tract of insurance; that the term "fire," used in the policy, included fire from accident, or brought about by a peril of the sea, and not spontaneous combustion. Entertaining these views, we think the court below were in error in granting the fourth prayer of the plaintiff, and in refusing the first prayer of the defendant, and the judgment must be reversed. But, inasmuch as the evidence is full and explicit that the injury was caused by the inherent infirmity of the goods, a new trial will not be awarded.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
COURT OF ERRORS AND APPEALS OF MARYLAND.[2]
SUPREME COURT OF NEW HAMPSHIRE.[3]
SUPREME COURT OF NORTH CAROLINA.[4]
SUPREME COURT OF OHIO.[5]

ASSIGNMENT.

Power to make—Surviving Partner of Insolvent Firm—Effect of Fraudulent Omission from Schedule.—In the absence of any statute forbidding it, a sole surviving partner of an insolvent firm, who is himself insolvent, can make a valid assignment of partnership assets for the benefit of the joint creditors, with preference to some of them; and the fact that such surviving partner fraudulently omitted from the assignment schedule certain property which constituted a part of the partnership assets and appropriated the same to his own use, while the assignment purported to be of all the firm assets, does not affect the rights of the assignee and of the beneficiaries of the trust, they being ignorant of the fraud of the grantor: *Emerson* v. *Senter*, S. C. U. S., Oct. Term 1885.

COMMON CARRIER. See *Damages.*

CONFLICT OF LAWS

Contract—Usury.—If no place is agreed on for the performance of a contract, the *lex loci contractus* governs. If the place of performance is agreed on, *the lex loci solutionis* governs: *Morris* v. *Hockaday*, 94 N. C.

Where a bond was dated in North Carolina, but had no specified place of payment, it was *held* that it was governed by the usury laws of that state, and it is immaterial that the pleadings admit that the bond was delivered in Virginia: *Id.*

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term, 1885. The cases will probably appear in 118 U. S. Rep.

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

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

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

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

If, in such case, it had appeared that the bond was given for goods purchased in Virginia, the rule would be different: *Id.*

Quære, whether the contracting parties can agree on a rate of interest, legal where the contract is made, but illegal where it is to be performed: *Id.*

Donatio Causa Mortis.—The validity of a gift *causa mortis* is to be determined by the law of the place where it was made, without reference to the domicile of the donor: *Emery* v. *Clough*, 61 N. H.

Constitutional Law.

Special Legislation—Municipal Corporation—Power of Removal—Governor.—An act of the general assembly conferring certain corporate powers on cities of the first grade of the first class, is one of a general, and not of a special, nature; and, therefore, not in conflict with the constitutional prohibition against the passage of special acts conferring such powers: *State* v. *Hawkins*, 44 Ohio 35.

The power conferred on the governor of the state to remove any members of the board of police commissioners, is administrative, and not judicial, in its nature; and, therefore, not in conflict with the clause of the constitution, conferring judicial power on the courts of the state: *Id.*

Where charges, embodying facts that in judgment of law constitute official misconduct, are preferred to the governor, of which notice is given to the members charged, and he, acting upon the charges so made, removes them from office, his act is final and cannot be reviewed, or held for naught on a proceeding in *quo warranto*, whether he erred or not in exercising the power so conferred on him: *Id.*

Fourteenth Amendment—Municipal Corporation—Regulation of a Business when Illegal.—The city of San Francisco, by ordinances, forbade "any person to establish, maintain or carry on a laundry within the corporate limits of the city and county of San Francisco without having first obtained the consent of the board of supervisors, except the same be located in a building constructed either of brick or stone." There were at the time about 320 laundries in San Francisco, of which about 240 were owned and conducted by subjects of China, and of the whole number, viz., 320, about 310 were constructed of wood, the same material that constituted nine-tenths of the houses in the city of San Francisco. All the petitions of the Chinese were refused by the supervisors, and all the others, except one, were granted. *Held* (1), That the provisions of the fourteenth amendment are universal in their application, to all persons within the territorial jurisdiction; and the equal protection of the laws is a pledge of the protection of equal laws. (2) That the ordinances were so administered by the public authorities as to amount to a practical denial by the state of that equal protection of the laws secured by said amendment: *Yick Wo* v. *Hopkins*, S. C. U. S., Oct. Term 1885.

Semble, That the ordinances in question were void from their terms, because they compelled men to hold their means of living at the *mere will* of another, and that this differed from the not unusual case where *discretion* is lodged in public officers to grant or withhold licenses, &c.: *Id.*

CONTRACT.

