erected by a mechanic who expended money and labor at the instance of the husband: *Hughes* v. *Peters, supra;* or if made with the full knowledge of the wife: *Capp* v. *Stewart, supra;* or he be insolvent: *Robinson* v. *Hoffman, Webster* v. *Hildreth, supra.* Because the wife could not prevent it, and because if the estate would be liable, it would enable the husband to destroy the separate estate, and because a separate estate cannot be charged by the voluntary act of another: *Corning* v. *Fowler, supra; Washburn* v. *Sproat,* 16 Mass. 449; *Wells* v. *Banister,* 4 Id. 515; Hill on Real Prop. 54; *Caswell* v. *Hill,* 47 N. H., 407, and cases cited.

The reasons do not appear sufficient, because no man has a right to cheat his creditors. To divert his means to the improvement of his wife's estate instead of paying his debts is cheating, and a court of equity could, in such cases, protect the wife's property as well as his creditors. However, the courts hold otherwise.

JNO. F. KELLY.

Bellaire, Ohio.

ABSTRACTS OF RECENT DECISIONS.

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

ACCOUNT.

Account rendered—Mistake—Correction.—An account rendered is only *prima facie* evidence against the party making it: *Clark* v. *Marbourg,* 33 Kans.

Where there has been no mutual examination of an account consisting of many items, and the creditor notifies the debtor of a round sum being due thereon, which, by the mistake of the creditor is much smaller than the actual balance due, and the debtor gives his note for such balance and receives in return a receipt in full: *Held,* that the creditor may bring his action upon the original account, and if the debtor as a defence answers and attempts to prove an account stated and settled, the creditor may show under a reply containing a general denial that there has been no adjustment or settlement of the items of the account between him and the debtor; that the receipt was given by him to the debtor through mistake, and that the debtor is only entitled to credit for the amount of the note given by him: *Id.*

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[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 Hon. N. L. Freeman, Reporter; to appear in 112 Ill. Rep.

[3] From A. M. F. Randolph, Esq., Reporter; the cases will probably appear in 33 Kans. Rep.

[4] From John Lathrop, Esq., Reporter; to appear in 138 Mass. Rep.

[5] From E. L. DeWitt, Esq., Reporter. The cases will probably appear in 41 or 42 Ohio St. Rep.

ACTION. See *Conflict of Laws.*

AGENT.

Power to Sue.—Where a principal is absent, his general agent, having sole authority to manage his business, will necessarily have authority to bring suits to collect debts, and insurance in cases of loss by fire, such power being essential to an efficient discharge of his duties: *German Fire Ins. Co.* v. *Grunert*, 112 Ill.

AMENDMENT. See *Sheriff.*

ASSIGNMENT. See *Conflict of Laws.*

Contract—Evidence.—An agent appointed by the owner to sell coal lands upon commission, employed another to aid him in effecting a sale, promising to give the latter, as was claimed, one-half of his commissions in case of a sale at a given price, which sale was effected through the latter, and after the death of the former the latter presented a claim against his estate for one-half of the commissions received. It was *held*, on a review of the evidence, there was no equitable assignment of half of the claim for commissions, but that the relation between the two was merely that of creditor and debtor: *Wyman* v. *Snyder*, 112 Ill.

The burden of proof is upon a party who claims an equitable assignment of one-half of a demand, to show that fact by satisfactory evidence; and this is not shown by proof of casual admissions or statements of the party holding the demand, varying in form of expression and in sub stance, especially when rebutted by the conduct and acts of the party claiming the assignment: *Id.*

BILLS AND NOTES. See *Duress.*

Overdue Note—Receipt of Interest in Advance—Note—Surety—Interest.—The receipt of interest in advance upon an overdue promissory note, from the maker, does not of itself import such a giving of time as will discharge a surety: *Haydenville Sav. Bank* v. *Parsons*, 138 Mass.

