ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

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

SUPREME COURT OF RHODE ISLAND.[3]

SUPREME COURT OF VERMONT.[4]

ACTION. See *Corporation.*

When Local—Trespass—Practice.—Trespass on the freehold will not lie in this state for a trespass committed on lands in Massachusetts: *Niles* v. *Howe*, 57 Vt.

Objection to the jurisdiction may be raised at any stage of the proceedings by motion to dismiss: *Id.*

AGENT. See *Partnership.*

ATTACHMENT. See *Mortgage.*

BILLS AND NOTES. See *Contract; Executors and Administrators.*

Seal of Corporation—Effect of.—A promissory note in the ordinary form given by a corporation had on it when produced in court a paper seal. No vote of the corporation authorized the seal; the note did not purport to be under seal; the seal was not the corporate seal; and the treasurer of the corporation who was a witness in the case did not admit putting it on the note: *Held*, that the seal must be disregarded as "mere excess:" *Mackay* v. *Saint Mary's Church*, 15 R. I.

CONFLICT OF LAWS. See *Mortgage.*

CONTRACT.

Consideration—Guaranty—Endorsement of Note after Maturity—Statute of Frauds.—After a note had matured, but was still held by the payee, two sons of the maker, for the purpose of inducing the payee not to pass the note into the hands of a third person, and to give further time for payment, placed their names under that of their father already upon the note: *Held*, 1. That there was a good consideration to support their contract, which was to pay the amount of the note upon demand. 2. That their contract was not within the operation of the Statute of Frauds: *Frech* v. *Yawger*, 18 Vroom.

What not an Abandonment of—Estoppel.—By a written memorandum A. agreed to buy, and the B. company to sell, 1000 tons of old rails, delivery to be before August 1st, and also two to six hundred tons for delivery between August 1st and October 1st. The contract was dated January 31st 1880, and was signed by the vice-president for the company,

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[2] From G. D. W. Vroom, Esq., Reporter; to appear in 18 Vroom.

[3] From Arnold Green, Esq., Reporter; to appear in 15 R. I. Rep.

[4] From Edwin L. Palmer, Esq., Reporter; to appear in 57 Vt. Rep.

and he had full authority to make it. On February 17th the vice-president wrote to A., inclosing a minute of a resolution purporting to have been passed at a meeting of the directors of the company on February 16th, confirming the contract, but specifying 2000 lbs. as the ton contemplated. On February 28th, A. replied to this letter saying that the sale was "an absolute and final unconditional sale," and that the number of pounds per ton was to be 2240. This was the number understood between the parties at the time of making the contract. No reply was made to the last letter, which ended with "we hope to hear from you at your early convenience," until June 14th, when the company wrote tendering 1000 tons of 2240 lbs. By that time the price of old rails had fallen: *Held*, that the contract was in full force, and that the company was not estopped from setting it up against A.: *Wheeler* v. *New Brunswick, &c., Railroad Co.*, S. C. U. S., Oct. Term 1884.

Corporation. See *Bills and Notes.*

Tort—Defences—Ultra Vires—Tortious Act of Employee.—A corporation cannot defend itself, in an action for a tort done by it, on the ground that the business in the prosecution of which the tort was done was *ultra vires*: *N. Y., L. E. and Western Ry. Co.* v. *Haring*, 18 Vroom.

The plaintiff was injured by the mismanagement of a street horse-car. The defendant contended that even if the jury found that it ran such horse-cars that, as it had no franchise so to do, it could not be liable to the action: *Held*, such defence was untenable: *Id.*

An agent of the railroad company ejected, with unnecessary violence, a passenger from the cars: *Held*, the company was liable for the hurts to the passenger done in the course of such ejection: *Id.*

Liability of, for a Claim against the Corporation it succeeded.—A steamship company transferred its ships and other property to another company organized to succeed it, and the officers of the old company became officers in the new company, and the business went on under their direction. After the transfer a man was killed by a collision between canal boats and one of the steamships transferred to the new company. His widow sued the old company and obtained a judgment against it: *Held*, that the property transferred to the new company could not be subjected in equity to the payment of this judgment: *Gray* v. *National Steamship Co.*, S. C. U. S., Oct. Term 1884.

