

to induce him to do this, or any promise made afterwards in consideration of such service would be void. This is founded upon the general consideration of fitness and expediency. Such advice and solicitation, in whatever form the agency may be executed, are understood to be disinterested, and to flow from a single regard to the interests of the parties. They are lawful only so far as they are free and disinterested. If such advice and solicitation, thus understood to be pure and disinterested, may be justly offered from mercenary motives, they would produce all the consequences of absolute misrepresentation and falsehood. It is understood to be the offer of disinterested good offices, and the measure proposed to be recommended by the unbiased judgment of the person offering it; whereas, it is, in fact, an offer flowing from unavowed motives of pecuniary interest, and the recommendation is the result of a judgment biased by a hope of a large reward. If rewards might be taken in consideration of the exertion of direct or indirect influence, either by the person acting under it or by others who should be influenced and moved by him, it would destroy all confidence; it would lead to false and unfair representations

and dealings, and be productive of infinite mischief.”

The cases which illustrate the general principles so well stated are numerous. Only a few will be cited. An agreement by which one promises to use his influence with the directors of a railroad company to secure for another a lucrative building contract, is injurious in its tendency and not enforceable by action: *Davison v. Seymour*, 1 Bosw. 88. See, also, *Bliss v. Matteson*, 52 Barb. 335.

In like manner a contract by a stockholder in a railroad company for a pecuniary consideration to procure the building of the terminus or depot, upon or opposite the land of the defendant, is illegal and void on account of its tendency to bias the judgment of the directors in a matter where they should consult solely the welfare of the company, and the convenience of the public: *Fuller v. Dame*, 18 Pick. 472; *Holladay v. Patterson*, 5 Oreg. 177.

A large number of cases illustrating the general principle of the principal case, but too numerous to be here cited, will be found in the note to *Collins v. Blantern*, 1 Smith's Lead. Cas. (8th Am. ed.) 741 *et seq.*

M. D. EWELL.

Chicago.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

SUPREME COURT OF GEORGIA.²

SUPREME COURT OF ILLINOIS.³

SUPREME JUDICIAL COURT OF MAINE.⁴

COURT OF ERRORS AND APPEALS OF NEW JERSEY.⁵

ACCORD.

Note of Third Person for less Sum.—If a debtor gives and the cred-

¹ Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term, 1885. The cases will probably appear in 115 U. S. Rep.

² From J. H. Lumpkin, Esq., Reporter; to appear in 73 or 74 Ga. Rep.

³ From Hon. N. L. Freeman; to appear in 114 Ill. Rep.

⁴ From J. W. Spaulding, Esq., Reporter; to appear in 77 Me. Rep.

⁵ From John H. Stewart, Esq., Reporter; to appear in 40 N. J. Eq. Rep.

itor receives, in full satisfaction of the debt, a note endorsed by a third person for a less sum than the amount of the debt, it is a good accord and satisfaction to bar a subsequent suit by the creditor to recover the balance of the debt: *Varney v. Conery*, 77 Me.

ADMIRALTY.

Charter-Party—Penalty—Liquidated Damages.—The clause in a charter-party by which the parties mutually bind themselves, the ship and freight, and the merchandise to be laden on board, "in the penal sum of estimated amount of freight," to the performance of all and every of their agreements, is not a stipulation for liquidated damages, but a penalty to secure the payment of the amount of damage that either party may actually suffer from any breach of the contract; and is to be so treated in a court of admiralty of the United States, whatever may be the rule in the courts of the particular state in which the contract is made and the court of admiralty sits: *Watts v. Cumors*, S. C. U. S., Oct. Term 1885.

AGENT. See *Bills and Notes; Insurance.*

ASSIGNMENT.

Chose in Action—Oral Assignment.—To make an oral assignment of a debt due on account valid, as against creditors, or between parties even, there must be a valuable consideration therefor, and at least a symbolical or constructive delivery; although the delivery may be evidenced by a less significant act than is required for the assignment of a chose in action, which is capable of manual delivery like an execution, note or bond: *White v. Kilgore*, 77 Me.

ATTACHMENT. See *Exemption.*

BANK. See *Corporation.*

BILLS AND NOTES.

Consideration—Wagering Contract—Futures—Brokers—Bona fide Purchaser.—Contracts for the purchase and sale of cotton "futures" are illegal, and all evidences of debt executed on such consideration are void, even in the hands of a *bona fide* purchaser before due and without notice: *National Bank of Augusta v. Cunningham*, 73 or 74 Ga.

The payers of the note in question, being connected, in bringing about the transaction and carrying the same through, were *particeps criminis*, so, that their contract, growing out of an illegal transaction, was void: *Id.*

They could not recover for services rendered or losses incurred in forwarding the transaction: *Id.*

CONSTITUTIONAL LAW. See *Limitations, Statute of; Municipal Corporations.*

Power of State over Contracts of City with Gas Company.—A grant by the legislature of Louisiana, to a corporation, of the exclusive privilege, for a certain period, of manufacturing and distributing gas in the city of New Orleans, by means of pipes, mains and conduits, to such persons as might choose to contract for the same, upon certain condi-

tions, is a contract within the scope of the authority conferred by the constitution of the state and is binding upon the parties. While, in the exercise of its police power, the state may establish and enforce such regulations, not inconsistent with the essential rights granted in such a charter, as may be necessary for the protection of the public, yet she cannot, either by her organic law or legislative enactment, impair the obligation of the contract: *New Orleans Gas Co. v. Louisiana Light Co.*, S. C. U. S., Oct. Term 1885.

