force beyond that of an advisory proceeding of the chancellor; and the reason is, that the courts are not authorized to exert their power in that way. The doctrine stated by counsel is only correct when the court proceeds after acquiring jurisdiction of the cause, according to the established mode governing the class to which the case belongs, and does not transcend in the extent or character of its judgment, the law applicable to it." In this case it was accordingly held that a sentence of a court pronounced against a party without hearing him or giving him an opportunity to be heard, his appearance upon citation having been stricken out and his right to appear denied by the court, was not a judicial determination of his rights and not entitled to respect in any other tribunal, notwithstanding the fact that up to the time of striking out the defendant's appearance, the court had jurisdiction both of the person and the subject-matter.

Upon a careful consideration of the principal case, it seems to us that it would have been equally within the power of the court to have delegated the trial of the issue of fact to the clerk of the court, the sheriff, to arbitrators or any other voluntary tribunal, and that the sentence in the principal case, equally with one pronounced upon a finding by such an irregular tribunal, is null and void. With all its faults as a tribunal for the administration of justice in criminal cases we are a believer in trial by jury. As an educator of the people, and as a means of protection against the exercise of arbitrary power, its equal does not exist under any other system of jurisprudence. To it we are largely indebted for the measure of liberty we enjoy to-day. Let the law regulating it be amended, but not repealed nor the beneficial results of the system abridged by any power short of an amendment of the constitution by the people. From a decision like that in the principal case it is but a step to hold that the *denial* of trial by jury in a criminal case is a mere error, a decision which in many cases would entirely deprive trial by jury of its chief good, its power to protect against centralized and arbitrary power. If the one is merely error, so is the other. To our mind the decision in the principal case is a dangerous precedent, and an unwarranted departure from sound constitutional principles.

M. D. Ewell.

Chicago.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

SUPREME COURT OF NEW HAMPSHIRE.[3]

SUPREME COURT OF OHIO.[4]

SUPREME COURT OF SOUTH CAROLINA.[5]

Advancement.

Death of Son after receiving Advancement.—The acceptance by a son of a conveyance of land from his father, in satisfaction of his share as pro-

[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 Hon. N. L. Freeman, Reporter: to appear in 114 Ill. Rep.

[3] From Hon. W. S. Ladd, Reporter; to appear in 61 N. H. Rep.

[4] From George B. Okey, Esq., Reporter; to appear in 44 Ohio St. Rep.

[5] From Robert W. Shand, Esq., Reporter; to appear in 23 S. C. Rep.

spective heir in the father's estate, will not only bar his own right to share in the distribution of his father's estate, real and personal, but also that of his children, in case he should die before his father: *Simpson* v. *Simpson*, 114 Ill.

ARBITRATION.

Attempt to influence Arbitrator—Setting aside Award.—It is sufficient to authorize a court of equity to enjoin a suit at law upon an award, and set aside the award, that one of the parties in interest made a statement to one of the arbitrators, in the absence of the adverse party, designed and having a tendency to improperly affect his decision as an arbitrator without showing that such statement, in fact, produced any harmful result to such other party: *Catlett* v. *Dougherty*, 114 Ill.

A party to an arbitration who by overt acts attempts to corrupt or improperly influence the arbitrators, or any one of them, to make an award in his favor, will not be heard to say that he was impotent to accomplish what he sought, and to raise an issue thereupon: *Id.*

ATTACHMENT.

Purchaser for Value—Lis Pendens.—A general attachment of all a debtor's interest in real estate, in a town, does not hold land fraudulently conveyed by the debtor by a deed recorded before the attachment, and conveyed by his fraudulent grantee after the attachment to an innocent purchaser for value: *Ashland Savings Bank* v. *Mead*, 61 N. H.

Against the latter and subsequent purchasers from him, such attachment is not constructive notice of a lien, or of *lis pendens*: *Id.*

BANK. See *Bills and Notes.*

BANKRUPTCY.