Divorce.

Effect of Articles of Separation—Domicile.—Articles of separation by husband and wife which contain no express stipulation against divorce are not *per se* a bar to a divorce prayed for by the injured party for causes existing prior to the execution of the articles: *Fosdick* v. *Fosdick*, 15 R. I.

That the liberal divorce law of this state influenced a petitioner for divorce to come here does not make him any the less a domiciled inhabitant of the state, if he came here *bona fide* to reside permanently and not merely to obtain a divorce and then return to his former home; *Id.*

Equity.

Bill to remove Cloud on Title—Complainant out of Possession.—Equity will not interfere to remove a cloud upon title in favor of a party

out of possession, claiming under a legal title, against his antagonist who is in possession under the written title which makes the cloud. The remedy at law is sufficient: *Weaver* v. *Arnold*, 15 R. I.

Practice—Decree against a Co-complainant—Proceedings on New Issues after final Decree.—If one complainant can, under any circumstances, have a decree against another upon a supplemental or amended bill, it must be upon notice to the latter: *Smith* v. *Woolfolk*, S. C. U. S., Oct. Term 1884.

After a decree disposing of the issues and in accordance with the prayer of a bill has been made, it is not competent for one of the parties, without a service of new process or appearance, to institute further proceedings on new issues and for new objects, although connected with the subject-matter of the original litigation, by merely giving the new proceedings the title of the original cause: *Id.*

ERRORS AND APPEALS.

Creditor's Bill—Appeal to the Supreme Court of the United States—Separate Decrees for less than $5000 *each.*—Where on final hearing on a creditor's bill defendants were adjudged to pay to the complainants respectively certain sums of money, some of which were less than $5000, and defendants appealed, *Held*, that the decrees were several, and the appeal must be dismissed as to all of the appellees to each of whom the amount adjudged to be paid did not exceed $5000: *Stewart* v. *Dunham*, S. C. U. S., Oct. Term 1884.

EVIDENCE. See *Partnership.*

Party as Witness—Previous Conviction of Felony.—A defendant in proceedings, civil or criminal, who testifies in his own behalf may be impeached like any other witness by showing his previous conviction of a felony: *State* v. *McGuire*, 15 R. I.

Contradictory Declarations—Foundation for the Introduction of.—Contradictory declarations of a witness, whether oral or in writing, made at another time, cannot be used for the purpose of impeachment until the witness has been examined upon the subject, and his attention particularly directed to the circumstances in such a way as to give him full opportunity for explanation or exculpation, if he desires to make it: *The Charles Morgan*, S. C. U. S., Oct. Term 1884.

If the contradictory declaration is in writing, questions as to its contents, without the production of the instrument itself, are ordinarily inadmissible. Circumstances may arise, however, which will excuse its production. All the law requires is that the memory of the witness shall be so refreshed by the necessary inquiries as to enable him to explain, if he can and desires to do so; whether this has been done is for the court to determine before the impeaching evidence is admitted: *Id.*

EXECUTOR AND ADMINISTRATOR.

Authority as to Property in Foreign Jurisdiction—Endorsement of Note—Transfer by one only.—A. died in Connecticut and letters of administration on his estate were taken out in Connecticut. There were no claims in Rhode Island against the estate of A.: *Held*, that the Connecticut administrator could transfer and endorse a promissory note due

the estate of A. so as to enable the endorsee to bring suit on the note in Rhode Island: *Mackay* v. *Saint Mary's Church*, 15 R. I.

Promissory notes given to two joint administrators for a debt due to the estate of the intestate may be transferred and endorsed by one of the administrators: *Id.*

Former Recovery.