CONTRACT.

Right to Rescind—Custom—Evidence.—Where a purchaser of a lot of corn, to be delivered to him at a future time, agrees, as a part of the contract of sale, to make such advances from time to time as the seller may require, if the purchaser refuses to make an advance when demanded, except upon condition that the vendor shall give his note for the amount, the seller may rescind the contract, and refuse to deliver the corn: *Gilbert v. McGinnis*, 114 Ill.

Where a commercial contract is in any respect ambiguous, a particular custom or usage of trade known to the parties, or which, under the circumstances, they are presumed to know, or any previous course of dealing between them that will have a tendency to disclose the real intention of the parties, and to aid the court in arriving at the true construction, is admissible in evidence: *Id.*

Evidence of a particular custom or usage of trade is also admissible, for the purpose of engraving, as it were, new terms into a contract, subject, however, to the qualification that such terms are not expressly or impliedly excluded by the express agreement. To have this effect the custom or usage must be reasonable, and not in conflict with any general rule of law: *Id.*

But it is not admissible to prove a custom or usage the effect of which will be to add to an express agreement a condition or limitation which is repugnant to or inconsistent with the agreement itself. Such evidence is never admitted to vary or contradict, either expressly or by implication, the terms of an agreement, written or verbal: *Id.*

In February a person agreed to sell to another a quantity of corn at a stipulated price per bushel, to be delivered in the months of August and September following, and the purchaser, as a part of the same agreement, promised to make advances on the contract to the seller of what money, he might, from time to time, require. It was *held*, in a suit upon the contract brought by the purchaser for non-delivery of the corn, that evidence that a custom or usage prevailed requiring the vendor to give to the vendee his note upon receiving any such advances, was not admissible in behalf of the plaintiff, as it was inconsistent with the express contract: *Id.*

Physician Practising without License—Right to Recover for Services.—The fact that a physician failed for a short time after December 1st 1881, to register under section 1409 *et seq.* of the code, is not sufficient to defeat his right to recover for professional services rendered after that date and before his registry, where it appeared that he was a regular practising physician, that he applied to register in time and could not do so because the clerk had failed to provide a book, and that

he did register early in January thereafter as soon as he could do so: *Parrish v. Foss*, 73 or 74 Ga.

The case is distinguishable from stringent rules laid down in cases of sales of liquor and guano contrary to law: *Id.*

The services of physicians are necessary and called for upon pressing emergencies, and if this physician had applied for a mandamus against the clerk, his patients would have been compelled to wait, and he could not have obtained a registry sooner than he did actually register: *Id.*

Railroad—Control of by Ownership of Stock.—The Missouri Pacific Rd. Co. contracted with the Pullman Car Co. that the latter should have the exclusive right for a term of years to furnish sleeping cars on all passenger trains of the railway company, and “over its entire line of railway, and on all roads which it controls, or may hereafter control, by ownership, lease, or otherwise.” The railroad company afterwards consolidated with other roads, forming a new corporation under the name of Missouri Pacific Rd. Co. Subsequently, the new company acquired a large majority of the stock of the St. Louis, &c., Rd. Co., and the two roads were operated under one management, though each road kept up its own corporate organization. *Held*, that the railroad of the St. Louis, &c., Rd. Co. is not controlled by the present Missouri Pacific Rd. Co. in such a way as to require that company to use Pullman cars over that road, even if the contract were binding on the new company, precisely as if the old company were still in existence, and standing in the place of the new. Though the Missouri Pacific Rd. Co., by owning a majority of stock of the St. Louis, &c., Rd. Co., may have all the advantages of a control of the road, yet that is not in law the control itself. Practically, it may control the company, but the company alone controls its road: *Pullman Car Co. v. Missouri Pac. Rd. Co.*, S. C. U. S., Oct. Term 1885.

CORPORATION.

Receiver when Appointed—Facts Necessary to be Shown.—Allegations in a bill that the company is insolvent and has suspended its business for want of funds to carry on the same, are not sufficient in a bill to have a corporation declared insolvent and a receiver appointed. The facts and circumstances must be set out from which the insolvency of the corporation shall appear: *The Newfoundland Railway Construction Co. v. Schack*, 40 N. J. Eq.

