bagley* v. *Fletcher*, 44 Ark.

The deed of an infant will pass his estate subject to disaffirmance after his maturity, but the covenants in his deed are absolutely void: *Id.*

Insurance. See *Equity.*

Policy in favor of Wife—Subsequent Petition for Divorce.—A. took out policy on his wife's life, payable in four years to her if living and if not living to himself. He paid the premiums, retained the policy and received payments made upon it. She was living at the maturity of the policy, but had filed a petition for divorce. A statute provided, "Any policy or policies of insurance or part thereof which shall not exceed in the aggregate to the sum of ten thousand dollars, made by an insurance company on the life of any person and expressed to be for the benefit of a married woman, whether effected by herself or by her husband, or by any other person on her behalf, shall enure to her separate use and benefit, independently of her husband and of his creditors and representatives, and also independently of any other person effecting the same on her behalf, his creditors and representatives, and such policy may be sued in the name of the person beneficially interested therein, or in the name of the representative of such person." *Held*, that the wife was entitled to the amount due on the policy at its maturity: *Ætna Life Ins. Co.* v. *Mason*, 14 R. I.

Limitations, Statute of.

Equity—Analogy to Law.—A. transferred to B. certain corporate stock, vesting the legal title in B., who held it as a chattel mortgage. After default by A. in the conditions of the mortgage, and after B. had subsequent to such default held and treated the stock as his own for more than six years, A. filed a bill in equity to redeem. *Held*, that the bill could not be sustained: *Greene* v. *Dispeau*, 14 R. I.

LIS PENDENS. See *Notice.*

MALICIOUS PROSECUTION.

Probable Cause—Judicial Finding—In an action for malicious prosecution brought by A. against B.: *Held*, that a judicial finding in the former action in favor of B., and against A., by the court of original jurisdiction, is conclusive of probable cause, when such finding is not procured by unfair means, even if such finding is reversed on appeal: *Welch* v. *Boston & Providence Railroad*, 14 R. I.

MANDAMUS.

For what it may not issue to Inferior Court.—A mandamus will not issue to an inferior court to compel it to conform its judgment to the finding in the case, when a motion to amend the judgment in that particular has been entertained by the court and the amendment refused because the court was of opinion that the judgment had been correctly recorded: *Ex parte Morgan*, S. C. U. S., October Term 1884.

MASTER AND SERVANT. See *Contract.*

MINES AND MINING.

Sale of an Interest in a Mining Partnership.—One member of a mining partnership has the right, without consulting his associates, to sell his interest in the partnership to a stranger, and such a sale does not dissolve the partnership or injure any right or property of the other associates: *Bissell* v. *Foss*, S. C. U. S., October Term 1884.

MORTGAGE. See *Assignment.*

MUNICIPAL CORPORATION. See *Action; Constitutional Law; Contract.*

Acquiring Real Estate by Possession—Ejectment.—A municipal corporation may acquire realty by possession and for other than municipal purposes: *New Shoreham* v. *Ball*, 14 R. I.

In ejectment wherein the plaintiff's title rested on possession for more than twenty years, the *locus* was a long, sandy waste along the seashore, and the defendants were mere intruders. The plaintiff, a municipal corporation, had by vote let the *locus* year by year from 1829 to 1875. The court instructed the jury that to show title the town must prove open, adverse, actual and exclusive possession for twenty continuous years, and "that the votes, though they were evidence of a claim of right on the part of the town, were not sufficient to prove title by possession unless the lessees took actual possession under them, that it was not necessary for the plaintiff town to show that the possession of its lessees was continuous in the sense of their being on the premises all the time, and that if the lessees were in possession of any part of said East Beach (the *locus*), under the votes it might be considered that they were in possession of the whole for the purpose of acquiring title by possession by the town." *Held*, that the instruction under the circumstances contained no error entitling the defendants to a new trial. *Held, further*, that passage over the *locus* by the inhabitants of the town to get seaweed or sand, or use of the *locus* for temporary deposit of seaweed, would not amount to an interruption of the possession: *Id.*

There being evidence to show that the *locus* was known as the East Beach, *Held*, that it was for the jury to determine whether or not the town let the *locus* by the name of the East Beach: *Id.*

NOTICE

Bona fide Purchase—Lis pendens—Consideration.—To subject a purchaser to the notice of *lis pendens*, in the absence of actual notice, the purchase must be made from one who was a party to the suit at the time: *Marchbanks* v. *Banks*, 44 Ark.

