LEGAL NOTES.

THE recent cases of *Hanley* v. *Donoghue*, 116 U. S. S. C., 1, and *Renaud* v. *Abbott*, Id. 277, while not passing upon the question, serve to recall the diversity of opinion, evidenced by the decisions of the various state courts, in regard to whether a judgment rendered jointly against two defendants, one only of whom is summoned, and which is allowed to remain unappealed from, is void as against the *summoned* defendant. This subject was so recently considered in an article by Mr. Frederick J. Brown, of Baltimore, published in Am. Law Reg. (N. S.), vol. xix., p. 673, that we desire simply to call attention to the elaborate and careful note since written by Mr. A. C. Freeman to *St. John* v. *Holmes*, 32 Am. Dec. 604, in which he reviews the cases and examines the ground of the decisions. His conclusions, which agree with those previously reached by Mr. Brown, are thus emphatically expressed: "The authorities show that the courts of Massachusetts, Maine and New Hampshire are fully, and, perhaps, unalterably committed to the doctrine that a judgment is an entirety, and if void against one of the defendants is void as to all. * * * We believe it to be without any other support than the authority of those eminent courts, which, through what we conceive to be either a misapprehension of a prior decision, or of the real nature of the question in issue, pronounced in its favor. We say misapprehension of the question in issue, because the courts seemed to treat it as a mere question of error and not of power, and to assume that if error was shown the judgment was void."

This is significant, not only on account of Mr. Freeman's authority to speak on such a question, but because the learned author, in sect. 136, of his work on Judgments, had previously endorsed the contrary view.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF FLORIDA.[2]

COURT OF ERRORS AND APPEALS OF MARYLAND.[3]

SUPREME COURT OF NORTH CAROLINA.[4]

SUPREME COURT OF RHODE ISLAND.[5]

AGENT.

Contract to Sell Land as Agent for Feme Covert—Real Ownership of Agent—Fraudulent Conveyance to Principal.—A contract to sell a

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term, 1885. The cases will probably appear in 117 U. S. Rep.

[2] From D. C. Wilson, Esq., Clerk. The cases will probably appear in 21 or 22 Florida Rep.

[3] From J. Shaaf Stockett, Esq., Reporter; to appear in 64 Md. Rep.

[4] From Hon. Theo. T. Davidson, Reporter; to appear in 94 N. C. Rep.

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

tract of land, purporting to belong to a *feme covert*, was made by one who acted as her agent: It was *held*, that the contract was not binding on the *feme*, 1st, because of her coverture, and 2d, because the agent was not authorized by an instrument under seal to make the contract. Such contract is not binding on the agent, because its terms do not purport to bind him: *Boyd* v. *Turpin*, 94 N. C.

A son conveyed his land to his mother, a *feme covert*, for the purpose of defrauding his creditors, and afterwards contracted in her name and as her agent to sell the land to a *bonâ fide* purchaser. After a portion of the purchase-money had been paid, the mother attempted to repudiate the contract, and brought an action to recover the possession of the land: *Held*, that she cannot be permitted to hold the land for which she paid nothing, and at the same time disown the authority of the agent who assumed to act for her. She must either surrender the land to him, or abide by his disposition of it. The disability of coverture carries with it no license to practice a fraud: *Id.*

In such case, a court of equity looks through the disguises which cover the transaction, and charges the legal estate with a trust, which while it cannot be enforced by the fraudulent donee, may be by those who, in good faith, deal with him as possessed of authority to make the contract of sale: *Id.*

AMENDMENT. See *Judgment.*

Joining Causes of Action—Action to Recover Land—Statute of Limitation—Mistake—Correction.—The court cannot, except by consent, allow an amendment which changes the pleadings so as to make it substantially a new action, but an amendment which only adds to the original cause of action is not of this nature, and may be allowed: *Ely* v. *Early*, 94 N. C.