Section 34 of the corporation act (Rev. p. 182) authorizes the dissolution of a corporation before the time limited in the certificate of incorporation in its charter, by the resolution of the majority of the whole board of directors, at a meeting called for that purpose, on three days' notice to each director, and the consent of two-thirds in interest of all its stockholders, at a meeting of the stockholders convened upon notice, such consent being expressed in meeting, and being duly attested by its secretary and filed in the office of the secretary of state: The 57th section makes the directors of the corporation at the time of its dissolution its trustees to close up its business, pay its debts, and divide the surplus remaining among the stockholders. The 16th section authorizes the chancellor, upon the dissolution of a corporation, either to continue the directors as trustees or to appoint a receiver for the corporation. *Held*,

that the power of the chancellor to interpose and take from the directors the power to close up the business of the corporation and to put its affairs in the hands of a receiver, is a discretionary power to be exercised only on good cause shown, upon circumstances disclosed by the proofs which show the need of the interference of the court for the protection of creditors or stockholders from breaches of trust by the directors in the performance of their duties: *Id.*

Directors—Liability for Mismanagement—Statute of Limitations.—The managers of a savings bank stand in the relationship of trustees to the depositors, so that the statute of limitations will not be a bar against a charge of mismanagement on their part, which had occurred more than six years before the filing of the bill: *Williams v. McKay*, 40 N. J. Eq.

Although such managers are unpaid, they are to be held liable for the want of ordinary care and diligence in the management of the affairs of the institution: *Id.*

When the bill shows a long and systematic violation of the directions of the charter by the president and committee-men, it is a *prima facie* presumption that such course of misconduct was known to the managers, and the latter cannot demur to the bill on the ground that such misconduct is not traced to them: *Id.*

COVENANT.

Private Road—Encroachment—Injunction—Statute of Limitations.—In 1859 L. conveyed a tract of land to S., by a deed containing a covenant that L., his heirs and assigns, would thereafter keep open a private road, two rods wide, from the public road to the rear of the lands conveyed, and directly south thereof. L. then also owned the land southward. S.'s land now belongs to complainant, and L.'s to defendant, their respective conveyances containing the covenant; *held*, that complainant could enjoin defendant from encroaching on the private road by erecting piazzas, fences, &c., and that he was not estopped by knowledge of defendant's intention to build the structures and of their subsequent erection, and offered no resistance; and that the statute of limitations was no defence; *Gawtry v. Leland*, 40 N. J. Eq.

CRIMINAL LAW.

Evidence of Distinct Acts—Election.—Where several witnesses testified to distinct beatings given the wife by the husband, at no great intervals apart, but all within two years before the indictment was found, no two of the witnesses testifying to the same cruel treatment, it was error for the court to compel the state to elect one of these transactions on which it would rely, and when the election was made, rule out all the evidence in relation to the others: *Member v. The State*, 73 or 74 Ga.

Insanity—Burden of Proof.—A request to charge that the prisoner's sanity must be shown by the same amount of proof that is required to establish guilt in all other cases, that is to the exclusion of all reasonable doubt, was properly refused: *Danforth v. State*, 73 or 74 Geo.

The rule is that, in criminal as well as in civil cases, insanity should be established by a preponderance of testimony: *Id.*

Reasonable Doubt.—The law does not require that the jury shall believe that every fact in a criminal case has been proved beyond a reasonable doubt, before they can find the accused guilty. The reasonable doubt the jury is permitted to entertain must be as to the guilt of the accused on the whole evidence, and not as to any particular fact in the case: *Davis v. The People*, 114 Ill.

DAMAGES.

Bond—Penal Sum—Liquidated Damages—Barber-shop.—Where a bond in the usual form was given in the sum of five hundred dollars, conditioned that the obligor should never open and keep a barber-shop within a certain town, the sum named will be regarded as a penalty and not as liquidated damages: *Burrill v. Daggett*, 77 Me.

In such cases, the intention of the parties is to govern, and for that purpose it is necessary, 1. To look at the whole instrument; 2. Its subject-matter; 3. The ease or difficulty in measuring the breach in damages; 4. The magnitude of the stipulated sum, not only as compared with the value of the subject of the contract, but in proportion to the probable consequences of the breach: *Id.*

DEBTOR AND CREDITOR.

Fraudulent Conveyance—Secret Trust for Grantor—Subsequent Creditors.—A person being in debt, conveyed his real and personal property to his son, under an agreement made for the purpose on the part of both, to defeat, hinder and delay a creditor in the collection of his debt, no consideration being paid therefor, and with a secret understanding that the son should hold the property for the use and benefit of the father, and reconvey it to him when requested; and if the father did not require a reconveyance, the son to take care of him and provide him with necessities during his life, and have the property at his death. It was held, the sale and conveyance were fraudulent and void as to creditors of the father: *Gordon v. Reynolds*, 114 Ill.

Even where the grantee pays a valuable consideration, if a part of the consideration is an undertaking and promise by the grantee to support and take care of the grantor, such an agreement renders the transfer void as to then existing creditors of the grantor: *Id.*

If the fraudulent grantor reserves no future use or benefit in the property, then the transfer can be attacked only by pre-existing creditors; but where the conveyance is merely colorable, and a secret trust exists for the benefit of the grantor, then the sale is void, both as to precedent and subsequent creditors: *Id.*

Purchase by Insolvent—Fraud—Bill in Equity—Parties.—Where one purchases goods, being insolvent and not intending to pay for them, and conceals his insolvency and his intention not to pay, he is guilty of a fraud which entitles the vendor, if no innocent third party has acquired an interest in them, to disaffirm the contract and recover the goods: *Johnson v. O'Donnell*, 73 or 74 Ga.

