Courts, by the statutes referred to. It is a standard authority on the general law, independent of legislation."

We do not think that the existence of malice, in publishing a libel or uttering slanderous words, can make any difference in the jurisdiction of the court. Malice is charged in almost every case of libel, and no case of authority can be found, independent of statute, in which the power to issue an injunction to restrain a libel or slanderous words, has ever been maintained, whether malice was charged or not.

Charges of libel and slander are peculiarly adapted to and require trial by jury, and exercising as we do, authority, under a system of government and law, which, by a fundamental article, secures the right of trial by jury, in all cases at common law, and which, by express statute, declares that suits in equity shall not be sustained in any case where a plain, adequate and complete remedy may be had at law, as has always heretofore been considered the case in cases of libel and slander, we do not think that we would be justified in extending the remedy of injunction to such cases. The application for injunction must be denied, and the auxiliary bill is dismissed with costs.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ERRORS OF CONNECTICUT.[1]

SUPREME COURT OF FLORIDA.[2]

SUPREME COURT OF ILLINOIS.[3]

COURT OF ERRORS AND APPEALS OF MARYLAND.[4]

SUPREME COURT OF OHIO.[5]

AGENT. See *Bills and Notes.*

ASSIGNMENT. See *Deed; Gift.*

ATTACHMENT.

Foreign Attachment—Certificate of Stock.—The defendants, residing in the state of Indiana and owning stock in a bank located there, lodged

[1] From J. Hooker, Esq., Reporter; to appear in 53 Conn. Rep.

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

[3] From Hon. N. L. Freeman, Reporter; to appear in 117 Ill. Rep.

[4] From J. Shaaf Stockett, Esq., Reporter; to appear in 65 Md. Reports.

[5] From Geo. B. Okey, Esq., Reporter. The cases will probably appear in 44 or 45 Ohio St. Reports.

a certificate of the stock, with a blank power to sell and transfer it, with a corporation in this state as collateral security for a loan, its value being considerably in excess of the loan. *Held*, that their equitable interest in the stock could not be reached by the process of foreign attachment in this state: *Winslow* v. *Fletcher*, 53 Conn.

Suit on Bond—What is "improperly" Suing out Attachment.—An attachment is "improperly" sued out within the meaning of the statute when the plaintiff has no meritorious cause of action of that class in which the statute authorizes this remedy, or having such a cause of action, the ground alleged in the affidavit for its issue is untrue, or not one of the grounds enumerated which must exist before it can be obtained: *Steen* v. *Ross*, 21 or 22 Fla.

Where the plaintiff has a meritorious cause of action of the class for which an attachment may lawfully issue, and the cause for its issuance is one of those specified in the statute, and such cause is true, a dissolution of the attachment for some mere irregularity in the papers, is not ground for recovery on the attachment bond for "improperly" suing out the attachment: *Id.*

In an action on an attachment bond for "improperly" suing out the attachment, the declaration must state in what the impropriety of the issue of the attachment, within the meaning of the statute, consisted, and it is not sufficient to allege simply that it was improperly issued: *Id.*

ATTORNEY. See *Corporation; Evidence.*

BANK.

Certified Check—Liability thereon—Collection of Check—Negligence.—A bank which certifies a check drawn upon it, is primarily liable for its payment, the same as upon a promissory note or bond given by it: *Drovers' Nat. Bank* v. *Anglo American Packing and Provision Co.*, 117 Ill.

A bank taking a certified check on another bank, either as a payment, on account, or for the purpose, only, of collection, is entitled to show that the check has availed nothing, when the bank so receiving the same has discharged its duty by an effort to collect it: *Id.*

But if the bank receiving such check, either on account or for collection, sends the same directly to the debtor bank for payment, and the debt is lost in consequence thereof, the bank so transmitting the check must bear the loss: *Id.*

BANKRUPTCY.