In an action to recover land, the court may allow an amendment so as to set up a mistake in a deed: *Id.*

An action to recover the possession of land, and to correct a mutual mistake in a deed for the same land, executed by the plaintiff to the defendant, constitute but one cause of action: *Id.*

Where a distinct cause of action is allowed to be inserted in a complaint, by amendment, it is tantamount to bringing a new action, and the statute of limitation runs to the time when the amendment is allowed; but this rule does not apply when the new matter allowed by the amendment constitutes a part of the original cause of action: *Id.*

So where, in an action to recover land, the court allowed the plaintiff to amend, so as to set up a mutual mistake in a deed, the statute only runs against the relief demanded by the amended complaint to the time when the action was commenced: *Id.*

A court will only correct a mistake in a deed or other written instrument, upon clear, strong and convincing proof, and it is error in the court to charge the jury that the plaintiff is entitled to have the issue found in his favor upon a mere preponderance of evidence: *Id.*

In such cases, if the court should be of opinion that, in no reasonable view of the evidence, is it sufficient to warrant a verdict establishing the mistake, a verdict should be directed for the defendant: *Id.*

In the trial by a jury of issues arising in equitable matters, the rules of equity should be followed as far as possible: *Id.*

Issues of fact, as distinguished from questions of fact, in equitable as well as legal actions, must be tried by a jury; but this does not authorize the finding of such issues on less evidence than a chancellor would find them: *Id.*

ASSIGNMENT.

For Benefit of Creditors—Reservation in.—The reservation in a deed for the benefit of creditors, of a reasonable fee for the preparation of the deed, is such a preference as is forbidden by the insolvent act: *Wolfsheimer* v. *Rivinus*, 64 Md.

ATTACHMENT. See *Husband and Wife.*

ATTORNEY. See *Bills and Notes; Exemption.*

BANK.

Depositor—Pass-book—Examination of with Returned Vouchers.—A depositor in a bank whose pass-book is written up from time to time, and the checks paid returned to him, is bound to examine the account within a reasonable time and report to the bank any errors or omissions. His silence is an admission that the entries are correct: *Leather Manufacturers' Bank* v. *Morgan*, S. C. U. S., Oct. Term 1885.

Where altered checks have been paid, if the bank's officers, by proper care and skill, could have detected the forgeries, it cannot receive a credit for the amount of these checks, even if the depositor omitted all examination of his account: *Id.*

The required examination of the account can be made for the depositor by a competent clerk; but if the agent who examines the account is the one who committed the forgeries, the principal must at least show that he exercised reasonable diligence in supervising the conduct of the agent: *Id.*

BILLS AND NOTES.

Bonâ fide Purchaser—Notice—Attorney.—If the endorsee of a negotiable instrument before its maturity, knew, or if such facts came to his knowledge, which, if inquired into, would have informed him of an equity of the maker, he takes the instrument *cum onere*: *Hulbert* v. *Douglass*, 94 N. C.

Where a negotiable note is secured by a mortgage, the fact that one-half the land has been released, is some evidence to charge a purchaser of the note before maturity with notice that there has been a partial payment on the note: *Id.*

If anything appears to a party calculated to attract attention or stimulate inquiry, the person is affected with knowledge of all that the inquiry would have disclosed: *Id.*

Notice to an attorney of any matter relating to the business in which he is engaged for his client, is notice to the client: *Id.*

Where an attorney sold a note to a person who was occasionally his client, and such attorney, acting for the purchaser, investigated the title to the land on which the note was secured by a mortgage, and was afterwards employed by the purchaser to bring suit on, and collect the note: It was *held*, to be some evidence that the attorney was acting for the purchaser in the sale of the note: *Id.*

CONSTITUTIONAL LAW.