The bill shows that the plaintiff's goods were purchased by O'Donnell & B., and have been fraudulently transferred to other defendants in the bill. The subject-matter is the goods of plaintiffs, and to avoid a multiplicity of suits, a court of equity would have jurisdiction, there being no objection of multifariousness or misjoinder of defendants: *Id.*

DECEDENTS' ESTATES.

Sale for Payment of Debts—Power of Court—Adverse Title.—In a proceeding by an administrator for leave to sell land to pay debts, the court, exercising but a mere statutory authority, has no jurisdiction to settle and determine conflicting titles to the land, or to remove clouds upon title. If the paramount owner of the land is made a defendant, it would doubtless be his duty to assert his rights to the same in his answer; not for the purpose of forming an issue to be tried in that proceeding, but for the purpose of giving notice of his rights, and thus prevent an estoppel *in pais*: *Harding v. LeMoyne*, 114 Ill.

As a necessary incident to the power to make the sale, the court must also determine whatever questions may arise in respect to the payment of the purchase-money or the sufficiency of the conveyance, and, in short, all questions relating to the sale. In respect to the land, the court can find only the fact that the deceased had title or a claim to the same, and the sale will be subject to all adverse independent claims of title: *Id.*

The court, whether the circuit or county court, under whose decree an administrator sells land to pay debts, has no right or authority of law to enter an order requiring the delivery of possession to the purchaser by parties claiming an independent title thereto. The purchaser must establish his right to the possession by an action in a court of law where legal titles are cognisable: *Id.*

DEED. See *Covenant*.

Escrow—Effect of Delivery to the Grantee.—There cannot be a delivery of a deed to the grantee *in escrow*. Such delivery makes the deed an absolute one to the grantee: *Stevenson v. Crapnell*, 114 Ill.

Mill-dam.—A deed, wherein the grantor gives, grants, bargains, sells and conveys unto the grantee, his heirs and assigns forever, the right of having, building and maintaining, and repairing, and keeping in repair a dam on certain premises, with the right to so much of the premises as may be necessary on which to build and maintain the dam with its wings, conveys a fee in the land upon which the dam stands: *Inhabitants of Monmouth v. Plimpton*, 77 Me.

DOMICILE.

Residence—Minor—Pauper—Settlement.—That a minor daughter should depart from home for temporary employment, leaving such articles of clothing and bedding as she did not require for use, even though she receive the wages for her labor for her own use, is not so uncommon an occurrence as to authorize an inference of such a change in the parental and filial ties as to constitute emancipation: *Inhabitants of Searsmont v. Inhabitants of Thorndike*, 77 Me.

When the home of a person is once established in a town it requires less proof to show continuance there than would be necessary to show both the establishment and continuance. Bodily presence at all times is not necessary to show continuance. The departure for a purpose in its nature temporary, leaving behind articles not required for immediate use, expressing an intention to return, and returning to visit, and to repair wardrobe, and on account of sickness, are sufficient evidence of the continuance: *Id.*

DOWER.

Division of Land by Partition—Separate Suits.—Where land in which a widow is entitled to dower has been divided, by partition, between several different parties, she may properly bring a separate suit against the owner of each portion. She may perhaps proceed against all in one suit, but she is not compelled to do so: *Coburn v. Herrington*, 114 Ill.

EJECTMENT.

Ownership in Second Story of Building.—Certain persons were permitted to build a public hall as a second story of a new school-house, and an agent, authorized by the district, leased that second story to the builders of it, with necessary easements of ingress and egress, and with equitable provisions as to the use, repair of the building, &c., "so long as the building shall stand." The building in its several parts was occupied in accordance with the agreement for nearly thirty years, when the district voted "to sell the school-house and lot under" the hall, and by deed their agent conveyed all their interest in the lot and building thereon. In a real action by the grantee against the occupants of the hall, *Held*, 1. That the title to the hall was never in the district, it accrued to the builders before the execution of the instrument, called a lease, by virtue of their having built it under a license from the district, and the purpose of the paper was to regulate the use and manner of using the hall. 2. That these regulations applying to the use, were not conditions of a grant, for there was no grant, hence the remedy for a breach would not be a forfeiture. 3. That there could be no forfeiture without an entry, and the deed from the district conveyed no such right, nor had the district made any such entry. 4. That the vote to sell did not authorize a conveyance of the hall, and the deed could go no further than the authority. 5. That the defendants, having disclaimed all but the hall with its easements, and being in possession of that, have a color of title, and the plaintiff had failed to show a better one: *Peaks v. Blethen*, 77 Me.

EQUITY. See *Debtor and Creditor; Decedent's Estates; Insurance; Partition.*

Parties—Trustee and Cestui que Trust—Receiver.—A receiver filed a bill in his own name to foreclose a mortgage made to A. in trust for B. To establish his right to foreclose, the bill relied on a decree of the court of chancery appointing him receiver. It not appearing by the recitals of the bill that the decree transferred to the receiver the legal title which A., as trustee, had in the mortgage: *Held*, that A. was a necessary party to the bill: *Tyson v. Applegate*, 40 N. J. Eq.