Validity of Judgment obtained after Discharge in Suit commenced prior to Filing of Petition.—Where suit was commenced in a state court prior to filing by defendant of his petition in bankruptcy, on a debt provable, but not proved thereunder, and judgment was obtained thereon subsequent to the granting of a discharge to said bankrupt, *held*, in a suit on said judgment in another state that the discharge could not be pleaded as a bar thereto: *Dimock Revere Copper Co.*, S. C. U. S., Oct. Term 1885.

BILLS AND NOTES.

Bill of Lading—Transfer of Title—Drafts accompanying Bill—National Bank.—A draft for a sum stated, drawn by the seller against a buyer in favor of a national bank, by whom it is discounted or purchased, with the bill of lading attached, passes title to the goods therein mentioned to the bank; and the bank may recover them, upon dishonor of the draft from a sheriff who had seized the goods as the property of the seller under attachment subsequent to the purchase by the bank: *Union Nat. Bank* v. *Rowan*, 23 S. C.

A draft so drawn is a bill of exchange, and its purchase by a national bank is not beyond the powers conferred by acts of Congress upon national banks: *Id.*

CORPORATION.

Dissolution—Reversion of Property—Seal.—Upon the dissolution of

a corporation (other than a moneyed, trading, or municipal corporation) by expiration of charter, all of its property not validly alienated before dissolution reverts to the grantor: *St. Phillip's Church* v. *Zion Presbyterian Church*, 23 S. C.

Where a corporation, having no adopted seal, directed a conveyance to be made of a lot of land, and a deed was accordingly executed professing to be under the seal of the corporation, attested by the signature of its president, and was signed by such president, and a wafer was attached, which was intended to be the seal of the corporation., *held*, that the wafer was the corporate seal to this deed: *Id.*

Customs Duties.

Proprietary Medicine, what is.—Sect. 2504, Schedule M, p. 480 (2d ed.) Rev. Stat., imposes a tax of 50 per cent. *ad valorem* on proprietary medicines, and the same schedule and section, p. 477, makes the duty on calcined magnesia twelve cents per pound. A certain firm put up calcined magnesia in bottles, with their name blown thereon, wrapped up in a circular which claimed peculiar excellence for their preparation, cautioning purchasers against spurious imitations thereof, and calling attention to their "trade mark" stamped thereon. The process of calcining magnesia used by said firm was not a secret or peculiar one, but the preparation sold by it did differ from ordinary calcined magnesia (though used for the same purpose) in that the carbonic acid was eliminated and the grit got rid of; and it had a peculiar reputation and value in the market by reason of the nicety with which it was prepared. *Held*, that it was subject to tax as a proprietary medicine: *Ferguson* v. *Arthur*, S. C. U. S., Oct. Term 1885.

Damages.

Diversion of Water—Proof of Loss of Profits—Evidence.—In an action of a lessee of a mill against his lessor for a diversion of water, depriving the plaintiff of the demised water-power, damages for loss of profits being claimed in the declaration, and loss of profits being a damage the parties could have reasonably anticipated, proof of the profits done at the mill is admissible on the question of damages: *Crawford* v. *Parsons*, 61 N. H.

Decedents' Estates. See *Advancement.*

Errors and Appeals.

Determination of Value of Matter in Dispute.—In a suit to collect interest due on certain bonds of a railroad by the foreclosure of a mortgage made to trustees to secure a series of bonds aggregating $500,000, the bill was dismissed. The suit was brought by two complainants for themselves and all others in the like situation who might join with them, but no one saw fit to join. The principal of complainants' bonds exceeded $5000, but the interest, which the suit was brought to recover, was less. *Held*, that the matter in dispute was less than the jurisdictional limit of the United States Supreme Court; *Bruce* v. *Manchester & Keene Rd.*, S. C. U. S., Oct. Term 1885.

Evidence. See *Will.*

Judicial Notice—Distance from Seat of Government.—A statute of

Montana provided that "all acts of the legislature declaring that they should take effect from and after their passage, shall so take effect only at the seat of government, and in other portions of the territory, allowing fifteen miles from the seat of government for each day." *Held*, that where, by reason of this statute, the question whether a certain law was in effect at a certain time in a certain part of said territory, depended upon the distance of that place from the seat of government; the distance was a fact of which the court was bound to take judicial notice: *Hoyt* v. *Russell*, S. C. U. S., Oct. Term 1885.