Statute defining Adulteration.—A statute forbidding and punishing the sale of adulterated milk provided: "In all prosecutions under this act, if the milk shall be shown upon analysis to contain more than 88 per cent. of watery fluids or to contain less than 12 per cent. of milk solids, or less than 2½ per cent. of milk fats, it shall be deemed for the purpose of this act to be adulterated" *Held*, that the provisions were constitutional: *State* v. *Groves*, 15 R. I.

Habeas Corpus—Power of United States Courts to Discharge on.—A Circuit Court of the United States has jurisdiction on habeas corpus to discharge from custody a person restrained of his liberty, in violation of the Constitution of the United States, although he is held under the authority of a state: *Ex parte Royall*, S. C. U. S., Oct. Term 1885.

But where a person is in custody, under process from a state court of original jurisdiction, for an alleged offence against the laws of such state and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the Circuit Court has a discretion whether it will discharge him upon habeas corpus, in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the state court shall have finally acted upon the case, the Circuit Court has still a discretion whether, under all the circumstances, the accused, if convicted, shall be put to his writ of error from the highest court of the state, or whether it will proceed, by writ of habeas corpus, summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States: *Id.*

CONTRACT. See *Public Policy.*

Consideration—Forbearance to Sue.—A. having a *bona fide* claim against C. placed it in the hands of an attorney for collection, who exhibited it both to C. and to B., his father, and informed them of the consequences of the suit which he was instructed to institute. After this information, B. obtained a bill of sale from his son of all his property, and upon being told by A. that "he was going to send the sheriff up that day; that he was not going to stop for that bill of sale, it was all a fraud," he replied, "you keep quiet and you will get your money; I guess I am worth it." A. relying on the promise of B., left him, and called immediately to his attorney's and stopped further proceedings: *Held*, that the forbearance to sue constituted a sufficient consideration for the promise of B., and A. was entitled to recover in an action against B.: *Bowen* v. *Tipton*, 64 Md.

CORPORATION. See *Negligence; Tax.*

Purchase of Stock of another Company—Use of.—While one railroad company may have the right to acquire the stock of another company, it has no right to use its controlling influence, thus acquired, with the directors of the latter company, so as to sacrifice the interest of that company: *State* v. *Brown*, 64 Md.

Charters—Power to Convey Land—Ultra Vires.—Where the charter of a corporation authorizes it to purchase land for some specified purpose in the absence of evidence, it will be presumed that any land purchased

by it, was accepted for the purposes authorized by the charter: *Mallet* v. *Simpson*, 94 N. C.

Where the charter of a railroad company authorized it to purchase land for the purpose of procuring stone and other material necessary for the construction of the road, or for effecting transportation thereon. It was *held*, that the charter authorized the purchase of land for the purpose of getting cross-ties and fire wood: *Id.*

At common law, in the absence of any provision in the charter, a corporation has the power to acquire and hold real estate in fee. The stautes of mortmain have never been adopted in this state: *Id.*

Even if a corporation is forbidden by its charter to hold or take a title to real estate, a conveyance of land to it is not void. It is valid until vacated by a direct proceeding by the sovereign, instituted for that purpose: *Id.*

COSTS. See *Will.*

CRIMINAL LAW.

Extradition—Affidavit—Habeas Corpus.—It is immaterial whether the warrant of the governor of this state for the arrest of the fugitive from justice from another state is based on an original affidavit or a copy thereof, when either one presented to the resident governor is certified to the governor of the state where the crime was committed as being authentic: *Kurtz* v. *The State*, 21 or 22 Fla.

The fugitive from justice cannot on *habeas corpus* impeach the validity of the affidavit upon which the requisition was founded, if it distinctly charge the commission of a crime: *Id.*

Evidence—Threats—Reputation.—Where there is no doubt but that the prisoner began the encounter resulting in death, previous threats made by the deceased, of serious bodily harm to, or against the life of the prisoner are not admissible in evidence, though they have been communicated to the prisoner, there being no evidence of any demonstration upon the part of the deceased made at the time of the killing and apparently indicating an immediate intention of executing the threats: *Bond* v. *The State*, 21 or 22 Fla.