Payments and the indorsements of payments, upon a promissory note in which no rate of interest is expressed, of interest at the rate of seven per cent. per annum, in respect of time after the note has become overdue, do not amount to a change of the contract, or satisfy the statutory requirement of an agreement in writing to bind the maker to pay that rate in the future: *Id.*

COMMON CARRIER. See *Master and Servant.*

Sick Passenger—Duty of Railroad—Negligence—Damages.—In an action brought against a railroad company in behalf of the next of kin, by the personal representatives of a deceased person, to recover damages for injuries resulting in the death of such person, nominal damages may be recovered, if it appears that his death was caused by the wrongful act or omission of the defendant, although no actual pecuniary damages may have been shown or suffered: *Atchison, T. & S. Railroad* v. *Weber*, 33 Kans.

It is the duty of a railroad company carrying passengers to provide for their quiet and comfort, and secure them against the annoying and offensive conduct of other passengers; and where the conduct of a pas-

senger is such as to render his presence dangerous to fellow passengers, or such as will occasion them serious annoyance and discomfort, it is not only the right, but the duty of a railroad company to exclude such passenger from its train: *Id.*

Where an unattended passenger after entering upon a journey becomes sick and unconscious, or insane, it is the duty of the railroad company to remove him from the train and leave him until he is in a fit condition to resume his journey, or until he shall obtain the necessary assistance to take care of him to the end of his journey: *Id.*

The duty of a railroad company to such a passenger does not end with his removal from the train, but it is bound to the exercise of reasonable and ordinary care in temporarily providing for his protection and comfort; and *held*, that the railroad company may have exercised due care towards such a passenger who is without friends or money when it carefully and prudently removes him from its train, and promptly places him in charge of the overseer of the poor. The statute makes it the duty of the overseer of the poor in any township or city to grant temporary relief to any non-resident who may be found lying sick therein, or in distress and without friends or money, and the expense of providing such relief is to be paid out of the county treasury: *Id.*

Conflict of Laws.

Action for Diverting Stream to Injury of Property in another State.—An action of tort, for diverting the waters of a natural stream in this Commonwealth, and preventing the same from coming to the plaintiff's mill in an adjoining state, may be maintained in this Commonwealth: *Mannville Co.* v. *Worcester*, 138 Mass.

In an action for diverting the waters of a natural stream, and preventing the same from coming to the plaintiff's mill, the fact that a certain percentage of the water was returned to the stream may be considered in estimating the amount of damages: *Id.*

Assignment of Insurance Policy—Foreign Company.—If an assignment is made in this Commonwealth, between parties domiciled here, of a policy of insurance issued by a company organized under the laws of another state, but delivered here, the questions of the validity of the assignment and of the capacity of the parties to contract are to be determined by the law of this Commonwealth: *Mutual Life Ins. Co.* v. *Allen*, 138 Mass.

Constitutional Law. See *Criminal Law.*

Right of Holder of Coupons of Virginia State Bonds to Pay Taxes therewith—Law impairing the Obligation of a Contract—What is not a Suit against a State within the Eleventh Amendment to the Constitution of the United States.—In an action of detinue for personal property, distrained by the defendant for delinquent taxes, in payment of which the plaintiff had duly tendered coupons cut from bonds issued by the state of Virginia under the funding act of March 30th 1871, *held*, that by the terms of that act, and the issue of bonds and coupons in virtue of the same, a contract was made between every coupon holder and the state that such coupons should "be receivable at and after maturity for all taxes, debts, dues and demands due the state;" the right

of the coupon-holder, under which, was to have his coupons received for taxes when offered, and that any act of the state which forbids the receipt of these coupons for taxes is a violation of the contract, and void as against coupon-holders: *Poindexter* v. *Greenhow*, S. C. U. S., Oct. Term, 1884.