Property of the Bankrupt—Subscription Price of Stock of an Incorporated Company—Discharge of Stockholder in Bankruptcy—Actions against Bankrupt for an Unpaid Instalment—Debt not Provable in Bankruptcy.—The law will not compel an assignee in bankruptcy to accept property of the bankrupt which is onerous, and will yield nothing toward the payment of his debts: *Glenn* v. *Howard*, 65 Md.

Where the subscription price of the stock of an incorporated company, was only to be paid in such instalments, and at such times, as it should be called for by the company, and at the time of the bankruptcy of a stockholder, and for a considerable time thereafter, no call for the payment of his subscription had been made, the discharge in bankruptcy,

under the late bankrupt law of the United States, of such stockholder, is no bar to an action against him for an instalment of his subscription, subsequently called for; the unpaid subscription for the stock not constituting such a debt or liability as was provable against his estate in bankruptcy, under the provisions of the bankrupt law: *Id.*

BILLS AND NOTES. See *Partnership.*

Acceptance by Agent—Liability of Agent—Parol Proof.—The drawee of a bill of exchange, drawn by the "Kanawha & Ohio Coal Co.," was described in the bill as "John A. Robinson, Agt.," and it was accepted by him as "John A. Robinson, Agent K. & O. C. Co." *Held*, that the acceptance so made was the personal obligation of John A. Robinson, and that in a suit upon the acceptance by an endorsee against him, parol evidence was not admissible, in the absence of fraud, accident or mistake, to show that the defendant so accepted the bill, intending to bind the drawer as his principal, and that this fact was known to the plaintiff at the time it became the owner and holder of it: *Robinson* v. *Kanawha Val. Bank*, 44 or 45 Ohio St.

Promissory Note—Fraud—Burden of Proof—Bona Fide Holder for Value—Knowledge of Facts Impeaching Validity.—If fraud in the procurement of a note be shown, the *onus* is cast upon the plaintiff to show that he paid value for the note before maturity, and under circumstances that created no presumption that he knew of the existence of the facts that impeached the validity of the instrument: *Crampton* v. *Perkins*, 65 Md.

A *bona fide* holder of a negotiable instrument for valuable consideration, without notice, will be protected against the antecedent equities of the original parties; *Id.*

But actual knowledge of the impeaching facts at the time of taking the paper, notwithstanding value is paid, will defeat recovery on it: *Id.*

Alteration—Effect of—Burden of Proof.—If the acceptor of a bill of exchange allege affirmatively that it has been altered materially and without his authority since he accepted it, the burden is upon him to prove the alleged alteration. The production of the bill will, if the alteration is apparent upon its fact, make a *prima facie* case for the acceptor and throw the burden upon the holder to show that the alteration was made before it was accepted. The party producing and claiming under the paper must explain every apparent material alteration and remove every suspicion thereof, of which there is evidence on its face, before he can recover. If there is nothing upon the face of the bill to indicate or to put one on notice as to the alteration, the acceptor must prove it by extraneous testimony: *Harris* v. *Bank of Jacksonville*, 21 or 22 Fla.

The bill of exchange in question was drawn on a printed blank form, all the blanks being filled in the handwriting of C. F. R., in whose handwriting were also the words "payable at Metropolitan National Bank, New York City." The words "Accepted, James A. Harris," in Harris' handwriting, were in red ink, and the other writing on the paper in black ink: *Held*, that there was apparent, upon the face of the bill of exchange, no alteration, nor any presumptive evidence or reasonable ground for suspicion thereof: *Id.*

CHECK. See *Bank.*

CONSTITUTIONAL LAW.