Written Agreement—Construction.—When a written agreement consists of more than one distinct writing or contract, the different provisions of all the parts should be given due weight in ascertaining the intended meaning of any portion of the same; but if the language is clear and distinct, and the plain and obvious meaning of the words is consistent with the whole instrument, such meaning must be taken as the intended meaning of the parties, unless other parts of the agreement not only admit of, but require, a different construction: *The Cin., S. & C. Rd. Co.* v. *The Ind., B. & W. Ry. Co.*, 44 Ohio St.

CORPORATION. See *Public Policy.*

COVENANT.

Assignee of Lessee—Liability—Action at Law.—The liability of an assignee of a term to the original lessor, or those claiming under him, grows out of the privity of estate, and such liability continues only so long as such privity of estate exists: *Donelson* v. *Polk*, 64 Md.

An action at law cannot be maintained after the assignee has severed his relation to the land, in respect to breaches of covenant committed by him during the time of his holding. The remedy in such case is in equity: *Id.*

CRIMINAL LAW.

Errors and Appeals—Erroneous Ruling without Injury.—On an appeal in a criminal case, the ruling of the court below, although erroneous, will not be reversed, it being manifest that the accused was not injured by such ruling: *Swann* v. *State*, 64 Md.

DAMAGES.

Common Carrier.—Punitive Damages—Evidence.—Punitive damages are not recoverable, unless there is an element of fraud, malice, gross negligence, insult, or other cause of aggravation in the act causing the injury: *Holmes* v. *Carolina Cent. Rd. Co.*, 94 N. C.

Where the conductor of a railroad company, in obedience to the rules of the company, ordered the plaintiff, who had purchased a first-class ticket, to occupy another car, not so comfortable as the one from which he was removed, but used no force or insult in removing him, it was *held*, that the plaintiff was not entitled to recover punitive damages: *Id.*

Where the plaintiff is aware of certain rules of a railroad company, and takes passage over the road for the purpose of violating these rules and bringing suit, his declarations to this effect, are admissible in mitigation of damages: *Id.*

Land Damages—How determined.—In determining the value of lands appropriated for public purposes, the same considerations are to be regarded as in a sale between private parties, the inquiry in such cases being, what, from their availability for valuable uses, are they worth in the market. *Low* v. *Railroad*, 61 N. H.

As a general rule, compensation to the owner is to be estimated by reference to the uses for which the appropriated lands are suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future: *Id.*

EQUITY. See *Covenant; Insurance; Public Policy.*

Condition in Deed—Injunction.—A stipulation in a deed of a lot of land in the grounds of the Winnipesaukee Camp-Meeting Association prohibiting the erection or use of buildings for stores, boarding-houses, hotels, or stables thereon, without the consent of the association, is enforcible by injunction: *Winnipesaukee* v. *Gordon*, 61 N. H.

ERRORS AND APPEALS

Supreme Court of the United States—Jurisdictional Limit—Affidavits to show Amount in Dispute—Delay in Filing.—On a motion to reinstate a case dismissed for want of jurisdiction by the Supreme Court of the United States, it appeared that the case was docketed August 11th, 1883: that it was submitted January 7th 1886, but on looking into the record the court found nothing from which it could fairly be inferred that the value of the matter in dispute exceeded $5000, and, consequently, on the 19th of January, entered an order of dismissal, on its own motion. The motion in question was not filed until April 26th, and was denied because the court was not willing, at so late a day, to receive and consider affidavits to supply the defect in the record: *Johnson* v. *Wilkins*, S. C. U. S., Oct. Term 1885.

Supreme Court of the United States.—Criminal Law.—Writs of error were brought to the Supreme Court of the territory of Utah, to review judgments of that court, affirming judgments of a district court of Utah, rendered on convictions on indictments under sect. 3 of the Act of Congress of March 22d 1882, for cohabiting with more than one woman. Each judgment imposed imprisonment for six months, and a fine of $300. The jurisdiction of the Supreme Court of the United States was endeavored to be sustained under sect. 2, of the Act of March 3d 1885, giving jurisdiction, on appeal or writ of error in any case "in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, without regard to the sum or value in dispute;" *held*, that the authority exercised by the court in the trial and conviction of the plaintiff in error, was not such an "authority" as is intended by the act. The validity of the existence of the court, and its jurisdiction over the crime named in the indictments, and over the person of the defendant, were not drawn in question. "All that is drawn in question is whether there is or is not error in the administration of the statute." The writs of error were dismissed; and in *Canon* v. *United States*, 116 U. S. 55, in which the question of jurisdiction had not been considered, the judgment of affirmance was vacated and the writ of error dismissed: *Snow* v. *United States*, S. C. U. S., Oct. Term 1885.