An action or suit brought by a tax-payer, who has duly tendered such coupons in payment of his taxes, against the person who, under color of office as tax collector, and acting in the enforcement of a void law, passed by the legislature of the state, having refused such tender of coupons, proceeds by seizure and sale of the property of the plaintiff, to enforce the collection of such taxes, is an action or suit against him personally as a wrongdoer, and not against the state, within the meaning of the eleventh amendment to the constitution of the United States: *Id.*

CONTRACT. See *Conflict of Laws*

CORPORATION. See *Municipal Corporation.*

Subscription to Stock—Liability of Subscriber for Debts.—There is no liability on a subscription to the stock of a corporation, the amount of whose capital stock is fixed, until the whole amount of the stock is subscribed: *Temple* v. *Lemon*, 112 Ill.

A subscriber to the capital stock of a proposed corporation, when the full amount of stock fixed by law or by the action of those connected therewith is not subscribed, cannot be held liable individually for a debt of such corporation, unless for some cause he has estopped himself from alleging that the whole of the fixed capital stock was never subscribed: *Id.*

COSTS. See *Errors and Appeals.*

CRIMINAL LAW.

Presentment or Indictment by a Grand Jury—Infamous Crime—Constitutional Law.—A person sentenced to imprisonment for an infamous crime, without having been presented or indicted by a grand jury, as required by the fifth amendment of the constitution of the United States, is entitled to be discharged on *habeas corpus* from the Supreme Court of the United States: *Ex parte Wilson*, S. C. U. S., Oct. Term 1884.

A crime punishable by imprisonment for a term of years at hard labor is an infamous crime, within the provision of the fifth amendment of the constitution, that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury: *Id.*

DAMAGES. See *Conflict of Laws; Malicious Prosecution.*

DIVORCE.

Insane Wife—Suit by Guardian.—The guardian of an insane woman cannot bring and maintain an action against her husband for divorce and alimony, or for alimony alone: *Birdsell* v. *Birdsell*, 33 Kans.

DOMICILE.

Infant Orphan residing with a Grandparent.—The grandfather or grandmother of an infant, when the next of kin, is the guardian by

nature of such infant; and infants having a domicile in one state, who after the death of both their parents take up their residence at the home of their paternal grandmother and next of kin in another state, acquire her domicile: *Lamar* v. *Micou*, S. C. U. S., Oct. Term 1884.

DURESS.

Note given by Person under Arrest.—No action can be maintained upon a promissory note, given by a person while under arrest on a complaint for larceny of property exceeding in value $100, to the owner of the property alleged to have been stolen, under an agreement that the complaint shall be placed on file, the plaintiff having received the note with notice of the circumstances; and the question of the guilt or innocence of the accused person is not open in such action: *Gorham* v. *Keyes*, 138 Mass.

EQUITY. See *Assignment.*

Practice—Allowing New Answer.—A motion by a defendant in a bill, to set aside an interlocutory decree and for leave to file a new answer, is addressed to the sound discretion of the court, with which this court will not interfere, unless it can see that such discretion has been abused: *Schmidt* v. *Braley*, 162 Ill.

The proper practice in a case where a defendant desires to file a new answer to the bill, is to prepare the answer and submit it to the court with the motion for leave to file it. If the proposed new answer is frivolous, impertinent or scandalous, the court should not allow it to be filed: *Id.*

Reformation—Specific Performance—Evidence.—In an action to reform a contract and for relief thereunder, after the same is reformed, the court may specifically enforce the same when that may be done, or may give adequate compensation for its non-performance: *Columbus & Toledo Railroad* v. *Steinfield*, 41 or 42 Ohio St.

On trial of an action to reform a written substituted contract for fraud or mistake, and to enforce the same when reformed, or if the same could not be reformed, then to rescind the written contract, there may be given in evidence the original writing made by the same parties upon the subject-matter in dispute, and also the subsequent acts done or procured to be done by the party charged with the fraud and which tend to prove the fraud or mistake: *Id.*

On such a trial, the court may find that the written contract in dispute does not contain the true agreement of the parties, but if the party complaining neither pays back nor offers to return the money received by him under the contract, it is error to order the contract to be set aside and held for naught: *Id.*

ERRORS AND APPEALS.