Evidence of the reputation of the deceased as a violent, quarrelsome and dangerous man in the community where he lives, is not admissible when the prisoner is the assailant, and the killing takes place under circumstances that can afford him no reasonable ground to believe himself in danger of serious bodily harm: *Id.*

DEBTOR AND CREDITOR. See *Fraud.*

Sale—Retention of Possession—Administrator—Right to Attack Fraudulent Sale.—The retention of personal property by the vendor after a sale is *prima facie* evidence of fraud, and the evidence to rebut such presumption is an explanation of the retention by showing that it is inconsistent with the deed, or is unavoidable, or is temporary, or for the reasonable convenience of the vendee: *Holliday* v. *McKinne*, 21 or 22 Fla.

Creditors of an intestate have their right to question the fraudulent transactions of their debtor by proper proceedings in the courts: *Id.*

The better rule is not to permit the representative of an estate to question such transactions for the benefit of creditors: *Id.*

DEED. See *Husband and Wife.*

EQUITY. See *Agent; Amendment; Fraud.*

Marshalling Assets—Lien on two Funds—Homestead.—Where one creditor is secured by a lien upon two funds, and another by a lien upon only one of them, the former will be compelled to exhaust the subject of his exclusive lien before he can resort to the other: *Pope* v. *Harris*, 94 N. C.

The equity to have the securities embraced in a trust for the benefit of creditors of different classes, marshalled and appropriated in exoneration of the liens of the less preferred class, is an equity against the debtor, and not against the doubly secured creditor: *Id.*

The right of the debtor to a homestead is superior to that of all creditors except so far as it may be impaired by the voluntary act of the claimant: *Id.*

ESTOPPEL. See *Mortgage.*

EVIDENCE. See *Criminal Law; Insurance; Will.*

Suppression of—Secondary Proof.—Where it is shown that evidence of the indebtedness of a party to the estate of a decedent, has been suppressed or destroyed by the debtor, or some one acting in his interest, such indebtedness may be established by testimony, which, under ordinary circumstances, would be regarded as too vague and indefinite: *Love* v. *Dilley*, 64 Md.

Impeaching own Witness.—A party cannot impeach his own witness by proof through other witnesses of contradictory statements unless the witness is one whom the law obliges the party to call: *Hildreth* v. *Aldrich*, 15 R. I.

A party disappointed in his witness may, to refresh the witness' recollection, ask him if he has not made contradictory statements, but cannot prove such statements by other witnesses: *Id.*

Explanation of Telegram by Parol.—Where the question is as to the authority given by a telegram, the party to it sued, should not be permitted to testify what his intention was in sending it. Such intention, in so far as the authority conferred is concerned, is to be derived from the telegram and the entire contract between the parties: *Meinhardt* v. *Mode*, 21 or 22 Fla.

Where telegrams do not contain the entire contract, the other parts of it may be proved by verbal testimony, or by other writings, or by both, as in other cases where the entire contract has not been reduced to writing: *Id.*

Burnt Records—Recitals in Deeds.—Where records have been burned or destroyed, the entries in the bound volumes containing the minutes of the court are admissible in evidence to establish the regularity of the proceedings: *Hare* v. *Holloman*, 94 N. C.

Where land has been sold under a decree of court, and the records have been destroyed, the recitals in the deeds are evidence of the regularity of the proceedings: *Id.*

EXECUTION. See *Exemption.*

EXEMPTION. See *Tax.*

Tools—Lawyers' Books.—A statute exempting from attachment the

necessary working tools of a debtor, not exceeding in value $200, covers only tools used in manual labor, and does not cover a lawyer's law books: *Petition of Church*, 15 R. I.

Execution—Allotment—Mortgage.—A debtor is entitled to have his personal property exemption ascertained up to and immediately before the sale: *State* v. *Harper*, 94 N. C.