Insolvent Law—Effect of on Contract with Citizen of another State—Subscription to Corporation.—Where the subscription price of the stock of a company incorporated under the laws of Virginia, was only to be paid in such instalments, and at such times, as it should be called for by the company, and at the time of the insolvency of a stockholder, and of his discharge under the insolvent law of Maryland, no call for the payment of his subscription had been made, such discharge of the stockholder is no bar to an action against him for an instalment of his subscription subsequently called for, even though the unpaid subscription may have constituted, at the time of the discharge of the insolvent, a debt or contract within the meaning of the insolvent law—the insolvent law of this state not operating to discharge a contract made with a citizen or corporation of another state: *Glenn* v. *Clabaugh*, 65 Md.

Eminent Domain—Taking Land for Cemetery Purposes.—The burial of the dead being a necessity, land may be taken for the purpose under the authority of the state: *Evergreen Cemetery Association* v. *Beecher*, 53 Conn.

And land taken for such a purpose by a corporation authorized to establish and conduct a cemetery, is taken for public use, if all the public have a right of burial there, even though the expense may operate practically to exclude some: *Id.*

But a corporation does not take land for a public use where the public have not, and cannot acquire, the right to bury in it: *Id.*

Impeaching Validity of Statute—Effect of Journals of Legislature. Where the journal of each house of the general assembly shows that a law received the concurrence of the number of members required by the constitution for its adoption, and that it was publicly signed in the presence of each house by its presiding officer as required by sect. 17, art. 2, of the constitution, its authenticity cannot be impeached by parol evidence that one or more of the members in either house, recorded as concurring in its adoption, had, prior thereto, been seated upon the determination of a contested election, by less than a constitutional quorum, although the concurrence of such member, or members, was necessary to the number of votes required by the constitution for the passage of the law: *State* v. *Herron*, 44 or 45 Ohio St.

CONTRACT. See *Damages.*

Conditional Acceptance of an offer to Sell—Receipt of a Deposit.—To constitute a contract of sale of land by the acceptance of an offer to sell, the acceptance must be unconditional. No contract will result from a letter in reply, that the party will accept the offer "provided the title is perfect." At any time before an unconditional acceptance of an offer and compliance with its terms it may be withdrawn: *Corcoran* v. *White*, 117 Ill.

The agents for the owner or party having the power to sell a lot, gave to a party desirous of purchasing the same, a receipt, as follows: "Received of J. H. W., attorney for T. R. C, his check for $500, as deposit on account of proposed purchase of sub-lot 2, &c., said sum of $500,

when paid, to apply on said purchase of said lot at $8000 cash, or to be returned to him in case said sale cannot be perfected, say within sixty days from this date, or in case the title should prove defective, it being understood that we are to forward a deed to the owner of said lot and recommend its execution. Lyman & Giddings:" *Held*, not the evidence of a contract of sale, but only a proposed purchase and agreement of the agents to forward a deed and recommend its execution: *Id.*

Copyright.

Offieial Reports of Cases—Right of Judges and Reporter.—The judges and the reporter being paid by the state, the product of their mental labor is the property of the state, and the state has power to take for itself a copyright of it, and it is for the state to say when and in what manner the decisions of the court shall be published: *Gould* v. *Banks*, 53 Conn.

The taking of the copyright does not offend the rule that judicial proceedings shall be public. The courts and their records are open to all. The reasons given by the judges for their determination in a particular case constitute no part of the record therein; and these are accessible to all who desire to use them in the enforcement of their rights: *Id.*

Corporation. See *Constitutional Law.*

Officers—Power to Employ Attorney—Compromise of Suit—Ratification.—Where the by-laws of a private corporation for pecuniary gain make it the duty of its president to exercise a general supervision over its entire business, and provide that all the property of the company shall be under his control, and such president for a number of years before had acted as its attorney, and looked after its affairs in the courts, this will be evidence of his authority to employ attorneys to appear for the corporation and look after its interests: *Wetherbee* v. *Fitch*, 117 Ill.