Motion to Dismiss Writ of Error for want of Jurisdiction.—Costs on.—The Supreme Court of the United States upon dismissing a writ of error for want of jurisdiction can adjudge to the defendant in error the costs incident to his motion to dismiss, though not the costs of the suit: *Bradstreet Co.* v. *Higgins*, S. C. U. S., Oct. Term 1884.

EVIDENCE. See *Account; Assignment; Negligence.*

To show Pain—Physician.—On the trial in an action for a personal injury, the plaintiff called his attending physician, who testified that he had examined the plaintiff, who stated the symptoms, and that he had suffered pain. The witness was then asked whether the plaintiff was feigning or "making believe," to which he answered, "No, sir; I know he did not, from examination and tests:" *Held*, that, with the explanation as to his means of knowledge, there was no error in the admission of the evidence. The answer could only be understood as a deduction or conclusion from the examination and tests made: *Chicago, B. & Q. Railroad Co.* v. *Martin*, 112 Ill.

In such a case, the attending physician, having every means of observing the symptoms, may be asked if the patient suffered pain, and his answer in the affirmative can be considered only as an opinion based upon actual facts and tests. It does not even require an expert to know the existence of pain from the nature of the injury and the patient's outward manifestations: *Id.*

FIXTURE.

Fence built on Land of another—Notice—Purchaser.—A fence built by one person upon the land of another under a parol license or agreement that it might be removed at the will of the builder, becomes a fixture which will pass with a grant of the land to a *bona fide* purchaser without notice of the adverse title to such fence: *Rowand* v. *Anderson*, 33 Kans.

The legal effect of attaching an improvement of a permanent character to land may be controlled by the agreement of the parties as between themselves and those who have knowledge of such agreement, but a parol agreement cannot be sustained or held to be binding upon a subsequent vendee who had no notice of the parol agreement under which the structure was annexed to the land: *Id.*

Under the facts stated in this case, *held*, that the location of the fence and its use were not sufficient to reasonably excite inquiry regarding the ownership of the fence, nor were they sufficient to charge the plaintiff with notice of the adverse interest therein: *Id.*

HIGHWAY.

Municipal Corporation—Defective Sidewalk—Negligence.—The fact that a person uses a street or sidewalk after he has notice that it is out of repair is not necessarily negligence. Persons are not to be entirely debarred from the use of a street because it may be defective or somewhat dangerous, but where danger exists, and it is known, ordinary prudence would require of those using such street, greater vigilance and care and caution, corresponding with the danger, to avoid injury: *City of Emporia* v. *Schmidling*, 33 Kans.

In an action brought against a city to recover for personal injuries alleged to have resulted from a defective sidewalk, the fact that the walk in question was removed by the city authorities and another and a better one substituted therefor soon after the injury occurred, may be considered as a circumstance tending to show that the walk removed was out of repair, but it is no evidence that the city authorities had knowledge of the defect before the occurrence of the injury: *Id.*

Defective Sidewalk—Negligence—Use of Velocipede—It cannot be ruled, as matter of law, that the use of a velocipede upon a sidewalk of a street is necessarily unlawful: *Purple* v. *Greenfield*, 138 Mass.

An opening about a foot and a half deep, a little more than a foot in width, and two feet and a half long, was made six inches from the line of the sidewalk in a town, for the purpose of furnishing light and air to the cellar of a building. There was nothing to indicate where the line of the sidewalk ended. The opening had existed for some months, and was covered by a loose board, and was known to be so covered by the chairman of the selectmen of the town. While the board was off, a person travelling on the highway stepped into the opening. *Held*, in an action against the town for an injury thereby occasioned, that the jury were authorized to find that the town had reasonable notice of a hole, insecurely guarded, near the limit of the highway: *Id.*

Municipal Corporation—Negligence.—A town is not bound to erect barriers to prevent a person travelling with a horse and wagon from straying from a highway, although there is a dangerous place thirty-four feet from the marked travelled part of the highway, and nine and a half feet from the line of the location of the highway, which he may reach by so straying: *Barnes* v. *Chocopee*, 138 Mass.