Fraud.

Deceit—Representations as to Remote Lands.—Where a party effects an exchange of real estate situate in another state, with a person residing in this state, for property here, by means of false representations as to the quantity of his land, the location thereof, and the character of the improvements thereon, with a knowledge of the falsity of his representations, he will be liable to the injured party in an action on the case for fraud and deceit. Under circumstances like these, the person with whom the exchange is sought may rely upon the statements as being true, without being guilty of such negligence as to preclude a recovery by him for the fraud practised on him. It might be different where the property is situated conveniently near, so as to permit an examination to be readily made: *Ladd* v. *Pigott*, 114 Ill.

Husband and Wife. See *Presumption.*

Divorce—Alimony, defence to.—A judgment ordered for the defendant upon an agreed statement of facts, which showed that the mortgage in suit was given to secure the payment of a sum of money by a husband to his wife, under a collusive agreement for obtaining a divorce in her favor, is not conclusive against the rights of the wife, after such divorce has been decreed, to recover alimony from the husband: *Cross* v. *Cross*, 61 N. H.

Nor is the adultery of the wife, both before and after such divorce, a legal bar to the granting of alimony upon her petition subsequently brought: *Id.*

Infant.

Decree of Court—Conclusiveness.—A decree of the judge of probate on the settlement of an administration account concludes an infant whose guardian has notice and is present: *Simmons* v. *Goodell*, 61 N. H.

If an appeal is not taken, a decree has the same effect as the judgment of a court of common law: *Id.*

Errors in the decree can be corrected only upon appeal; errors in the record of the decree may be corrected at any time: *Id.*

Insurance.

Life Insurance—Failure to send Notice—Waiver of Tender of Premium.—Where, by the terms of a contract of life insurance, the beneficiary named in the policy is entitled to participate in the profits, a portion of which, in the form of dividends, is to be applied each year in reduction of premiums, and it has been the uniform practice of the company to give timely notice of the amount of premium, amount of divi-

dends, and of the balance to be paid in cash, and the company neglects to give such notice, having knowledge of the residence of the beneficiary, and by reason thereof a premium is not paid at the time specified in the policy, the company cannot set up such failure to pay as a defence to a recovery upon the policy, although by its terms the same is to be forfeited in case of failure to pay a premium upon any of the dates stipulated therein: *Manhattan Life Ins. Co.* v. *Smith*, 44 Ohio St.

In such case, where the company has uniformly sent the notices to the insured (the husband of the beneficiary) and he has made payment of premiums from year to year, the law will treat him, in making such payments, as agent for the wife, but where it is shown to the company, by letters from the husband, very shortly after notice sent, that he and the wife have separated, she having commenced a proceeding for alimony against him, and that he is desirous of having the policy changed and made payable to his estate, the company is not justified in treating him as her agent, for the purpose either of receiving notice for her, or of making a surrender of the policy: *Id.*

Where, in such case, the company repudiates the contract, and by its course of conduct, clearly indicates that a tender of the premium after the death of the insured, if made, would not be accepted, a failure to make such tender will not bar a recovery on the policy: *Id.*

Agents—Limitation of Powers of—Representations not contained in Written Application.—While the powers of an insurance agent are *prima facie* co-extensive with the business intrusted to his care, yet an insurance company, like any other principal, may limit the authority of its agents, and thus bind all parties dealing with them with knowledge of the limitation: *N. Y. Life Ins. Co.* v. *Fletcher*, S. C. U. S., Oct. Term 1885.

The application for a policy of insurance contained a provision, that no statements or representations made, or information given, to the persons soliciting or taking the application for the policy, should be binding on the company, or in any manner affect its rights, unless they were reduced to writing and presented at the home office in the application. *Held*, that such a stipulation is binding upon the parties: *Id.*

Limitations, Statute of.