A purchaser, though without notice of outstanding equities, is not an innocent purchaser unless he has paid the whole consideration. Payment of part and securing the residue to be paid, are not sufficient. But he has an equity to reclaim out of the property the part innocently paid: *Id.*

PARTNERSHIP. See *Mines and Mining.*

Agreements between—Liability.—Partners may make any agreements they see proper for the management of their joint affairs; but the provisions of such agreements are liable, at least in a court of equity, to be controlled or qualified, or to be held altogether waived, when the assent of all the partners may be fairly inferred from their acts and declarations in the conduct of the firm affairs: *Hall* v. *Sannoner*, 44 Ark.

One partner is not liable to another for an honest mistake of judgment as to what will be most beneficial to the common interest: *Id.*

Surviving Partner—Expenses of unsuccessful Litigation.—A surviving partner who, in good faith and under an honest belief that he has a good defence, resists, by litigation, but unsuccessfully, the collection of a claim against the partnership estate, will be entitled to contribution for the reasonable expenses of the litigation as part of the expenses of winding up the partnership affairs: *Lee* v. *Dolan*, 39 N. J. Eq.

PATENT. See *Equity.*

Receiver.—A receiver of an insolvent debtor is entitled to a patent right belonging to the debtor: *Petition of Keach*, 14 R. I.

The words in this statutory provision "exempted from attachment by law," mean exempt by statute: *Id.*

Under this statutory provision the court may order the debtor to assign his patent right to the receiver: *Id.*

Claims for Combinations.—In patents for combinations of mechanism, limitations and provisos imposed by the inventor, especially such as were introduced into an application after it had been persistently rejected, must be strictly construed against the inventor and in favor of the public, and looked upon as in the nature of disclaimers: *Sargent* v. *Hall Safe and Lock Co.*, S. C. U. S., Oct. Term 1884.

PAYMENT.

Application of.—The right of a creditor to make application of payments to one of several debts owing from his debtor, applies only to those debts then due; and does not apply at all where the debtor himself makes the appropriation: *Gates* v. *Burkett*, 44 Ark.

PLEADING.

Replication—Fraud.—A replication of fraud to a plea of release must set out the fraudulent acts relied on, that the court may determine whether they amount to fraud, and that the defendant may know on what to take issue: *Friedburg* v. *Knight*, 14 R. I.

PRE-EMPTION. See *United States.*

RAILROAD. See *Taxation.*

RECEIVER. See *Patent.*

STATUTE.

Repeal by Implication.—Where there are two statutes on the same subject, passed at different dates, and it is plain from the framework and substance of the last that it was intended to cover the whole subject, and to be a complete and perfect system in itself, the last act must be held to be a legislative declaration that whatever is embraced in it shall prevail, and whatever is excluded is discarded and repealed: *Bracken* v. *Smith*, 39 N. J. Eq.

STREET. See *Action; Constitutional Law.*

SUNDAY.

Contract—Ratification.—A contract of sale made on Sunday is void; but the parties to it may, on a subsequent week-day, affirm or adopt its terms, and so become bound by them; and a receipt of the purchase-money by the vendor on a week day, would be an affirmance of it and make it good, at least from that time. And a demand of payment on a week day would have the same effect as to the vendor, and would compel the purchaser to elect either to adopt the Sunday terms or to insist on their invalidity: *McKinney* v. *Demby*, 44 Ark.

TAX. See *Constitutional Law.*

TAXATION

Exemption of Railroad—Subsequent Purchaser—Consolidation.—Exemption from taxation granted to a railroad corporation is a personal privilege, incapable of transfer, and does not pass to the purchaser of the road under a mortgage: *Arkansas Midland Railroad Co.* v. *Berry*, 44 Ark.

The exemption from taxation granted by charter to the Arkansas Midland Railroad Company, was lost by the subsequent consolidation of that company with the Little Rock and Helena Railroad Company, forming the Central Railroad Company: *Id.*

TENANTS IN COMMON. See *Frauds, Statute of.*

UNITED STATES.

Pre-emption Laws—Requirement of Residence.—The pre-emption laws of the United States are intended for the benefit of persons making a settlement upon the public lands, followed by residence and improve-