Negligence—Defeat of Plaintiff in Former Action against Others for same Tort.—A. claiming to be injured by collision with certain teams left in a highway by B. brought an action against B. to recover damages for his injuries. In this action B. obtained judgment. A. then brought an action against the town in which the highway was situated to recover damages for his injuries, charging the town with negligence in permitting the highway to be unsafe. The town pleaded in bar the judgment recovered by B. against A. alleging that B. caused the defect complained of. To this plea A. demurred: *Held*, that the plea was good and that the demurrer should be overruled: *Held*, further, that A. by the judgment which B. recovered against him was estopped from suing the town: *Hill* v. *Bain*, 15 R. I.

Fraud. See *Will.*

Frauds, Statute of. See *Contract.*

Guaranty. See *Contract.*

Husband and Wife. See *Divorce.*

Infant.

Avoidance of Contract.—The defendant while an *infant* executed the note in contention for a horse; and before he attained his majority rescinded the contract, tendered the horse to the payee—which was refused—and demanded the note: *Held*, in an action on the note, that the defendant could avoid his contract while under age and that the avoidance and tender annulled it on both sides *ab initio*: *Hoyt* v. *Wilkinson*, 57 Vt.

Landlord and Tenant

Duty of Tenant to repair adjoining Fence—Nuisance on Premises when Leased.—It is the duty of a farm tenant by force of law to make all needed current repairs on the fences; and if they are not kept in lawful condition it is his fault, and not the landlord's; and an action cannot be maintained against the landlord by an adjoining land owner, whose colt escaped through an insufficient division fence, and strayed on the railroad track, and was there injured. And this is so although the fence was in the same condition at the time of the accident as when the tenant went into possession: *Blood* v. *Spaulding*, 57 Vt.

Libel.

Charges against Public Officer—Malice—Presumption.—Certain citizens presented to the town council of their town a request that K. might be removed from his office of constable because: "firstly, said K. is a man utterly devoid of principle, and uses his office more for the purpose

of wreaking his personal spite than for the peace and harmony of the community; secondly, said K. is wholly ignorant of the duties of his office; thirdly, said K. has at various times heretofore maliciously and wickedly assaulted and arrested sundry persons who were entirely innocent of the charges charged by him against them:" Whereupon K. brought an action for libel against the citizens, and at the trial introduced evidence to show that the statements of the request were false: *Held*, that the action could not be maintained without affirmative proof, which was not produced, of express malice: *Held*, further, that proof of the mere falsity of the statements would not support the action: *Held*, further, that the statements were not such as, if proved untrue, to imply actual malice: *Kent* v. *Bongartz*, 15 R. I.

LIMITATIONS, STATUTE OF. See *Mortgage*.

MASTER AND SERVANT. See *Negligence*.

Negligence—Injury to Passenger by Vehicle—Contributory Negligence of Driver.—A. hired a coach and horses, with a driver, from B., to take his family on a particular journey. In the course of the journey, in crossing the track of a railroad, the coach was struck by a passing train and A. was injured. In an action by A. against the railroad company for damages, *Held*, that the relation of master and servant did not exist between the plaintiff and the driver, and that the negligence of the driver, co-operating with that of the persons in charge of the train which caused the accident, was not imputable to the plaintiff as contributory negligence to bar his action: *N. Y., L. E. and Western Rd. Co.* v. *Steinbrenner*, 18 Vroom.

A passenger in a hired coach may, by words or conduct at the time, so sanction or encourage a special act of rash or careless driving as to commit an act of negligence which will debar him from a suit against a third person for an injury resulting from the co-operating negligence of both parties. But for whatever purpose the negligence is invoked—whether as a cause of action for an injury done by the driver, or as contributory negligence to bar an action by the passenger against a third person for an injury sustained—the negligence, to be imputed to the passenger, must be such as arises in some manner from his own conduct. The negligence of the driver, without some co-operating negligence on his part, cannot be imputed to the passenger in virtue of the simple act of hiring: *Id.*

Thorogood v. *Bryan*, 8 C. B. 114, disapproved: *Id.*

MINES AND MINING.