After an execution has been returned with the allotment of the personal property exemption, it becomes an estoppel, but as long as the process remains in the officer's hands, such allotment is *in fieri*, and may be corrected: *Id.*

If property belonging to the judgment debtor has been omitted by the appraisers, they have the power to correct the allotment: *Id.*

While an unregistered mortgage is not valid as to third parties, yet the lack of registration cannot subject to sale under execution, property which would be exempt if there were no mortgages: *Id.*

Burton v. *Spiers*, 87 N. C. 87; *Duvall* v. *Rollins*, 68 Id. 230; *Crummen* v. *Bennett*, Id. 494, cited and approved: *Id.*

EXECUTOR AND ADMINISTRATOR. See *Debtor and Creditor; Insurance; Judgment.*

FRAUD. See *Debtor and Creditor.*

Fraudulent Conveyance—Evidence of Fraudulent Intent—Burden of Proof.—No appeal lies from an order of a court of equity dismissing a petition for a rehearing: *Zimmer* v. *Miller*, 64 Md.

In order to justify the annulment of a deed as void under the statute of 13 Eliz., chap. 5, because made with intent to delay, hinder, or defraud the creditors of the grantor, it is necessary to prove a fraudulent intent: *Id.*

The intent with which a grantor executes a deed, must be gathered from the deed itself, and from his acts and the surrounding circumstances. And when those circumstances are of such a character, as to lead to the inference that there has been a fraudulent intent, the *onus* of disproving fraud rests on the parties to the transaction: *Id.*

HUSBAND AND WIFE.

Attachment—Married Woman as Garnishee—Default.—An attachment was laid in the hands of a married woman as garnishee, returnable before a magistrate. She failed to appear, and a judgment of condemnation was rendered against her for the amount of the debt, $63.76, with interest and costs. Between the time the attachment was laid and the judgment was rendered, the husband of the garnishee died. On a bill filed to restrain the execution of the judgment, it was *held*, that having failed to appear, as it was her duty to do, in person, or by agent or attorney, and avail herself of any defence which she might have, whether of coverture or otherwise, she had no standing in a court of equity to obtain relief against a judgment rendered against her by her own default, in the absence of clear proof of fraud or surprise, unmixed with negligence or fault on her part: *Ahern* v. *Fink*, 64 Md.

Deed by Married Woman—Defective Execution and Acknowledgment—Correction of after Suit Brought.—An instrument in writing made by a married woman purporting to be a deed conveying real estate, but

without a seal, not acknowledged by her as required by statute, and in which her husband did not join, is a nullity: *Carn* v. *Haisley*, 21 or 22 Fla.

Such paper acquires no validity from the execution of a paper by the husband afterwards purporting to ratify said deed of the wife: *Id.*

A private examination of the wife before the proper officer is an indispensable requisite to the conveyance of her real estate. A deed of land belonging to a married woman, but not acknowledged by her until after suit commenced by her grantee for the recovery of the land described therein, cannot be introduced in evidence in said suit: *Id.*

The plaintiff cannot avail himself of a title acquired or which did not subsist in him until after he commenced suit: *Id.*

INSURANCE.

Parol Evidence to vary Policy—Assignment—Parties.—Parol evidence is incompetent to vary, explain or contradict a written instrument. So where an insurance company contracted in writing to pay a sum of money to the personal representative of the insured, parol evidence is not admissible to show that it was intended that the sum should be paid to certain of his children: *Elliott* v. *Whedbee*, 94 N. C.