Joint Sureties—New Promise by one—Payment of Interest.—Where a principal and sureties gave their joint and several promissory note, upon which, after maturity, the principal debtor, from time to time, made several payments, the legal liability of all the parties to the note was discharged at the expiration of six years from its maturity, and thereafter action could be maintained only on the new promise implied from the partial payments credited on the note: *Walters* v. *Kraft*, 23 S. C.

But as such subsequent promise constituted a new contract and a new cause of action, no one is liable except him who made it; the liability of the sureties was not continued by the payments and promises of the principal debtor: *Id.*

The relation of agency does not exist between joint-debtors arising from community of interest; their community of interest is confined to the payment of the debt. Payment by a principal debtor cannot con-

tinue the obligation of a surety, without his consent, beyond the period fixed by the original contract; *Id.*

MANDAMUS.

Discretion of Inferior Court—Time of Probate of Will.—Where the exercise of a discretion is involved, a writ of mandamus will not be allowed against an inferior court or tribunal. So the discretion of the county or probate court as to the time it will receive probate of a will, or which of two papers purporting to be the wills of the same person, shall be passed upon first, will not be interfered with by this writ: *People* v. *Knickerbocker*, 114 Ill.

MASTER AND SERVANT.

Discharge—But one Action Maintainable.—Where an employee, engaged under a contract for a specified time, the wages being payable in instalments, is wrongfully discharged before the expiration of the period of hire, and all wages actually earned at the time of the discharge have been paid, an action will not lie to recover the future instalments, as though actually earned, but the remedy is by action for damages arising from the breach of the contract, and one recovery upon such claim is a bar to a future action: *James* v. *Board of Commissioners* 44 Ohio St.

Who are Fellow-Servants.—A locomotive engineer and a section-master of track-workers are not fellow-servants in the sense that the railroad company employing them would not be liable to one for damages resulting to him from the negligence of the other: *Calvo* v. *Charlotte, Col. & Aug. Rd. Co.*, 23 S. C.

Where an engine is thrown from the track and the engineer injured through the negligent violation of the rules of the company by a section-master, the company is liable to the engineer, the section-master being a representative of the company: *Id.*

Contributory Negligence—Promise to Remove Cause of Danger.—Where a master or his representative has expressly promised to repair a defect, the servant can recover for an injury caused thereby, within such a period of time after the promise as it would be reasonable to allow for its performance, or for an injury suffered within any period which would not preclude a rational expectation that the promise might be kept; *Provided*, that the danger which the plaintiff apprehended from the beginning was not so imminent or manifest as to prevent a reasonably prudent man from risking it upon a promise or assurance by the proper authority that the cause from which the peril arose would be removed: *District of Columbia* v. *McElligott*, S. C. U. S., Oct. Term 1885.

Hough v. *Railway Co.*, 100 U. S. 224, considered and applied: *Id.*

MORTGAGE.

Absolute Deed with Parol Defeasance—How Recorded.—A deed, absolute in form, intended, however, to secure the payment of money due from the maker to the grantee, and, upon the payment of which by a certain time, the grantee agreed to reconvey the property to the grantor, though in equity a mortgage, is not a legal one; and, to make it available as against creditors of the grantor, it need not be recorded as a

mortgage; it is sufficient for such purpose, if it be recorded within the time prescribed for the registration of all other deeds and instruments of writing for the conveyance or incumbrance of lands in this state: *Kemper* v. *Campbell*, 44 Ohio St.