Location of Claim—Grant of Patent for part of Land to another.—The grant of a patent by the United States for land located or claimed for valuable deposits, is a determination binding on a rival claimant, whether he assert his claim or not; and if the patent includes that part of the rival's claim wherein was situated his discovery-shaft, where all his labor was done, his whole location falls, and the part thereof not included in the patent is open to exploration, and subject to claim for new discoveries: *Gwillim* v. *Donnellson*, S. C. U. S., Oct. Term 1884.

MORTGAGE.

Chattel Mortgage—Validity of—Effect of removal of to another State —Attachment.—The mode of alienation of personal property is governed by the law of the place where the owner resides, and where the property is situated, and is not affected by the rule requiring a change of possession; thus, a chattel mortgage executed in New York, and valid there, is valid here when the owner comes into this state with the property: *Norris* v. *Sowles*, 57 Vt.

After breach of condition the mortgagor has no attachable interest in the property: *Id.*

Record—Failure to Index—Limitations, Statute of—Effect of Payment.—An index is not necessary to the validity of the record of a mortgage; thus, the mortgage in question was recorded, but no index was made; a subsequent mortgage was executed and assigned to the defendant, who purchased without notice; *held*, that the first mortgage was superior to the second, and could be foreclosed: *Barrett* v. *Prentiss*, 57 Vt.

Payment by the mortgagor after he had sold and quit possession, rebuts the presumption of payment arising from lapse of time, not only as to him, but his grantees affected with constructive notice of the mortgage: *Id.*

NEGLIGENCE. See *Former Recovery; Master and Servant.*

Concurrence of Negligence and Accidental Cause.—When a traveller on a highway is injured, and the injury results from a combination of two causes, both proximate, one a defect in the highway and the other a natural cause or a pure accident, the town is liable in damages to the injured traveller, provided his injury would not have been sustained but for the defect in the highway: *Hampson* v. *Taylor*, 15 R. I.

A., injured by falling on a highway which had been washed away in gullies and was slippery with frozen sleet, brought an action for damages against the town. At the trial the presiding judge charged the jury: "If the sidewalk where the accident happened was so defective as to render the town liable in case an accident had happened by reason of the defect in the absence of the obstruction caused by the ice, and this accident happened by reason of such defect, and would not have happened but for it, then the town is liable even though the ice was one of the proximate causes of the accident:" *Held*, no error: *Id.*

Independent Contractor.—The plaintiff's horse was frightened at a steam shovel, and ran, throwing the plaintiff out of his carriage, who thereby received the injury complained of. The shovel was located on the defendant's land and used to obtain gravel to ballast its road-bed near the highway in which the plaintiff was travelling. The defendant's evidence tended to show that the shovel was operated and wholly controlled by one M., an independent contractor and his servants, although its use was contemplated when the contract was made; and the question being whether the defendant or M. was liable, the court charged in effect that the defendant's liability was co-extensive with that of M, if it was part of the agreement that the shovel should be used in doing the work: *Held*, error: that the work being lawful, and the shovel not a nuisance, until it became so by negligent use, the defendant was not liable

unless the relation of master and servant existed between it and those operating the shovel; unless it not only prescribed the end, but directed the means and methods; and that the inquiry was, whether the defendant or M. was the principal or master in operating the shovel; if M., and it became a nuisance through his negligence, he alone was liable, although it was understood by the defendant, in making the contract, that the shovel was to be used: *Bailey* v. *Troy & Boston Railroad Co.*, 57 Vt.

Railroad—Precautions required in Places of Extra Danger—Mistake of Traveller in Moment of Peril.—Where a railroad company has created extra danger it is bound to use extra precaution; and if the track is put in a position where the trains, when close to their transit over a public street or road, cannot be seen, that is an extra danger calling for more than ordinary cautionary signals: *N.Y., L. E. and Western Railroad Co.* v. *Randel*, 18 Vroom.