Where the by-law of an insurance company allowed the holder of a policy to designate the beneficiaries, by endorsing on the back of the policy the names of such beneficiaries, which endorsement was to be signed and witnessed: It was *held*, that a designation could not be made by the insured, by merely writing the names of the beneficiaries in the blank prepared on the policies for that purpose, but without signing it: *Id.*

Where a policy of insurance is payable to the personal representative of the deceased, his administrator may maintain an action for the money, against some of the next of kin who have received it: *Id.*

Where, in such case, the amount of the policy has been paid to some of the next of kin of the insured, and the administrator sues them to recover the amount, if the estate is solvent, and the money is not needed for the payment of debts, the defendants are entitled to retain their distributive shares, and the administrator can only recover the excess: *Id.*

INTOXICATING LIQUOR.

Illegal keeping for Sale.—A., duly licensed to sell liquors in Providence, sent liquors in bulk to B., in Hopkinton, where no licenses were granted, with the agreement that they should remain the property of A., but that B. might draw ten gallons at a time as he wished, paying therefor when drawn: *Held*, that A. was illegally keeping for sale and selling liquor in Hopkinton, and that the liquors were properly seized and were forfeited to the state: *In re Liquors of Young*, 15 R. I.

JUDGMENT.

Amendment of.—The rule is settled that a judgment rendered at one term, may be amended at a subsequent term, *nunc pro tunc*, when from an inspection of the record in the cause, it is apparent that the proposed amendment would have been a part of the original judgment, or that the original judgment would have been in accordance therewith, had it not have been for the inadvertence of the court or an error or omission of the clerk. *Adams* v. *Requa*, 21 or 22 Fla.

When a suit is brought against an administrator of an estate, and judgment rendered adding only after his name "administrator of estate of J. S. Adams," and the whole record shows that the suit was based on a claim or demand against the deceased person of whose estate the defendant is administrator, the court will, on motion, at a subsequent term, permit the record to be amended so as to show that the defendant was sued, and judgment rendered against him "as administrator of J. S. Adams, deceased:" *Id.*

LEGACY. See *Set-off.*

LIMITATIONS, STATUTE OF. See *Amendment.*

MANDAMUS.

Return to—Affidavit—Illegal Purpose.—The allegations of a return or an answer to an alternative writ of mandamus, should be stated positively, and not upon information and belief: *State* v. *County Com.*, 21 or 22 Fla.

The rules requiring pleas to be sworn to, does not restrict a defendant to pleading matter of defence which are within his personal knowledge. The affidavit is required as an evidence of the pleader's good faith in setting up the defence: *Id.*

A mandamus will not issue to enable a person to effect an illegal purpose, *e. g.*, to compel the county commissioners to issue a permit to sell liquors under chapter 3416, to one whose purpose is to transfer the same, and a license to be issued by the collector of revenue, to another who has not complied with such statute; and to thereby enable him to carry on the business of a liquor dealer unlawfully: *Id.*

MISTAKE. See *Amendment.*

MORTGAGE.

Absence of Seal—Notice—Demurrer—Estoppel.—A. made a loan of money to B., and received B.'s note, accompanied by a paper signed by B. and his wife, acknowledged and recorded, and which would have been a valid mortgage had it been sealed. C. attached B.'s interest in the realty described in the paper, whereupon A. filed a bill in equity against B. and his wife, and C., charging accident and mistake as the cause of the paper not being sealed; actual notice of the paper on the part of C., and praying that the paper might be reformed by affixing seals. C. demurred to the bill; *held*, that the demurrer must be overruled: *Bullock* v. *Whipp*, 15 R. I.

A man cannot allow another to part with money on the faith of a conveyance, and then taking advantage of some defect known to himself, claim to have acquired by a subsequent conveyance, a title better in equity than that obtained by such other: *Id.*

Partnership—Execution by one Member of Firm—Reservation of right of Mortgagees to sell Property without accounting.—An instrument executed by one member of a partnership, in the firm name, and legally binding upon the partnership and entitled to be recorded under the registry statutes of Florida, may be admitted to record upon the acknowledgment of the partner who executed it: *McCoy* v. *Boley*, 21 or 22 Fla.