Notes secured by—Endorsement of—Payment of one Note by Endorser—Priority as between Assignee of Endorser and Holder of other Notes.—K. executed and delivered to T. three notes, payable to T.'s order, due in one, two and three years from date, and a mortgage to secure their payment. Before either note became due, T. endorsed the notes, waiving demand and notice, and delivered both to A., with an assignment of the mortgage. The note maturing in one year not being paid when due, was put in judgment against K. as maker and T. as endorser. K. being insolvent, T. paid the judgment. He then commenced suit to foreclose the mortgage, claiming the benefit of the mortgage security and a lien prior to the lien of A., who held the remaining two notes, which were then past due. A., by answer and cross-petition, alleged facts showing T.'s liability as endorsor upon the two notes, that K. was insolvent, that the lands would prove insufficient to satisfy the whole mortgage debt, claiming priority of lien, praying foreclosure and full relief. Later, S., on his motion, became plaintiff, and filed supplemental petition averring purchase from T., and assignment of all his rights and interest in the mortgage and as plaintiff in the suit, and claiming priority of lien. The land was sold. The sum realized was not sufficient to satisfy the whole indebtedness. *Held*, that A. was entitled to payment in full from the proceeds before application of the money to the claim of S.: *Anderson* v. *Sharp*, 44 Ohio St.

Omission of word Heirs—Intention.—By a well-established general rule the use of the word "heirs" or other appropriate words of perpetuity in a mortgage or other deed of conveyance of lands, is essential to pass a fee simple estate; but this is not an inflexible rule admitting of no exception or qualification: *Brown* v. *First Nat. Bank of Hamilton*, 44 Ohio St.

Where the language employed in, and the recitals and conditions of, a mortgage plainly evidence an intention to pass the entire estate of the mortgagor as security for the mortgage debt, and the express provisions of the instrument cannot otherwise be carried into effect, it will be construed to pass such estate, although the word "heirs" or other formal word of perpetuity is not employed: *Id.*

Municipal Corporation.

Increase of Indebtedness beyond Constitutional Limit—Defence to proceeding to improve Street.—The fact that a city has already exhausted its constitutional power to incur a debt, can not be shown to defeat a proceeding by it to improve a street by special assessment in part, and partly by general taxation. That question can not arise until the city seeks to borrow money or incur an indebtedness in that regard: *Jacksonville Ry. Co.* v. *City of Jacksonville*, 114 Ill.

Bonds of—When Excess of Issue Invalid.—A county court was authorized to issue bonds for a subscription to such an amount of the stock of a railroad as should be proposed by certain commissioners and

approved by a majority of the voters of the county. *Held*, that bonds issued in excess of this amount were void, and that the certificate of the judge of the county court upon the back of each bond that it was issued as authorized by the statute, and by an order of the county court in pursuance thereof, cannot estop the county to deny that the particular bond is void, because the county court, at the time of its issue, had exhausted the power conferred by the act of the legislature and the vote of the people; nor can the payment of interest on all the bonds ratify bonds issued beyond the lawful limit, as the county cannot ratify what it could not have authorized: *County of Davies* v. *Dickinson*, S. C. U. S., Oct. Term 1885.

NEGLIGENCE. See *Master and Servant.*

Railroad—Trespasser.—While a railroad company cannot be said to owe no duty to one who unlawfully intrudes himself upon its engines or cars, it does not owe to him the same duty that it owes to a passenger, or even to one of its employees: *Darwin* v. *Charlotte, Col. & Aug. Rd. Co.*, 23 S. C.

Where a trespasser gets, without authority, upon the most dangerous place on a railroad engine and is killed, he is guilty of contributory negligence, and no recovery of damages for his death can be obtained against the company, even if the company had been guilty of negligence, and although the engineer knew the person was in such place of danger and did not warn him off. In the case of a passenger, the rule would be different: *Id.*

PARTNERSHIP.

Contract with one Member of Firm for Interest in Profits—Dissolution—Notice by Mail.—A person may contract with a particular member of a firm for an interest in his share of the profits, without making himself a member of such firm and liable for its debts: *Meyer* v. *Krohn*, 114 Ill.

Proof of the mailing of notices of the dissolution of a partnership and of the retirement of certain members thereof, properly addressed to persons having had prior dealings with the firm, is *prima facie* evidence that the notices have been received by the parties to whom they were addressed; but such presumption may be rebutted by proof that they were not received: *Id.*

PATENT.