The authority of an attorney to prosecute a suit does not involve authority to compromise it. Before he can compromise the suit he must have special authority for that purpose: *Id.*

Where negotiations by an attorney employed to prosecute an ejectment suit in the name of a corporation, but in fact for the benefit of one of its creditors, for the compromise thereof, were well known to the president and secretary of the company intrusted with its affairs, and they and the attorneys frequently advised as to the suit, and they made no objection to taking a sum in money instead of the land, and the company after the compromise, accepted the benefit of the settlement in the payment of a part of its indebtedness, it was *held*, that its conduct amounted to a ratification of the compromise of its attorneys: *Id.*

Criminal Law. See *Habeas Corpus.*

Possession of Stolen Property, as Evidence of Guilt—Explanation of such Possession—Degree of Proof.—It is error for the court, on trial of one for larceny, to instruct the jury that the possession of the stolen property soon after the theft is sufficient to convict, unless such possession is satisfactorily explained, and that an *alibi* must be clearly and satisfactorily proved before that defence can avail: *Hoge* v. *The People*, 117 Ill.

The burden of proof is on the people to establish a defendant's guilt of the crime charged; and when the defendant charged with larceny introduces evidence to explain his recent possession of the stolen property, and tending to establish an *alibi*, if the jury, after considering the evidence introduced by him as to either or both such questions, in connection with the other evidence, have a reasonable doubt of his guilt, they should acquit: *Id.*

Waters v. *The People*, 104 Ill. 544, distinguished: *Id.*

DAMAGES.

Breach of Contract of Sale of Personal Property—Market Price.—The rule for the assessment of damages for the breach of a contract for the sale of personal property, is the difference between the market price of the article, if there is a market price, where it is to be delivered, and the contract price: *Equitable Gas Light Co.* v. *Balt. Coal Tar and Manufacturing Co.*, 65 Md.

If there is no such market price at the place of delivery, and the goods are costly and difficult of transportation from a distance, and are intended to be used for manufacturing purposes, then the market price may be arrived at by deducting the cost of manufacturing and the price of the raw material from the market price of the manufactured article: *Id.*

DEBTOR AND CREDITOR.

Retention of Possession—Taking of Possession before Rights of Creditors Accrue.—A vendee who takes possession at a time subsequent to the sale, but before the rights of creditors have accrued by attachment or otherwise, can hold the property against creditors: *Gilbert* v. *Decker*, 53 Conn.

The retention of possession raises a presumption of fraud only in favor of attaching creditors or those who stand in their position: *Id.*

The presumption of fraud does not exist in the case of the sale of property exempt from execution: *Id.*

DECEIT.

When Action Maintainable.—The plaintiff alleged in his complaint that as a sub-contractor in the construction of a building for the defendant, he had an inchoate lien on the property for his claim and was about to take proceedings to perfect it, when the defendant, for the purpose of preventing his doing so, falsely represented to him that she had paid the original contractor in full and that nothing was due him; and that the plaintiff, believing the representation, did not perfect his lien and thereby lost it; claiming damages for the false representation: *Held*, on a demurrer to the complaint, that it presented a good cause of action: *Alexander* v. *Church*, 53 Conn.

And held not to affect the case that it did not appear that the original contractor was irresponsible, nor that a demand had been made on him for payment. The plaintiff was entitled to his lien as security, without reference to his remedy against the original contractor: *Id.*

DEED.

Recording—Priority—Bona Fide Purchaser—Assignee for Benefit of Creditors.—M. made a deed to A. of a house and lot for a valuable con-

sideration. The deed was delivered on the 1st of January 1883, but by oversight was not left for record until the 19th of March 1884. On the 17th of March 1884, M. made an assignment of all his property for the benefit of his creditors, in consideration of which they executed a general release of all claims and demands against him. This deed was recorded on the day of its date, two days prior to the deed of A.: *Held*, 1st. That the provision of sect. 16, of art. 24, of the code, declaring that where there are two or more deeds conveying the same property, the deed or deeds which shall be first recorded according to law, shall be preferred, if made *bona fide* and upon good and valuable consideration, refers to deeds as between persons who have either paid or advanced money upon the faith of the grantor's actual title to the property transferred, or who have accepted specific property in payment of a specific debt. 2d. That an assignee of all the debtor's property for the benefit of his creditors is not a *bona fide* purchaser within the meaning of the code, even though the creditors have executed a general release of all claims and demands against the debtor in consideration of the assignment: *Tyler* v. *Abergh*, 65 Md.