HUSBAND AND WIFE. See *Divorce.*

Contract to Charge separate Estate—Action on.—A contract by which a married woman charges her separate estate, in equity, with the payment of a debt, need not be in writing: *Elliott* v. *Lawhead*, 41 or 42 Ohio St.

An action founded on such a contract, where a personal judgment against a married woman is not authorized, is of an equitable nature, of which a court of equity alone has jurisdiction: *Id.*

The rule that a creditor must exhaust his remedy at law before seeking equitable relief, does not apply to an action to charge the separate estate of a married woman for the payment of a claim, where the statute gives no remedy at law: *Id.*

A prior action to recover a money judgment, in which it is sought to reach the same separate property by attachment, in which the plaintiff fails, is no bar to a suit in equity to charge such separate property, with the judgment of the same claim: *Id.*

INFANT. See *Domicile.*

INJUNCTION.

A Proper Remedy to Prevent Collection of Taxes by Distraint after Tender in Tax-receivable Coupons.—The remedy by injunction to prevent the collection of taxes by distraint upon the rolling stock, machinery, cars, and engines, and other property of railroad corporations, after a tender of payment in tax-receivable coupons, is sanctioned by repeated decisions of this court, and has become common and unquestioned practice, in similar cases, where exemptions have been claimed in virtue of the constitution of the United States; the ground of the jurisdiction being that there is no adequate remedy at law: *Allen* v. *B. & O. Railroad Co.*, S. C. U. S., Oct. Term 1884.

INSURANCE. See *Conflict of Laws.*

Assignment to Person having no Insurable Interest.—If a policy of insurance on the life of another is issued to a person having an insurable interest in such life, an assignment of such policy to a person having no such insurable interest does not render the assignment void: *Mut. Life Ins. Co.* v. *Allen,* 138 Mass.

Proof of Loss—Time—Waiver—Absence of Insured.—Where a policy of insurance requires the assured, within thirty days after any loss by fire, to furnish proofs of the same, signed and sworn to by him, the proof of loss should be so signed and sworn to, unless there is some legal excuse. His absence at the time of the loss, and failure to return in time, is a sufficient legal excuse, and in such case the proofs may be signed and verified by his agent having charge of his business: *German Fire Ins. Co.* v. *Grunert,* 112 Ill.

Where written notice and proof of loss are made out and delivered to the insurance company within the required time, by the agent of the assured, the latter being absent from home, and the company returns notice and proofs, with objections thereto, and they are amended by the agent and again delivered, and they are again sent back for amendment, which is made, and this is repeated several other times, this will be held a waiver by the company of the objection that such notice and proofs were not delivered in proper time: *Id.*

Condition against Vacation of Building.—An absolute condition in a fire insurance policy, on a dwelling-house, that the policy shall be void "if the building insured be vacated or left unoccupied," avoids the policy, although the vacation of the house results from the permanent removal of the tenant of the insured during the running of his lease, without the knowledge or consent of the landlord: *Farmers' Ins. Co.* v. *Wells,* 41 or 42 Ohio St.

INTEREST. See *Bills and Notes.*

JUDGMENT.

Confession—Power of Clerk in Vacation—Meaning of Vacation—Judicial Act.—Where a circuit court adjourned over for thirty-two days, it was held that the period intervening in which the court did not sit and transact business was to be regarded as vacation, within the meaning of that word in section 66 of the Practice Act, authorizing judgments by confession in vacation. But the word is not to be understood as embracing all the time the court is not actually in session, or as embracing the time of an adjournment from day to day: *Conkling* v. *Ridgely,* 112 Ill.

LIMITATIONS, STATUTE OF.

Public Nuisance—Right of Action for—Lapse of Time.—Maintaining a nuisance for twenty years does not give a prescriptive right to maintain it: *Inhab. of New Salem* v. *Eagle Mill,* 138 Mass.