EXECUTOR AND ADMINISTRATOR.

Non-Residence.—The non-residence of a person otherwise entitled does not of itself constitute disqualification for the office of administrator: *Ehlen* v. *Ehlen*, 64 Md.

EXEMPTION.

Claim of Partner out of Firm Property.—One partner, with the assent of the other, is entitled to have a personal property exemption

allotted to him out of the partnership property before the partnership debts are paid, and it is immaterial that he has individual property sufficient to make up the exemption: *State* v. *Kenan*, 94 N. C.

FRAUD. See *Debtor and Creditor.*

GIFT. See *Conflict of Laws.*

Donatio Causa Mortis—Character of—Evidences of Debt.—Bills, bonds and promissory notes, and all other evidences of debt, although payable to order and not endorsed, may be given as *donationes causa mortis*, and the donee may sue on them in his own name: *Kiff* v. *Weaver*, 94 N. C.

A *donatio causa mortis* partakes somewhat of the character of a testamentary disposition, but the assent of the personal representative is not essential to its validity. If needed to pay debts it may be recovered by the representative, but if there be a *residuum* of the gift after the payment of debts, it goes to the donee and not to the intestate's estate; *Id.*

INFANT.

Contracts Executory and Executed—Confirmation.—Where an infant sold his claim against his guardian for a present consideration, and promised to give a receipt for it when he became of age, it is an executed, and not an executory contract: *State* v. *Rousseau*, 94 N. C.

Where an infant enters into an executory contract, express confirmation or a new promise after coming of age, must be shown in order to bind him: but where the contract is executed, ratification may be inferred from circumstances, and any acknowledgment of liability, or holding the property and treating it as his own, will amount to such ratification: *Id.*

INJUNCTION. See *Equity; Waters and Watercourses.*

Bond—Sureties—Dismissal of Action without Prejudice.—An injunction undertaking was conditioned: "that the plaintiff shall pay to the defendants the damages which they or either may sustain by reason of the injunction in this action if it be finally decided that the injunction ought not to have been granted." On motion of part of the defendants and because co-defendants had not been served with summons, the court dismissed the action without prejudice to another action and the injunction was dissolved, and the costs were paid by plaintiff. Thereupon suit was brought, on the undertaking, for damages claimed by reason of the injunction. *Held:* Such dismissal of the action without prejudice and such dissolution of the injunction, do not constitute a breach of the condition of the undertaking: *Krug* v. *Bishop*, 44 Ohio St.

The sureties thereon cannot be required to pay damages for such injunction until it is "decided that the injunction ought not to have been granted:" *Id.*

INSURANCE.

Change of Beneficiary.—Where the by-laws of a mutual benefit association, in the nature of a life insurance company, provide that upon the death of a member the benefit shall be paid to his direction, the member may change the beneficiary by surrendering his certificate of mem-

bership and procuring a new one made payable to the person therein named: *Barton* v. *Provident Mut. Rel. Asso.*, 61 N. H.

Reformation of Certificate of Membership.—A certificate of membership in a mutual relief association may be reformed after the death of the member by inserting the name of a beneficiary, when it appears that the secretary of the association and the assured both understood at the time of the application that the proposed name should be entered upon the record without further direction: *Scott* v. *Provident Mut. Rel. Asso.*, 61 N. H.

INTEREST. See *Usury.*

LANDLORD AND TENANT. See *Covenant; Negligence.*

MORTGAGE. See *Usury.*

Bondholders—Coupons Purchased but not Paid—Priority of Lien.—As against bondholders who presented their coupons at the office of the company for payment and not for sale, and who had the right to assume that they were paid and extinguished, a person who advances the money to take them up, under an undisclosed agreement with the company that the coupons should be delivered to him uncancelled as security for his advances, is not entitled to an equal priority in the lien, or the proceeds of the mortgage by which the coupons are secured: *Cameron* v. *Tome*, 64 Md.

MUNICIPAL CORPORATION.