Whether if the release had been executed on the faith of the debtor's ownership of the house and lot which he had previously sold, this would have constituted the assignee or the creditors *bona fide* purchasers within the meaning of the code, *Quære? Id.*

Construction—Premises on Bank of River—Canal—Dissolution of Canal Company—Reversion of Fee.—A general deed of premises lying upon the bank of a river, in which is constructed a canal, conveys the grantor's rights to the centre of the stream bounding the property. And to reverse or exclude from the grant any such rights, the conveyance should contai proper words of such reservation or exclusion: *Day* v. *Pittsburgh, Y. & C. Rd.*, 44 or 45 Ohio St.

Where the canal company, owning and operating such canal, had the right only to use for canal purposes, the bed and waters of such river, on ouster of such company from its corporate franchises and its dissolution by order of this court, the trustees winding up its affairs have no power to convey such rights, but they revert to the proper owners: *Id.*

EQUITY.

Will not aid Party Guilty of Fraud—Qualification of Rule.—Where a debtor understandingly and deliberately conveys away his property to hinder or defraud his creditors, a court of equity will not lend him its aid to recover it back: *Nichols* v. *McCarthy*, 53 Conn.

But whether a party guilty of an independent fraud in receiving or retaining property upon such a conveyance should be allowed to avail himself of the fact that the conveyance to him was made to defraud creditors, as a defence against a suit to recover the property back, *quære.* The court inclined to the opinion that such a qualification of the rule would be reasonable: *Id.*

EVIDENCE.

Attorney—Privileged Communications.—Instructions by a grantor to an attorney drawing a deed are not ordinarily privileged communications. If the grantor had instructed the attorney to make the conveyance to

the grantee in trust, it would be competent for the attorney to testify that such were the instructions: *Todd* v. *Munson*, 53 Conn.

Death—Effect of Competency of Witness.—It is only where the suit is upon the cause of action, to which one party is dead, that the other party is excluded, to preserve mutuality: *Horner* v. *Frazier*, 65 Md.

Where such contract only incidentally arises in another suit, on an other contract and about something else, as matter of evidence touching this suit, the death of one party to it does not close the mouth of the other; but he is a competent witness: *Id.*

EXECUTION. See *Partnership.*

EXECUTORS AND ADMINISTRATORS.

Impounding Share of Devisee to pay Judgment.—Where a testator devises the rest and residue of his estate, after the payment of his debts, among his ten children, equally, the share of each child to be charged with all advances made or to be made to him or her, the administrators with the will annexed have the right, as against the judgment creditors of one of such children, to impound so much of his share, as may be necessary to pay a judgment recovered against such administrators on a bond of such child on which the testator was the surety: *Stieff* v. *Collins*, 65 Md.

FRAUD. See *Debtor and Creditor.*

FRAUDS, STATUTE OF.

Pleading.—It is not necessary in pleading to allege a promise to which the Statute of Frauds applies, to be in writing. If it appear in the proof, at the trial, to be in writing it is sufficient: *Horner* v. *Frazier*, 65 Md.

A plea, in addition to the general issue plea, that the promise was not in writing, is an argumentative answer to the declaration, asserting nothing which is not cognizable under the general issue, and is therefore demurrable: *Id.*

Sale of Land—Description.—An agreement for the sale of land under the Statute of Frauds will be held sufficient as to its description of the land to be conveyed, if it so describes a particular piece or tract of land that it can be identified, located or found. A detailed description is not necessary. Where the description shows that a particular tract is within the minds of the contracting parties and intended to be conveyed, parol evidence may be resorted to, to apply the description or identify the tract, though such description be somewhat general: *Lernte* v. *Clark*, 21 or 22 Fla.