An action, by a person who suffers a peculiar and special damage from a public nuisance, may be maintained against a person who continues the nuisance, although a recovery for the injury done by the creation of the nuisance is barred by the Statute of Limitations: *Id.*

LUNATIC. See *Divorce.*

MALICIOUS PROSECUTION.

Corporation—Attachment—Damages.—An action may be maintained against a corporation to recover damages for wrongfully, maliciously and without just or probable cause, obtaining and levying an order of attachment upon personal property: *Western News Co.* v. *Wilmarth*, 33 Kans.

Where it is alleged in a petition brought to recover damages therefor, that an order of attachment was wrongfully, maliciously, and without just or probable cause sued out; that a stock of goods was levied thereon and withheld from the owner for about two months, and thereby his business completely broken up, it is not error on the part of the court, trying the case without a jury, to receive evidence showing the value of the stock on hand at the time of the attachment; that the owner was doing a business from $6000 to $7000 per annum, with a net profit of $1500 to $1600 per year, and that on account of the attachment proceedings his business was broken up, as in such a case vindictive or exemplary damages are allowable: *Id.*

MASTER AND SERVANT.

Common Carrier—Assistance rendered by Passenger at request of Driver—Injury through Fault of Driver.—The plaintiff was a passenger on defendant's street railroad, on a car northward bound. The railway was a single track, with occasional side-tracks for the passage of cars moving in opposite directions. The northbound car, having been drawn beyond the side-track, where it was to have met the southbound car, it became necessary to push it back to the side-track, so that the cars could pass and each proceed to its destination. At the request of the driver of the northbound car, the plaintiff assisted him in pushing the car back to the side-track. While so engaged, without fault on his part, he was injured by the carelessness of defendant's driver on the southbound car: *Held*, 1. The plaintiff did not engage in the service of defendant as a mere volunteer. 2. Under the circumstances the plaintiff cannot be considered as a fellow-servant with the driver of the southbound car. 3. In the case stated, the doctrine of *respondeat superior* applies: *McIntire Street Rd.* v. *Bolton*, 41 or 42 Ohio St.

MORTGAGE.

Assumption of Mortgage Debt—Liability of Purchaser.—A purchaser of mortgaged premises from the mortgagor, who assumes payment of the mortgage debt, or who accepts a conveyance reciting his assumption of the same with a knowledge of such recital, will at once become personally liable to the mortgagee for the mortgage indebtedness, and he cannot defeat the mortgagee's right to hold him responsible, by procuring a release from the mortgagor: *Bay* v. *Williams*, 112 Ill.

The acceptance by the purchaser, of a conveyance by a mortgagor of his equity of redemption in mortgaged premises, is a sufficient consideration for a promise by the grantee to assume and pay the mortgage debt: *Id.*

A promise by one, upon a valuable consideration moving from another, to pay the debt of that other to a third person, inures to the benefit of such third person; and his right to maintain an action upon it is vested

in him by force of the agreement itself. The express assent of the beneficiary is not essential to his right to avail of its benefits: *Id.*

Subrogation—Money obtained on Forged Mortgage to pay off Valid Mortgage—Rights of Mortgagee.—Where money is loaned upon the security of what is supposed to be a valid mortgage, but which in fact is a forged and void mortgage, and the money is so loaned for the purpose that a prior valid mortgage may be discharged, which is done, the mortgagee of the void mortgage may be subrogated to the rights of the prior mortgagee, there being intervening liens or incumbrances, *Everston* v. *Central Bank*, 33 Kans.

And in such a case, where the mortgagee of the void mortgage assigns the same in the regular course of business to an innocent purchaser, such innocent purchaser takes the place of the mortgagee of the void mortgage with all his rights of subrogation: *Id.*

MUNICIPAL CORPORATION. See *Highway.*

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

Crossing Railroad—Duty to Look or Listen.—It is the duty of a person about to cross a railway track to make a vigilant use of his senses, as far as there is an opportunity, in order to ascertain if there is a present danger in crossing. A failure to listen or look, when by taking this precaution the injury might have been avoided, is negligence that will bar a recovery, notwithstanding the negligence of the railroad company in failing to give signals contributed to the injury: *Union Pacific Railroad* v. *Adams*, 33 Kans.