Construction of Sewers—Negligence.—The exercise by municipal authorities, of their judgments and discretion, in the selection and adoption of a general plan or system of drainage, is of a *quasi* judicial nature and not subject to revision by a court or jury in a private action for not sufficiently draining a particular lot of land; but the construction and repair of sewers, according to the plan adopted, are merely ministerial duties, and for any negligence in these, the municipality is responsible to a person whose property is thereby injured: *Johnson* v. *District of Columbia*, S. C. U. S., Oct. Term 1885.

Unauthorized Distillation of Spirits—Taxation.—A suit was brought by the City of Salt Lake, to recover certain taxes paid by it to the collector of internal revenue. The city distilled and sold spirits, and paid voluntarily the tax on the larger part of the spirits so distilled. The taxes in question were assessed against it for certain spirits distilled, and not deposited in the bonded warehouse of the United States. The contention of the city was, that, as it had no corporate authority to engage in distilling, it was not liable for the tax: *held*, that a municipal corporation cannot any more than any other corporation, or private person, escape the taxes due on its property, whether acquired legally or illegally, and it cannot make its want of legal authority to engage in a particular transaction or business a shelter from the taxation imposed by the government on such business or transaction, by whomsoever conducted: *Salt Lake City* v. *Hollister*, S. C. U. S., Oct. Term 1885.

NEGLIGENCE. See *Waters and Watercourses.*

Landlord and Tenant—Liability of Tenant after Surrender of Premises for Negligent construction during Term.—A tenant who erects an

insecure fence on the premises is liable for injuries to a passer-by occasioned by a fall of the fence after the tenant had surrendered possession and removed from the premises: *Hussey* v. *Ryan*, 64 Md.

PARTNERSHIP. See *Assignment.*

PATENT.

Patentability—Quantum of Invention.—A patent cannot be taken out for an article old in purpose and shape and mode of use, when made for the first time out of an existing material, and with accompaniments before applied to such an article, merely because the idea has occurred that it would be a good thing to make the article out of that particular old material: *Gardner* v. *Herz*, S. C. U. S., Oct. Term 1885.

The case of *Saxby* v. *Gloucester Wagon Co.*, 7 Q. B. Div. 305, referred to for the purpose of showing that the question of patentability, as depending on the *quantum* of inventive skill in a given case, is one which the courts of England consider in a suit for infringement: *Id.*

PLEADING. See *Slander.*

PUBLIC POLICY.

Home for Aged Persons—Condition of Admission—Conveyance of Property—Concealment—Relief in Equity.—One of the conditions of admission into a home for aged persons, besides the payment of the stipulated entrance fee, was that the applicant should transfer to the institution all property or income of any kind which he might have. *Held*, That such condition was neither *ultra vires*, nor against public policy: *General German Aged People's Home* v. *Hammerbacker*, 64 Md.

Where an applicant declared in writing, that he had no property other than the sum of $300, the amount of his entrance fee, and was received into the institution without a conveyance of his property, and after his death, it was discovered that at the time of his application, he had some $1200 in money and notes, it was held, that the institution was entitled to relief in equity, against the administrators of the deceased: *Id.*

RAILROAD. See *Mortgage.*

REMOVAL OF CAUSES.

Colorable Assignment to Prevent Removal.—While United States courts have power, under the act of March 3, 1875, to dismiss or remand a case, if it appears that a colorable assignment has been made for the purpose of imposing on their jurisdiction, no authority has as yet been given them to take jurisdiction of a case by removal from a state court, when a colorable assignment has been made to prevent such a removal: *Oakley* v. *Goodnow*, S. C. U. S., Oct. Term 1885.

Erroneous Statement of the Citizenship of a Defendant in her Answer —Estoppel.—The answer of the defendant to the complaint, which answer was signed only by her attorney and was not under oath, stated that defendant was a citizen of New York: *Held*, That she was not thereby estopped from subsequently showing on a petition for the removal of the case from the state to the United States Circuit Court, that she was in reality a citizen of Massachusetts, it having been shown how the

mistake arose, and the defendant having promptly denied the erroneous statement as soon as it was brought to her attention: *Corson* v. *Hyatt*, S. C. U. S., Oct. Term 1885.

SLANDER.

Privileged Communication.—The reply of an employer to a discharged employee, in answer to a question as to why the latter was discharged, is a privileged communication, and the burden is upon the employee to show the existence of malice: *Beeler* v. *Jackson*, 64 Md.