Further recitals in the bill justified the conclusion that the decree divested B. of her interest in the mortgage, and vested that interest in three persons named in the bill. *Held*, that B. was not a necessary party, but that the three persons in whom her interest was vested were necessary parties to the bill: *Id.*

The rule that to a bill to foreclose a mortgage made to a trustee in trust, the *cestui que trust*, as well as the trustee, shall be made a party, is to be observed when the *cestuis que trustent* are known, and are not so numerous as to make it impossible or highly inconvenient to include them as parties: *Id.*

Specific Performance—Contract for Sale of Lands—Tender—Parol Evidence.—It is not essential to the enforcement of a contract for the sale of lands that it should be signed by the complainant, as well as by the defendant: *Carshaddon v. Kennedy*, 40 N. J. Eq.

A contract induced by fraudulent representations would not be enforced in equity, even though it appeared that the parties did not intend to make the representations a part of the contract: *Id.*

If a party refuse a tender of the purchase-money for land sold, on the express ground that he is not bound to make any conveyance, he cannot, afterwards, object to the propriety of the tender, on the ground that the description of the land, in a deed which the purchaser, at the time of the tender, requested him to execute, was erroneous: *Id.*

Oral evidence is not competent to establish an agreement to change the description of land previously bargained for by a written contract signed by the vendor: *Id.*

EVIDENCE.

Public Records—Sworn Copy.—The contents of a public record may be proved by the production of the record itself, or by a copy duly certified by the proper officer, or by an examined copy sworn to by an unofficial witness who made the examination: *State v. Lynde*, 77 Me.

Power of Court to Strike out.—Where, in a suit brought by the representatives of a deceased person, the testimony of the living defendant concerning conversations and transactions had with the decedent is admitted without objection, it is not in the power of the court afterward to strike it out because its admission is opposed to the statute. The court can strike out testimony so admitted only when its exclusion is demanded by some consideration of public policy: *Rowland v. Rowland*, 40 N. J. Eq.

Averments in another Suit on Information and Belief.—Averments made under oath, in a pleading in an action at law, are competent evidence in another suit against the party making them; and the fact that the averments are made on information and belief goes only to their weight, and not to their admissibility as evidence: *Pope v. Allis*, S. C. U. S., Oct. Term 1885.

EXEMPTION.

Waiver of—Invalidity.—A general waiver of exemption of wages from the process of garnishment, extending indefinitely to all the future wages of the laborer, is void and cannot be enforced against the promissor: *Green v. Watson*, 73 or 74 Ga.

Whether a special waiver upon specific wages in a certain employment, and for a certain time by specific orders on employers containing such specific waiver, we do not decide: *Id.*

FRAUD. See *Debtor and Creditor; Sale.*

FRAUDS, STATUTE OF.

Promise to Pay the Debt of Another—New Consideration.—Where the moving consideration for the promise to pay money is the liability of a third person, the promise must be in writing; but if there is a new
VOL. XXXIV.—19

consideration moving from the promisee to the promisor, then the super-added consideration makes it a new agreement, which is not within the Statute of Frauds: *Power v. Rankin*, 114 Ill.

So where a party having a chattel mortgage upon a lot of corn, to secure a note of some \$1200, relinquishes the same, and allows the corn to be sold and delivered by his debtor, in consideration that an agent, in whose hands \$1000 was placed, had agreed to pay him that sum when the corn should be delivered, it was *held*, that the verbal promise to pay the holder of the chattel mortgage was not within the Statute of Frauds, and that an action would lie for a failure to make the payment: *Id.*

Reserving a Verbal Trust by a Grantor.—An express trust between the grantor and grantee of land, that the grantee is to hold the land in trust for the grantor, or is to reconvey to him in a certain contingency, is invalid, under the Statute of Frauds, unless evidenced by some writing signed by the grantee: *Stevenson v. Crapnell*, 114 Ill.

Resulting Trust—When it Arises.—Where there is an express trust, there cannot be a resulting or implied trust; and in case of a voluntary conveyance, no resulting trust can arise in favor of the grantor: *Stevenson v. Crapnell*, 114 Ill.

HABEAS CORPUS.

Removal of, into United States Court.—A writ of *habeas corpus* is not removable from a state court into a circuit court of the United States, under the Act of March 3d 1875, c. 137, sect. 2: *Kurtz v. Moffitt*, S. C. U. S., Oct. Term 1885.

HUSBAND AND WIFE.

Conveyance—Attachment and Levy.—The statute prohibiting conveyances by the wife, without the joinder of her husband, of such real estate as has been directly or indirectly conveyed to her by her husband, does not include transfers by attachment and levy for the satisfaction of her debts. Such real estate is liable to attachment and levy by her creditors: *Virgie v. Stetson*, 77 Me.

INSURANCE.

When in the Nature of a Wager.—It would seem that a policy or certificate for the payment of a premium to one who may hold a number next to that held by the one who dies, and solely because he does die, makes the transaction in the nature of a wager upon the life of one in whom the party thus benefited has no interest, and is therefore illegal: *The People v. Golden Rule*, 114 Ill.