GIFT.

Assignment of Stock—Delivery—Trust.—A father made an assignment under seal to his daughter of certain shares of stock in a corporation. The certificates for this stock at the date of said assignment had been made out in due form in the name of the assignor, but remained in the certificate book of the corporation just as they were executed, and uncut therefrom. The assignment appeared on its face to be for value, but was in fact intended as a gift, and not as a sale. The assignment,

which contained no power of attorney authorizing the transfer of the stock, was left by the assignor with the attorney of the corporation, with whom also was left the book of certificates, with instruction that upon obtaining the assent of a mortgagee of the corporation, the transfer of the stock should be made to the daughter on the books of the company. No transfer, however, was made in the lifetime of the father. On a bill filed by the daughter against the corporation after her father's death, to compel a transfer of the stock, it was *held*, 1st. That the assignment was imperfect without an actual transfer of the stock on the books of the corporation, and equity could not make that good and enforcible as a gift *inter vivos*, which was incomplete, and, therefore, not enforcible at law. 2d. That there was no element of trust in the case upon which the claim of the assignee could be supported. 3d. That if the father had declared that he held, or would thenceforth hold the shares of stock in trust for his daughter, then perhaps equity would seize upon and enforce such trust for the benefit of the donee, although voluntarily created: *Baltimore Retort and Fire Brick Co.* v. *Mali*, 65 Md.

Habeas Corpus.

Use to review Judgment at Law.—The writ of *habeas corpus* does not lie to review a judgment at law, for an alleged error in the proceedings in a case, where the court had jurisdiction of the subject-matter and of the person: *Ex parte Smith*, 117 Ill.

A petition for a writ of *habeas corpus* showed that the petitioner was regularly brought before the grand jury as a witness; that he refused to answer certain questions propounded to him, and that the court thereupon fined him twenty-five dollars, and on refusal to pay the same, ordered him to stand committed to the county jail until the fine and the costs should be paid: *Held*, that if the court erred in imposing the fine, the remedy was by appeal or writ of error, and not by the writ sought. If the order had been simply a committal until the petitioner answered the questions, a different question would be presented: *Id.*

Highway. See *Negligence.*

Husband and Wife.

Alimony.—Suit in Foreign State.—A. and P. were married in West Virginia, at their domicile, where A. retained his domicile, but P. went to Tennessee, where, in *ex parte* proceedings, she obtained a divorce *à vinculo* from A., but, as there was no personal service upon A., her application for alimony was dismissed without prejudice, and to enable her to sue for it, elsewhere. She then brought suit here for alimony alone, and to reach certain property in Ohio belonging to A.; in which case she obtained service upon A., who also appeared and filed pleadings in the case, and on trial the court found sufficient cause, and allowed her alimony: *Held*, P. had a right thus to bring her action for alimony alone, and she could have her claim therefor determined, and, if sustained upon trial, the court could allow her reasonable alimony out of the property of A.: *Woods* v. *Waddle*, 44 or 45 Ohio St.

Injunction. See *Mortgage.*

Insolvent Law. See *Constitutional Law.*

Mortgage.

Personal Property—Destruction by Mortgagor—Injunction.—A court of equity will prevent, by injunction, a mortgagor from impairing the value of, or destroying the property embraced in the mortgage-lien, on which the mortgagee has a right, by virtue of his mortgage, to rely for the security of his debt: *Logan* v. *Slade*, 21 or 22 Fla.