NEGOTIABLE INSTRUMENT.

Fraud in obtaining—Bona fide Holder—United States.—Where, by the connivance of a clerk in the office of an assistant treasurer of the United States, a person unlawfully obtains from that office money belonging to the United States, and, to replace it, pays to the clerk money which he obtains by fraud from a bank, the clerk having no knowledge of the means by which the latter money was obtained, the United States are not liable to refund the money to the bank. The case distinguished from *United States* v. *State Bank*, 96 U. S. 30: *State Bank* v. *United States*, S. C. U. S., Oct. Term 1884.

NOTICE. See *Fixture.*

Possession under Contract of Sale—Payment to Vendor in ignorance of subsequent Mortgage.—A. loaned to B. a sum of money, receiving B.'t promissory note and a mortgage on real estate to secure the same; bus when A. accepted the note and mortgage, C. was in actual possession of the premises, and resided thereon with his family: *Held*, that A. was chargeable with notice of C.'s rights and interest in the premises; and A. having assigned the note and mortgage his assignee occupied the same situation; nor will the fact that A. and his assignee did not know that C. was in possession, make any difference: *Ranney* v. *Hardy*, 41 or 42 Ohio St.

B. sold to C. real estate, placed him in possession, and agreed in writing to execute to him a deed on payment of the purchase-money in

monthly instalments. Subsequently B. executed to A. a mortgage on the premises, which was recorded: *Held*, that such mortgage was valid, but subordinate to the rights of C.; that C. may validly make payments of purchase-money to B. until A. or his assignee, by suit, or in some other unequivocal form, asserts the right to receive from C. the unpaid instalments of purchase-money; and that the assignee of C. has the same right: *Id.*

NUISANCE. See *Limitations, Statute of.*

PARTNERSHIP.

Insolvency—Liability of a Retiring Member.—Where a member of a partnership retires from it, and his copartners, who continue the business, thereupon agree, in good faith, to pay him a sum certain as his share of the capital, and the firm afterwards unexpectedly turns out to have been insolvent at the time of the said withdrawal: *Held*, that a bank from which the new firm had borrowed money which they had partly used in making payments to the said retiring member, could not in equity charge the old firm with the money loaned to the new, nor the retiring partner with the moneys obtained from it and used to pay him, the retiring partner having paid in discharge of the debts of the old firm, more than the amount received by him as his share of the capital thereof: *Penn Bank* v. *Furness*, S. C. U. S., Oct. Term 1884.

RAILROAD. See *Common Carrier.*

SALE.

Ambiguous Terms—Liability of Vendee.—Where a proposition to sell goods is sent by a writing, that, by mistake, is ambiguous; and, knowing of such ambiguity, the receiver of the writing claiming an improbable meaning, unreasonably favorable to himself, and not intended or thought of by the sender, and without notice to the sender or inquiry of him as to his intended meaning, orders the goods, obtains, and uses them, such receiver of the goods is liable to the seller of the same for the value of the goods used, as if no proposition had been sent: *Butler* v. *Moses*, 41 or 42 Ohio St.

USURY.

Separate Loans—Deduction of whole Usury from last Loan.—In 1869, 1870 and 1872, A. loaned money to B., taking at each loan a promissory note therefor, the note for the loan of 1870 embracing also the amount of the loan of 1869, and the note for the loan of 1872, embracing also the amount of the two preceding loans. In each of the notes asurious interest was incorporated. *Held*, that in an action to foreclose a mortgage given to secure the payment of the note of 1872, and obtain a sale of the mortgaged premises, all the illegal interest should be deducted: *Beals* v. *Lewis*, Ohio St.