It was not error in the court, in such a case, to refuse to charge that under the circumstances the company had discharged its whole duty to those of the public who had occasion to use the track at that place, by merely ringing the bell at the crossing: *Id.*

Where a traveller was crossing, in a wagon, the tracks of a railroad in a place of extra danger, and the flagman did not notify him of the coming of the train until after he had begun to cross the tracks, and the traveller then misunderstood the warning and went forward when he ought to have retreated: *Held*, that such misunderstanding should not, under the circumstances, be imputed to him as negligence: *Id.*

Partnership.

When not dissolved by Death—Agent—Obligation of Contract by—Declarations of.—While the death of a partner generally works the dissolution of a partnership, it does not have that effect when the partnership contract shows the intention of the parties was to give it a continuing existence; as when it takes the form of a joint stock association, with transferrible shares, officers, records, and a general agent to transact the business: *McNeish* v. *U. S. Hulless Oat Co.*, 57 Vt.

It is for the jury to determine, on a reasonable construction of the articles of agreement, interpreted by the kind of business contemplated and the manner of transacting it, whether the intention was that the partnership should be continuing, or dissolved by the death of a partner: *Id.*

Dealing in hulless oats was the main business of the partnership, under the control of a general agent, with a provision that its "affairs" were to be kept secret: *Held*, that partners might be liable for common oats purchased by an agent, although it was not proved that they knew of the transaction; and that it was their duty to see to it, that their agents transacted no business outside the scope of the partnership: *Id.*

What the agent said to the vendor at the time of the sale as to who the partners were and what was their responsibility, was admissible evidence: *Id.*

Power.

Renunciation by one of two Donees of Power—Authority of other to Execute.—When a power, coupled with a trust is given to two or more

persons to be executed by them jointly, and one renounces, the other or others may execute the power as if originally given only to them, that the trust may not fail nor suffer delay: *Petition of William M. Bailey*, 15 R. I.

A. by will devised and bequeathed his estate to B. and C. in trust, to sell, to invest the proceeds, and to use the income for his daughters during their lives, with remainder over. In case of the death, refusal or inability of one of the trustees, the testator desired the other to fill the vacancy. One of the trustees refused the trust; the other did not make an appointment in his stead, but alone made sales and gave deeds of the devised realty: *Held*, that the sales and deeds so made and given by the one trustee were valid: *Id.*

PRACTICE. See *Equity.*

RAILROAD. See *Negligence.*

RECORD. See *Mortgage.*

SEAL. See *Bills and Notes.*

SURETY.

Effect of Decree against Principal.—A surety of a receiver in chancery held to be concluded in a suit at law on the bond, by the amount found due on an account taken in chancery, he having by due notice, had an opportunity to intervene in the taking of such account: *Ball* v. *The Chancellor*, 18 Vroom.

Official Bond—Duties imposed by Law.—Sureties on the official bond of a city clerk, who by the city charter is also *ex officio* register of licenses of the city, are liable for the embezzlement by him of license fees received by him as such register of licenses: *Van Valkenbergh* v. *The Mayor of Paterson*, 18 Vroom.

A surety upon an official bond must be held to have contracted with reference to the obligations devolved upon his principal by law: *Id.*

TRESPASS. See *Action.*

TRIAL.

Limiting Time for Speeches.—It is in the discretion of the court to limit the time to be occupied by counsel in addressing the jury, and unless that discretion is so exercised as practically to deny to the accused his constitutional right to have the assistance of counsel, it is not error: *Sullivan* v. *The State*, 18 Vroom.

TROVER.

Animals feræ naturæ—Title to.—Bees are animals *feræ naturæ* and until reclaimed are only owned *ratione soli*: *Rexroth* v. *Coon*, 15 R. I.

In obtaining possession of an animal *feræ naturæ* no title is gained by one who when so obtaining possession is a trespasser: *Id.*

A., without B.'s permission, put upon a tree on B.'s land an empty box for bees to hive in. The box remained there more than two years, when C. took the box down, took out a swarm of bees and replaced the box. A., after demand upon C., brought trover against C. for the value of the bees, honey and honey comb: *Held*, that A. could not maintain his action against C.: *Id.*