Agency—Broker—Evidence.—A party desiring to insure certain property, applied to an insurance agent of his place to procure the insurance, leaving him to select the company. He forwarded the application to certain insurance brokers in Chicago, who procured the policy in a company with which they had considerable dealing, and sent the same to the assured through the first named agents, and he sent the premium to the agents in Chicago, who never forwarded the same to the insurance company. The policy contained the usual clause that it should not be binding until the actual payment of the premium. A loss occurred, and

payment was refused, when suit was brought on the policy, and a recovery had: *held*, that the liability of the insurance company depended upon the fact whether the Chicago agents were its agents, or were authorized to receive payment in its behalf: *Sun Mut. Ins. Co. v. Saginaw Barrel Co.*, 114 Ill.

Where insurance brokers procuring a policy of insurance received payment of the required premium, and failed to return the same to the insurance company, it was held that the correspondence between the brokers and the company was proper evidence for the purpose of showing their previous relations and methods of business, in respect to insurance effected through them, and as tending to show they were, in fact, agents of the company, and as such authorized to receive payment of the premium: *Id.*

Mutual Benefit Association—Power of Chancery to enforce Contract.
—A mutual benefit association, a corporation not organized for pecuniary profit, having no surplus, and relying entirely upon mortuary assessments made upon each death of a member for the payment of benefits to the beneficiaries of decedent, gave a certificate of membership to a member, in the sum of \$5000, whereby it promised, upon proof of his death, that an assessment should be levied upon the surviving members to the amount of the certificate, which sum, when collected, less the expenses and collection costs, it would pay to his devisees, in case he left any, and if he left none, to his legal heirs. It was *held*, that a court of chancery might properly take jurisdiction of a bill brought by the heirs of the deceased member to enforce payment of the certificate, by compelling a specific performance of the contract: *Benefit Association v. Sears*, 114 Ill.

JUDICIAL SALE. See *Decedents' Estates*

Default of Purchaser—Resale—Right to recover Deposit.—A judicial sale was made upon the conditions that the purchaser was required to pay down ten per cent. of his bid, and pay the remainder at a certain time; that if any purchaser should not comply with the conditions, then the property would be offered for sale a second time, and that the first purchaser would not be benefited by any advance, but would be held liable for all loss and expense incurred thereby. A. purchased a lot, paid ten per cent. of his bid, and failed to pay the remainder. The lot was resold for a sum in excess of the first amount sufficient to pay the interest on the first bid and the expense of the second sale; *held*, that the first purchaser was entitled to be repaid the ten per cent.: *The Chancellor v. Gummere*, 40 N. J. Eq.

LANDLORD AND TENANT.

Rent received in Cotton—Right of Landlord to enter and pick Cotton.
—The landlord, having rented his land for a certain number of pounds of cotton, had no right to enter, pick and remove the cotton, against the will of the tenant, though the cotton was wasting and likely to be destroyed: *Wadley v. Williams*, 73 or 74 Ga.

The title to the crop was in the tenant; the landlord had only a lien thereon: *Id.*

The relation of landlord and tenant existed in this case. The land was let to the defendant in error for a fixed rent to be paid therefor out of the crop. The contract was not a mere cropping agreement: *Id.*

LIMITATIONS, STATUTE OF. See *Corporation; Covenant*.

Constitutionality of—Repeal of.—There is a clear distinction between the effect of statutes of limitation in vesting rights to real and personal property, and their operation as a defence to contracts. Where the question is as to the removal of the bar of the statute of limitations by a legislative act, passed after the bar has become perfect, such act, in the former case, deprives the party defendant of his property, without due process of law; because, by the law in existence before the repealing act, the property had become his; but in the latter case, it merely takes away a purely arbitrary defence to an action, which falls with the repeal of the law on which it depended; and such a defence is not a right of property which is protected by the fifteenth amendment to the Constitution of the United States: *Campbell v. Holt*, S. C. U. S., Oct. Term 1885.

MASTER AND SERVANT.

Fellow-Servants—Who are.—Servants of the same master, to be co-employees or fellow-servants, so as to exempt the master from liability on account of injuries sustained by one resulting from the negligence of the other, must be such as are directly co-operating with each other in a particular business; that is, the same line of employment; or such that their usual duties shall bring them into habitual consociation, so that they may exercise a mutual influence upon each other promotive of proper caution: *Rolling-Mill v. Johnson*, 114 Ill.

The relations of the servants must be such, that each as to the other, by the exercise of ordinary caution, can either prevent or remedy the negligent acts of the other, or protect himself against its consequences. Where there is no right or no opportunity of supervision, or where there is no independent will, and no right or opportunity to take measures to avoid the negligent acts of another without disobedience to the orders of an immediate superior, the doctrine exempting the master can have no application: *Id.*

MINES AND MINING.

Title to Mineral Lands, how obtained from the United States.—No title from the United States to land known at the time of sale to be valuable for its minerals of gold, silver, cinnabar, or copper, can be obtained under the pre-emption or homestead laws, or the town-site laws, or in any other way than as prescribed by the laws specially authorizing the sale of such lands, except in the states of Michigan, Wisconsin, Minnesota, Missouri and Kansas: *Deffebach v. Hawke*, S. C. U. S., Oct. Term 1885.