A mortgage duly recorded is not void as between the parties to it, or

as to a third person, whose claim is not based on a valuable consideration, from the fact that it permits the mortgagor to sell personal property covered by it without accounting to the mortgagee for the proceeds: *Id.*

Vague Description—Entire Crop.—The sale or mortgage of a crop to be planted, as well as one planted and in process of cultivation, is valid—provided the place where the crop is to be produced is designated with certainty sufficient to identify it. It seems, parol testimony is competent to fit the description to the property, and show the agreement of the parties: *Rountree* v. *Britt*, 94 N. C.

A mortgage conveying "my entire crop of every description," is too vague to pass any title to the property mentioned: *Id.*

NEGLIGENCE.

Railroad—Trespass—Child—Corporation—Charter—Demurrer.—A young child strayed from its home on to a railroad track, crossed the track and fell into an adjoining trench. The track was not fenced on the trench side. In an action against the railroad company for damages, the plaintiff child claimed that its fall was caused by the company's negligence in not fencing the track on the side of the trench; *held*, on demurrer to the declaration, that the company was as to the plaintiff under no obligation so to fence its tracks that the plaintiff could not get from them on to the adjoining land. *Held, further*, that the action could not be maintained: *Morrisey* v. *Providence & Worcester Rd. Co.*, 15 R. I.

On demurrer to a declaration against a corporation, the charter of the corporation is not before the court: *Id.*

Contributory Negligence—When a Question of Law for the Court—Ordinarily the question of contributory negligence is a question of fact for a jury, under instructions from the court, but when there is no contradiction in the evidence, and the facts are undisputed, and the conclusion and inference to be drawn from it, is indisputable, involving only a common instinct of mankind—self-preservation—it becomes a question of law: *Id.*

When a person voluntarily walks on and along the track of a railroad laid in a public thoroughfare, which he knew was used as a switch-yard on which locomotives were passing to and fro, night and day, where the walking on either side of said track was as good as on the track, and in doing so is run over by a passing train and killed, he has, by the failure to exercise ordinary care and prudence, directly contributed to his own misfortune, and his representative cannot recover from the company using said track, damages therefor: *Id.*

NOTICE. See *Bills and Notes.*

PARTNERSHIP. See *Mortgage.*

PAYMENT.

When Voluntary—Protest—Taxes.—An action will not lie to recover the amount of taxes illegally assessed and voluntarily paid: *Dunnell Mfg. Co.* v. *Newell*, 15 R. I.

A tax is not paid under compulsion merely because the collector holds a warrant to collect it by levy or distress, but if paid under protest a tax illegally assessed may be recovered: *Id.*

Public Policy.

Wager—Stakeholder—Recovery of Money Deposited.—A. deposited with a stakeholder the amount of his wager on a match at pool between C. and D. While the games were playing, but after it was clear that A. would lose, A. denounced the match to the stakeholder as a fraud, and notified the stakeholder not to pay the money over. At the close of the match the stakeholder paid over the amount to the winner of the wager; whereupon A. sued the stakeholder for his deposit: *Held*, that A. should recover: *McGrath* v. *Kennedy*, 15 R. I.

Railroad. See *Negligence.*

Receivers.

Compensation—Allowance of—How Payable.—The rule for compensating receivers is not of the same invariable character as that governing in the case of trustees; but the allowance to receivers of insolvent corporations or private partnerships, in all cases not attended with peculiar circumstances requiring an augmentation should be regulated by analogy, as near as possible, to the rate of commissions allowed to guardians and trustees for the performance of like or kindred services. And whatever rate of compensation under this rule may be allowed, the order making the allowance should be definite, that it may not be doubtful upon what basis or for what services the particular allowance is made: *Tome* v. *King*, 64 Md.