Infringement—Measure of Damages.—Plaintiff was patentee of a combination lock, the essential feature of which was the turning-bolt. He granted no licenses, but manufactured the locks himself, being fully able to supply the demand. Defendant, infringing on plaintiff's patent, sold a lock having the turning-bolt device, at a reduced price, forcing the latter to do the same in order to hold his trade. *Held*, that defendant's infringement must be considered to have caused the entire loss of the plaintiff by a reduction of prices, after allowing a proper sum for any other patented device contained in the defendant's locks and for any other causes which gave to the defendant an advantage in selling his locks: *Yale Lock Co.* v. *Sargent*, S. C. U. S., Oct. Term 1885.

PLEADING.

Joinder of Covenant and Case.—Counts in covenant and case may be joined in a declaration on a single cause of action: *Crawford* v. *Parsons*, 61 N. H.

POWER.

Trust—Exercise of Power by Donee for his own Benefit.—Where a testator invests his widow with a life estate in his property, with power to dispose of the remainder to his heirs, an attempted appointment of it in such manner as to secure to herself a substantial pecuniary benefit from its disposition, not authorized by the testator, is an abuse of such power of appointment and is void: *Shank* v. *Dewitt*, 44 Ohio St.

An innocent motive or an honest misconstruction of the power conferred will not save the exercise of the power, if the true purpose of it is violated: *Id.*

RAILROAD. See *Negligence.*

PRESUMPTION. See *Surety; Partnership.*

Conflicting Presumptions—Validity of Marriage.—Where a marriage in fact is shown, the law raises a strong presumption in favor of its legality, and the burden of proof is on the party contesting its validity to show that it is not valid: *Johnson* v. *Johnson*, 114 Ill.

So, although the presumption in favor of the validity of a marriage in fact, and of the innocence of the contracting parties, may conflict with that of the continued life of a former husband or wife not heard from for a period less than seven years prior to the second marriage, yet if neither presumption is aided by proof of facts or circumstances co-operating with it, the presumption of the validity of the second marriage must prevail over the other: *Id.*

SURETY. See *Limitations, Statute of.*

Extension of Time for Principal—Presumption of Payment.—Where a creditor receives from the principal debtor payment of interest in advance on a past due note, an agreement to give time is necessarily implied, and the creditor thereby debars himself of suing meantime on the note, and the surety is therefore discharged—unless the creditor can show mistake, or, possibly an agreement that the right of suit should not be suspended: *Gardner* v. *Gardner*, 23 S. C.

The question whether a sealed note which matured in 1860, and was credited with payments by the principal debtor down to 1865, should be presumed paid as to the sureties in 1884, raised but not considered: *Id.*

TAXATION.

Exemption from, a Franchise—Loss by Non-User.—Exemption from taxation, being a special privilege granted by the government to an individual, either in gross or as appurtenant to his freehold, is a franchise; and a presumption of the surrender of this franchise may arise from long acquiescence in actual taxation, which the government may take advantage of, though the same period of non-user would be a ground of forfeiture in a direct proceeding on the part of the state to revoke the franchise: *State of New Jersey* v. *Wright*, S. C. U. S. Oct. Term 1885.

TRUST.

Resulting Trust—Expenditure of Money in Improving Land.—An interest in land does not pass, by resulting trust, from the owner to one whose money is expended in improving the land: *Bodwell* v. *Nutter*, 61 N. H.

Religious Use—Transfer to Persons of different Denominations.—Where land was conveyed to be held in trust for the erection of a church and academy for the benefit of a Lutheran congregation, the church council could not transfer to others who were not Lutherans, or to a town council, any portion of the land for the establishment of an academy or school: *Busbee* v. *Mitchell*, 23 S. C.

Resulting Trust—When it Arises—Laches.—Where a party receives money of another, to be invested in the purchase of land, and pays out the same, with other money of his own, in a purchase, taking a deed in his own name, he will hold the land so acquired in trust for the person whose money he has so used, in the proportion it bears to the entire consideration paid: *Springer* v. *Springer*, 114 Ill.