It would seem that there may be an entry of a town-site, even though within its limits mineral lands are found, the entry and the patent being inoperative as to all lands known at the time to be valuable for their minerals, or discovered to be such before their occupation and improvement for residences or business, under the town-site title: *Id.*

MORTGAGE.

Liability of Purchaser of Real Estate subject to—Extension of Time of Payment by Agreement with Purchaser.—A. purchased real estate

from B., subject to the payment of a mortgage thereon to C. *Held*, that even though A. had expressly promised B. to pay the mortgage debt, this would not, without the consent of C., convert B. from a principal debtor to a surety. 2. The relation of principal and surety not existing between A. and B., an extension of the time of payment of the mortgage debt granted by C. to A. would not discharge B. from his liability to C. (It did not appear in this case whether or not B. was prejudiced by the extension of time for paying the mortgage debt, through depreciation in the value of the property on which it was secured): *Shepherd v. May*, S. C. U. S., Oct. Term 1885.

MUNICIPAL CORPORATION. See *Taxation*.

Police Powers.—Closing Places of Business on Sunday.—Cities and villages incorporated under the general Incorporation Act, giving power “to regulate the police of the city or village, and pass and enforce all necessary police regulations,” may pass an ordinance prohibiting persons from keeping open their places of business in such city or village, for the purpose of vending goods, wares and merchandise on Sunday, and provide a penalty for a violation of the same: *McPherson v. Village of Chebanse*, 114 Ill.

The police regulations of a village may differ from those of the state upon the same subject, if they be not inconsistent therewith. A village ordinance prohibiting the keeping open of places of business on Sunday, for the sale of goods, etc., is not inconsistent with the provisions of section 261 of the Criminal Code: *Id.*

Subdivision 66 of section 62, article 5, of the “Act to provide for the incorporation of cities and villages,” which reads that the city or village council shall have power “to regulate the police of the city or village, and pass and enforce all necessary police regulations,” is not limited in its application to the organization and regulation of a police force, but may extend to and embrace a subject-matter of police regulation, under the general police power of the state: *Id.*

NEGLIGENCE. See *Master and Servant*.

Minor—Contributory Negligence—Railroad—Absence of Flagman.—Where there is no evidence of the want of capacity or discretion in a minor plaintiff suing a railway company for a personal injury from negligence, and he is present at the trial, and it appears that he was of such age and ability to care for himself as to be trusted by his parents to attend school in a large city, a considerable distance from home, and to go and return by himself, it was held error to instruct the jury that if believed, from the evidence, that the plaintiff, at the time and place of the injury, was of such tender years, and was so immature, that the requisite capacity to exercise proper care was wanting, then the law would not impute negligence to him. While the same degree of care might not have been required of him as from a person of mature years, it cannot be said that no negligence could be attributed to him: *Chicago, R. I. and P. Rd. Co. v. Eininger*, 114 Ill.

In a suit by a plaintiff, against a railway company, to recover for an injury received from a passing train at a public street crossing—not in attempting to cross the track along the street, but while unlawfully walking along the track as a footway—it was held error to instruct the jury

that if the injury happened because of there being no flagman at the railroad crossing to give warning to those about to cross the street and railroad track at the approach of train at the crossing, contrary to a city ordinance, then the plaintiff was entitled to recover: *Id.*

A requirement of a railway company to keep a flagman at a public street crossing in a large city, to give warning of the approach of trains, is intended for the protection of persons crossing the railroad tracks at such crossing, and not for the benefit of persons walking along the railroad track, employing it as a foot-path. To the latter the company does not owe the duty in respect to a flagman: *Id.*

Railroad—Arson—Contributory Negligence—Burden of Proof.—In order to support a recovery against a railroad corporation on account of an injury, or death, caused by a collision with its train at a crossing, whether the action be in form civil or criminal, it must affirmatively appear: 1. That the defendant corporation was guilty of negligence. 2. That its negligence was the cause of the accident. 3. That the injured party was in the exercise of due care and diligence at the time of the injury, or at least, that the want of such care on his part in no way contributed to produce it: *State v. Maine Central Rd. Co.*, 77 Me.

It is not enough to show that the defendant was negligent: *Id.*

It is incumbent on the prosecuting party to go further, and directly or indirectly, by affirmative proof satisfy the jury that no want of due care on the part of the injured party, helped to produce the accident: *Id.*

It is negligence to attempt to cross the track of a railroad without looking and listening to ascertain if a train is approaching, and ordinary sense, prudence and discretion require this of a traveller so far as he has an opportunity so to do: *Id.*

It is still greater negligence for one seeing and hearing a train approaching at ordinary speed to attempt to cross directly in front of it: *Id.*

PARTITION.

Defence of Equitable Title—Practice.—In a suit for partition in chancery, where a defendant sets up an equitable title to the whole estate in the premises, or impeaches the complainant's title on equitable grounds, the court will not suspend the suit until the title be settled, but will pass upon such title and settle all disputes concerning it in the partition suit, and grant relief accordingly: *Read v. Huff*, 40 N. J. Eq.