When a merchant, on the day after the execution of a mortgage on his stock of goods, in favor of some of his creditors, disposes of a large amount of them to other creditors, in payment of their debts, a court of equity is justified in enjoining him from selling said goods otherwise than for cash, and commanding him to pay the proceeds, after deducting expenses of sale, into the registry of the court: *Id.*

If the remedy by injunction as above, proves to be ineffectual, the court may appoint a receiver to take charge of the goods, and dispose of them under its direction: *Id.*

Negligence. See *Bank.*

Owner of Factory near Highway—Open Area.—The defendant owned a factory, set back ten feet from the line of a city street, and running along the street, eighty-eight feet, with the space in front, paved like the adjoining sidewalk, and of the same grade. In front of the factory was a porch extending a little way towards the street, with a door in it, used as the main entrance, and by the side of the porch, a depressed area extending along the building, about ten feet long, three feet wide and five deep, with no railing to protect persons from falling in. The plaintiff, on a lawful errand, undertook to go in the evening from the street to the porch, and, without want of care, fell into the open area and was injured: *held*, that the defendant was liable: *Crogan* v. *Schiele*, 53 Conn.

Where a person has so made the way leading to a building on his premises, as to invite people to pass along the way to such building, he is bound to keep the way clear of dangers: *Id.*

And it is not necessary in such a case, that the person using the way should be a traveller on the highway: *Id.*

Officers.

School Directors—Fraudulent omission to defend Suit—Relief against Judgment.—Persons accepting the position of school directors should not allow their private interest to conflict with public duty; and equity and good faith will require them to defend suits against the district, and protect its property, to the best of their skill and ability, regardless of any private interest they may have: *Noble* v. *School Directors*, 117 Ill.

Persons were elected school directors of a school district, pending a bill by two of them against the district, seeking to divest the district of property purchased by it, and they discharged the solicitors employed by their predecessors to defend, and interposed no defence whatever, but allowed a decree to pass in their favor against the district by default. It was *held*, that as the decree was obtained by breach of official trust, it should not be binding on the district, and would be set aside on a bill by the district, as being obtained by fraud and breach of duty, and a defence allowed: *Id.*

The rule that denies a party equitable relief against a judgment or decree when he has been guilty of negligence in making a defence, does not apply to the case of public officers, who, for their own private ends, and with selfish motives, allow a judgment or decree to pass against the interests of the public they should represent, for the reason that the public can defend only by and through its proper representatives: *Id.*

PARTNERSHIP.

Power of Partner to sign Note—Non-trading Partnership.—In the case of non-trading partnerships, the individual partners have not the same implied authority as in commercial partnerships, to bind the firm by note, executed in the name of the firm: *Pease* v. *Cole*, 53 Conn.

In such a case the presumption of want of authority may be overcome by proof of express authority, or of such a state of facts as justly implies authority: *Id.*

These facts may be a course of conduct on the part of the firm, the usage of similar partnerships, the necessities of the business, or a ratification of the act by receiving the benefit of it: *Id.*

A partnership formed for conducting a theatre, is one of the non-trading class: *Id.*

PATENT. See *Payment.*

PAYMENT.

When Voluntary—Purchase of License under worthless Patent.—Where a party with full knowledge, actual or imputed, of the facts, voluntarily without duress, fraud or extortion, pays money upon a demand, though not enforcible against him, he cannot recover it back: *Schwarzenbach* v. *The Odorless Excavating Apparatus Co.*, 65 Md.

A. relying wholly on the representations of B., made, without fraud, contracted to pay, and did pay B., a fixed sum for the privilege of operating under a certain patent, of which he was the owner. It afterwards turned out that the patent was void; *held*, that A. could not maintain an action for money had and received, against B., to recover back the money paid under said contract: *Id.*

PLEADING. See *Frauds, Statute of.*

TRADE-MARK.

Use of Person's own Name.—A manufacturer has the right to use his own name as a mark upon his goods, although it be the same name with that of another manufacturer of the same goods, who makes the name a part of his own trade-mark, where there is no false representation in such use; and the majority of the court regarded the absence of all fraudulent designs and acts established by the finding of facts in the court below: *Rogers* v. *Rogers*, 53 Conn.

TRUST. See *Gift.*