A party who takes a conveyance of land in his own name, partly paid for with the money of another placed in his hands, can not set up as a defence to a bill to enforce a resulting trust, the *laches* or delay of the complainant for the time he has admitted and recognised his equitable rights. Such defence will avail him only from the time he sets up an adverse claim, and denies the complainant's rights: *Id.*

Resulting Trust—Evidence after great lapse of Time.—The evidence to establish a resulting trust after the lapse of fifteen or sixteen years, and especially after many of the principal witnesses having knowledge of the facts are dead, should be of the most satisfactory kind. If the evidence fails to satisfy the court that the money paid for the land was that of the party seeking to establish the trust, no resulting trust can be declared: *Heneke* v. *Floring*, 114 Ill.

Where a resulting trust is sought to be established after the lapse of many years, on the ground that complainant's money was used in paying for the same, and that complainant's wife, by conspiracy and fraud, had the conveyance made to her imbecile son by a former marriage, it is incumbent on the plaintiff to establish these facts by very clear and satisfactory evidence, and failing to do so, he can have no relief: *Id.*

VENDOR AND VENDEE.

Purchase by Vendee of Superior Title.—The purchaser of land, while in possession under his contract of purchase, is under no obligation to maintain his vendor's title, and the law does not forbid him from buying an outstanding title to the premises, and asserting it against his vendor: *Green* v. *Deitrich*, 114 Ill.

So where the purchaser entered into possession under an agreement that the purchase-money was not to be paid unless the vendor should, within three years, make him a warranty deed conveying a perfect title, and in case of failure to make him such conveyance the purchaser was to remain in possession of the premises for the period of three years, and pay a reasonable rent for the time he could hold peaceable possession, and before the expiration of the three years he acquired the title from

other parties, it was *held*, that there was nothing in the relation of the parties, under the original contract or otherwise, that prevented the purchaser from yielding to the superior title and purchasing the same, and in that way secure his peace: *Id.*

WILL. See *Mandamus.*

Remainder—Vesting—Conversion.—A. by his will gave $10,000 to B. in trust for C., the income to be paid to C. for life, with remainder to the children of C., if she had any, and if she had none, then to D. C. had no children. D. died in the lifetime of C., leaving one child. *Held*, that the remainder became vested in D. immediately on the death of the testator, subject to be divested by the birth of a child to C., and that, on the death of C. without children, the fund passed to the heir-at-law of D.: *Vandewalker* v. *Rollins*, 61 N. H.

The quality of property for purposes of transmission by will or inheritance is not changed from the character in which the testator or intestate eft it, unless there is some clear act or intention by which he has impressed upon it a definite character either as money or land. And when, for the security of the fund, money is converted into land by a judicial decree, the land is substituted for the fund and goes to the person who would have taken the fund had it remained specifically personal estate: *Id.*

Testamentary Capacity—Undue Influence—Proof of Will.—On the question of testamentary capacity, the will itself is evidence: *Whitman* v. *Morey*, 61 N. H.

On the question of undue influence, the proponent of the will may show that nominal legacies to heirs other than children were inserted at the suggestion of the person who wrote the will, because he erroneously supposed it necessary to the validity of the will: *Id.*

When portions of a deposition are read by one party for the purpose of contradicting the witness who gave it, the other party may read, from the same deposition, so much as pertains to the same subject, and tends to explain, qualify, or limit what is so read: *Id.*

The practice of requiring an executor, upon the issues of insanity and undue influence, to call all the subscribing witnesses to the will, if alive, sane, and within the jurisdiction, should not be departed from without good cause: *Id.*

Whether a party shall be allowed to put leading questions to his own witness is determined by the presiding justice while the examination of the witness is going on before him, and is not matter of exception: *Id.*

The common-law rule, forbidding a party to discredit his witness, has no application when the party, by legal intendment, has no choice, as in the case of an attesting witness: *Id.*

Upon the issues of insanity and undue influence, declarations of the testator, tending to show the state of his feelings toward relatives to whom he gave only a nominal sum, may be received: *Id.*

Revocation—Evidence.—The revocation of a will is not effected by the death of legatees or devisees named in it; nor by the marriage of the testator, there being no issue of the marriage; nor by the alienation of the larger portion of his estate, which was specifically disposed of by the will; nor by the acquisition of other estate to an amount much greater