Where receivers are appointed solely at the instance and for the benefit of the second mortgage bondholders, and the trustees who sold the property were appointed to sell exclusively for the same parties, and not for the benefit of the first mortgage bondholders, upon no principle of justice or reason, can the first mortgage bondholders be assessed to pay the commissions and other expenses allowed, or any part of them, to such receivers and trustees: *Id.*

If the fund in court be not sufficient to afford adequate compensation and indemnity to the receivers, the parties at whose instance they were put upon the property, should be required to provide the means of payment: *Id.*

Removal of Causes.

The mere filing a petition for the removal of a suit that is not removable does not work a transfer. To accomplish this, the suit must be one that may be removed, and the petition must show a right in the petitioner to demand the removal: *Stone* v. *State of South Carolina*, S. C. U. S., Oct. Term 1885.

If the state court proceeds after a petition for removal, it does so at the risk of having its final judgment reversed, if the record on its face shows that when the petition was filed, that court ought to have given up its jurisdiction: *Id.*

There is no statute which authorizes the removal of a suit between a state and citizens on account of citizenship, for a state cannot, in the nature of things, be a citizen of any state: *Id.*

Where the money sued for was received by the defendants as partners, and they are liable jointly for its payment, if they are liable at all, such a case is not removable unless all the partners on one side of the controversy unite in the petition for removal: *Id.*

Separate Controversy—Creditor's Bill.—A bill filed by a judgment-creditor to marshal liens and obtain a sale of debtor's property free of encumbrance to pay his judgment after satisfying all prior claims, and in the meantime to have a receiver appointed, raises but a single cause of action which is indivisible. Though each of the lien-holders may have a separate defence, this does not create "separate controversies" within the meaning of the removal act: *Fidelity Co.* v. *Huntingdon*, S. C. U. S., Oct. Term 1885.

Ejectment against a Tenant—Admission of Landlord with same Citizenship as Plaintiff as Defendant.—An action of ejectment was brought in a court of Missouri, by citizens of Pennsylvania, against a citizen of Missouri, and removed to the United States Circuit Court of the proper district upon the petition of the plaintiffs. Afterwards the landlords of the original defendant, who were of the same citizenship as the plaintiffs were let in as defendants: *Held*, that the cause was thereupon improperly remanded to the state court: *Phelps* v. *Oaks*, S. C. U. S. Oct. Term 1885.

STATUTE.

Repealing Clause in Unconstitutional Statute.—A repealing clause in an unconstitutional statute, declaring that "all laws and parts of laws in conflict with this act, be and the same are hereby repealed," does not affect the previous laws: *Wilhe* v. *Barnes*, 24 or 22 Fla.

WILL.

Latent Ambiguity—Parol Evidence—Action in ejectment to recover lot of land in Washington, D. C. The plaintiff claimed title under Henry Walker, devisee of James Walker. The latter by his will made specific devises of real estate in the city of Washington, to four different persons, designating each property devised, by reference to squares and lots as numbered on a recorded plat or survey of the city. This was followed by a devise of the balance of his real estate "believed to be and to consist in" various other lots designated in like manner, but (lot No. three in square four hundred and six, hereinafter referred to, was not mentioned) one of the specific devises was "to my brother, Henry Walker, forever, lot numbered six, in square four hundred and three, together with the improvements thereon erected, and appurtenances thereto belonging." Parol evidence was offered on behalf of plaintiff to show that the testator did not own lot number six, in square four hundred and three, but did own lot number three in square number four hundred and six, that the former had no improvements on it at all, while on the latter there was a dwelling-house; this, for the purpose of explaining an alleged latent ambiguity in the devise to Henry Walker, so as to control the description of the lot therein contained, and make it apply to lot three in square number four hundred and six. The court below held the evidence insufficient: *held*, reversing the judgment of the court below, that the evidence taken in connection with the whole tenor of the will raises a latent ambiguity, and amounts to demonstration, as to which lot was in the testator's mind. Justices WOOD, MATTHEWS, GRAY and BLATCHFORD dissent: *Patch* v. *White*, S. C., U. S., Oct. Term, 1885.