Pleading—Actionable Words—Slander of Title to Trade-Mark.—It is sufficient if the complaint states facts sufficient to show that a legal wrong has been done by the defendants, for which the law will afford redress: *McElwee* v. *Blackwell*, 94 N. C.

In an action for slander of title to a trade-mark, where the injury complained of is not so much the defamatory words, but was occasioned by positive acts and threats, by which the customers of the plaintiff were deterred from trading with him, it was *held* error to nonsuit the plaintiff, because the complaint did not set out the actionable words: *Id.*

STATUTE.

Local Option Law—Repeal by Implication—Creation of New District.—Where, by an Act of Assemby, submitting the question to the voters of the several election districts of Caroline county, whether or not spirituous or fermented liquors should be sold therein, a majority of the votes in the third election district of the county was cast "against the sale of spirituous or fermented liquor" therein, and by a subsequent Act of Assembly a new election district was established out of the said third election district, the prohibition will continue to apply to the inhabitants of the new district, there being nothing in the latter act at all inconsistent with the provisions of the former act: *Higgins* v. *The State*, 64 Md.

SURETY.

Settlement of Guardian's Account—Conclusiveness of.—In an action upon a guardian's bond for the recovery of the amount found due the wards upon a final settlement of the guardian's accounts in the probate court, the sureties are concluded by the settlement, and will not be heard, in the absence of fraud and collusion, to question its correctness or to demand a rehearing of the accounts: *Braiden* v. *Mercer*, 44 Ohio St.

TAX AND TAXATION. See *Municipal Corporation.*

UNITED STATES.

Contract with Navy Department—Form of.—The plaintiffs wrote two letters to the Chief of the Bureau of Steam Engineering United States Navy Department, offering to supply certain boilers at a specified price, to which written replies were received stating that by direction of the Secretary of the Navy, the offers were accepted upon the terms and conditions named in plaintiffs' letters, and that specifications and drawings would be furnished as soon as prepared: *Held*, that these letters did not constitute a contract in writing and signed by the contracting parties within the meaning of Rev. Stat. sects. 3744–3747, and sects. 512–515;

but were nothing more in law and fact than preliminary memoranda made by the parties for use, in preparing a contract for execution in the form required by law: *South Boston Iron Co.* v. *United States*, S. C. U. S., Oct. Term 1885.

USURY. See *Conflict of Laws.*

Building Association—Mortgage.—By the terms of a building association mortgage weekly payments on a loan were required to be made, which amounted to more than six per cent., the rate of interest fixed by statute. The phraseology of the mortgage indicated that such payments were for interest, expenses, &c.: *Held*, That the transaction was tainted with usury; and the combination of interest with other payments was evasive and intended to avoid the operation of the statute: *Waverly Building Asso.* v. *Buck*, 64 Md.

WATERS AND WATERCOURSES.

Riparian Owners—Right to Build Embankment—Injury to Adjoining Owner in case of Flood.—The owner of land on a running stream has a right to construct embankments to protect his land from the current; provided such embankments do not occasion material injury to the owners of other lands on the stream; but if such embankments are so constructed that a man of ordinary prudence would reasonably anticipate damage to the owners of other lands in case of flood, the person so building them is liable for any such damages that ensue: *Crawford* v. *Rambo*, 44 Ohio St.

Embankments—Injunction.—Where all that can be inferred from what the complainant states in his bill, is, that when a heavy freshet may happen, the stream will, if the embankment complained of remains, overflow a portion of his land, and thereby destroy the crops, if any there be growing thereon at the time of such freshet, such a case is not made out as will warrant an injunction to restrain the defendant from maintaining the embankment: *Blaine* v. *Brady*, 64 Md.

Such an occasional overflow of a few acres of land, part of a farm of more than a hundred acres, does not work a destruction of the inheritance, nor justify the granting of an injunction in order to prevent irreparable mischief: *Id.*

WILL.

Subsequent Conveyance of Property—Revocation.—When it appears to have been the intention of a testator that all after-acquired property should pass by his will, a conveyance of all the estate previously devised, by a trust deed containing a power of revocation which is subsequently exercised and the title revested in the testator, does not operate as a revocation of the will; and upon the revesting of the title in the testator the estate is subject to the will, and the interest of the devisees exists as if no conveyance had been made: *Morey* v. *Sohier*, 61 N. H.

Devise—When not Charged with Legacy.—Real estate specifically devised is not charged with a general pecuniary legacy, given in the same will, when there is nothing to show that such was the intention of the testator: *Davenport* v. *Sargent*, 61 N. H.