Where a husband pays the consideration of the purchase of lands, and has the conveyance made to his wife, the presumption is that a gift or settlement was intended, and a resulting trust will not arise in his favor from such payment: *Id.*

The proof which in such cases shall overcome the presumption of a gift to the wife must be of facts antecedent to or contemporaneous with the purchase, or else immediately afterwards, so as to be in fact part of the same transaction: and it must be equally satisfactory and explicit with the proof required to establish a resulting trust: *Id.*

PARTNERSHIP.

What constitutes.—Where M. was to conduct a saw-mill, pay its expenses from the proceeds and divide the net profit with two others,

and it further appears that the two others and himself jointly owned the mill property itself, there was clearly a partnership between the parties: *Camp v. Montgomery*, 73 or 74 Ga.

The weight of authority and reason seems to be decidedly in favor of the rule that there may be a legal and valid partnership although one or more of the parties are guaranteed by the others against loss. And notwithstanding the last clause of section 1890 of the Code, that a "common interest in profits alone does not constitute a partnership," the rule is the same in this state: *Id.*

If parties go into an adventure, one furnishing money or stock and the other skill or labor, and to share the net profits, they are partners, since they have a joint interest in the profits as contradistinguished from the common interest. *A fortiori* is there a partnership where, in addition to this, there is a joint interest in the property used: *Id.*

RAILROAD. See *Contract*; *Negligence*.

RECEIVER. See *Corporation*; *Equity*.

SALE.

Misrepresentation—Four hundred and ten shares of the stock of an electric light company, recently organized, were paid for to the company by its stockholders, at the rate of one-third of the par value of one hundred dollars a share. The plaintiff sold five of his shares, thus paid for, to the defendant at par, representing that all stockholders had paid for their shares at par. *Held*, that the plaintiff's statement was a misrepresentation of a material fact; that the defendant would have the right to infer from the representation that the company had assets of forty-one thousand dollars, instead of assets of only one-third of that amount: *Coolidge v. Goddard*, 77 Me.

SHIPPING.

Earnings—Action by Part Owners—Tenants in common must join in an action to recover the earnings of their vessel unless there is an excuse for a severance of the claim; but bankruptcy of one owner is not an excuse: in such case the assignee of the owner who is in bankruptcy must be joined with the solvent owners, or, if an assignee has not been appointed when the suit is commenced, an action may be supported in the names of the bankrupt and other owners until an assignee comes in: *Stinson v. Fernald*, 77 Me.

SPECIFIC PERFORMANCE. See *Equity*.

TAX.

Public Buildings of Municipal Corporation.—Buildings and other property owned by municipal corporations and appropriated to public uses, are but the means and instrumentalities used for municipal and governmental purposes, and are, therefore, exempt from general taxation, not by express statutory prohibition but by necessary implication: *Inhabitants of Camden v. Camden Village*, 77 Me.

A village corporation was authorized by its charter to raise money to defray the expenses of a night watch, police force, fire department, &c., and also to erect a hall. The building thus erected contained a public

hall, police court room, assessors' office, lock-up, &c., and, when not in use for meetings and for purposes of the corporation, the hall and other rooms were let for hire, and the money received therefrom was used towards paying the expenses of the corporation. *Held*, that the building and lot were not liable to taxation by the town in which they were situated. *Id.*

TRUST. . See *Frauds, Statute of.*

Resulting Trust.—The title to a house and lot was taken in 1852 in the name of one R., but the consideration was paid by one D., who, with his family, continuously occupied the premises thereafter until his death, and paid the taxes thereon and for all improvements and repairs, without accounting for the rents to R., or being called on by R. to do so. R., at the request of D., afterwards conveyed the premises to C., who was D's daughter by a former wife. *Held*, that D. had a resulting trust in the premises, and that his wife, the respondent, was entitled to dower therein : *Mershon v. Duer*, 40 N. J. Eq.

TAX AND TAXATION.

No Collector—Power of Court of Equity to Appoint Person to Collect the Taxes.—Where the proper officers of a county or town have levied a tax for the satisfaction of judgments against it, and no one can be found to accept the office of collector, a court of equity has no jurisdiction to fill that office or to appoint a receiver to perform its functions : *Thompson v. Allen Co.*, S. C. U. S., Oct. Term 1885.

USURY.

Parol Evidence—Agreement to Pay Taxes.—The general rule that parol evidence is not admissible to change the terms of a written contract, has its exceptions, as, in respect to the consideration expressed in notes and conveyances. Such evidence is also admissible where usury is pleaded, regardless of the form the transaction may have in the writings executed by the parties : *Kidder v. Vandersloot*, 114 Ill.

A person borrowed \$2500 on several years' time, and to secure its payment, with interest, conveyed to the lender eighty acres of land, taking back a written contract for a reconveyance on payment of the principal and ten per cent. interest annually, that rate being the highest then allowed by law to be contracted for, with \$20 yearly for taxes on the land, making \$270 annually, and the proof showed that only \$250 was in fact paid as interest, and that on payment of that sum, and producing a receipt for the taxes of such year, he was credited with \$270. It was held, the transaction was not usurious, and that the \$20 was but a guaranty for the payment of the taxes, which were chargeable against the mortgagee by reason of the legal title being in him : *Id.*