not lost, the plaintiff had acquired no title to it other than that of bare possession, and as he had surrendered this in favor of the defendant there could be no recovery. One is led to ask why the teller individually was made defendant? It must be taken that the money was delivered to the teller as the representative of the corporation; and, if this is so, it would seem that the decision of the Court could be justified on another ground: that the bank owed to its customer, the true owner, the duty of keeping for him for an indefinite time property thus left upon its premises.

G. W. P.

DIGEST OF IMPORTANT DECISIONS.

EDITED BY

ALFRED ROLAND HAIG.

CARRIERS AND TRANSPORTATION COMPANIES.

Cases selected by OWEN WISTER.[1]

NEGLIGENCE.

1. *Injuries to Person Inflicted while Walking, After Being Wrongfully Ejected from Train.*

In an action against a railroad company for the death of a passenger, who was killed while walking on the railroad track after having been wrongfully ejected from defendant's train, the Court properly instructed the jury that decedent was not guilty of contributory negligence unless he failed to get off the track at the earliest practicable opportunity that a reasonably prudent man would have discovered and seized. GREEN, J., dissented on the ground that decedent's presence on the track could only be excused by imperious necessity, which was a question for the Court; Ham *v.* Canal Co., 21 Atl. Rep. 1012, 142 Pa. St., 617, explained: Ham *v.* Delaware and Hudson Canal Co., Supreme Court of Pennsylvania, MITCHELL, J., May 25, 1893, 26 Atl. Rep., 757, 32 W. N. C., 335.

2. *Injuries to Person on Railroad Track.*

An engineer is not wilfully negligent in failing to stop, while there is yet time, to examine an object which he supposes to be a dog, or something inanimate, lying on the track, but which, on closer approach, is discerned to be a child; but is only so negligent in case he might have stopped after the child had been discerned as such: Louisville, N. O. & T. Ry. Co. *v.* Williams, Supreme Court of Mississippi, WOODS, J., April, 1893, 12 S. Rep., 957.

[1] During the temporary absence of Mr. WISTER, the cases in this Department are selected by one of the Editors of the Journal.

3. *Trespasser on Horse Car—Who is Authorized to Permit One to Ride.*

Where a horse car has both a driver and conductor, and the driver alone sees a boy stealing a ride on the car, it not being his duty to put the boy off, the boy being injured cannot claim that he was given an implied permission to ride: Wynn *v.* City & Sub. Ry. Co., Supreme Court of Georgia, SIMPKIN, J., March 20, 1893.

Is it correct to assume that because the duties of conductor and driver are divided by the company, that one manifestly stealing à ride, would have no right to presume that, the driver seeing him and not telling him to get off, did not authoritatively permit him to ride?

RAILROADS.

4. *Contract of Shipment—Deviation Therefrom—Common Law Liability of Carrier—Provision in Contract Limiting Time Within Which Claim Must be Made.*

Where the contract between a shipper and a common carrier provides for carriage by passenger train service, and the carrier transports the cargo part of the way by freight train, there is a manifest deviation from the contract, and the liability of the carrier is then fixed by the common law. The implied contract in the latter case is that the carrier is an insurer of the cargo, and is to carry it safely from the point of shipment to destination unless prevented by "act of God or the public enemy." This common law rule is founded upon public policy, and the reason for it is the prevention of fraud, because the cargo is exclusively under the care of the carrier, who has no interest in it except the comparatively small one of a freight charge.

Where a contract of shipment provides that no claim for damages shall be allowed unless made in writing and presented within five days from unloading the cargo, such a provision is not affected or abrogated by a deviation from the contract in the matter of the method of transportation. Such a provision is a reasonable one, and will be enforced, because the prompt making of the demand gives warning and enables the carrier, while evidence is attainable and recollection clear, to institute inquiry into the merits of the claim, and thus guard against fraud or overvaluation.

The distinction between a stipulation going to fix the liability of the carrier and one for his protection against fraud, either before acceptance of goods or after delivery, is obvious: the law fixes the strict accountability of the carrier while he has possession of the goods, to prevent him from defrauding the shipper, and there is no reason why, under any circumstances, it should declare abrogated antecedent or subsequent stipulations on part of the carrier to prevent shippers from defrauding him: Pavitt *v.* Lehigh Valley R. R. Co., Supreme Court of Pennsylvania, DEAN, J., February 20, 1893, 32 W. N. C., 65; 153 Pa., 302.

COMMERCIAL LAW.

Cases selected by FRANCIS H. BOHLEN.

NEGOTIABLE INSTRUMENTS.

1. *Promissory Note—Payment to Take Out of Statute of Limitations.*

Where, after the maturity of a note, there are independent business transactions between the maker and payee, which are unsettled at the time action is brought on the note, the fact that there was a balance due the maker on such transactions, which ought to have been indorsed on the note, does not constitute a partial payment thereon, so as to prevent the running of the statute of limitations against the note prior to the time that such transactions ceased, in the absence of any agreement by the maker that it should be so indorsed: Sears *v.* Hicklin, Court of Appeals of Colorado, REED, J., May 22, 1893, 33 Pac. Rep., 137.

STATUTE OF FRAUDS.

2. *Promise to Answer for the Debt of Another.*

Defendant's contract for the erection of an opera house provided that, if the contractors failed to furnish material, defendant could supply the material, and deduct the cost from the price. Plaintiffs, after furnishing certain material on the contractors' credit, refused to furnish more, and an arrangement was made whereby, on the contractors' written order to defendant, the architect was to make the estimates and payments directly to plaintiffs. *Held*, that the agreement was not within the Statute of Frauds, as it was not a promise to pay plaintiffs' debt, but to benefit defendant, by the immediate acquisition of materials for the building; Calkins *v.* Chandler, 36 Mich., 324, followed: Brice *v.* Marquette Opera House Bdg. Co., Supreme Court of Michigan, LONG, J., June 1, 1893, 55 N. W. Rep., 382.

ASSIGNMENT.

3. *For the Benefit of Creditors—Action to Set Aside—Limit of Decree.*

Where one creditor alone sues to set aside an assignment for the benefit of creditors, and subject the property to the satisfaction of his judgment, it is error, on setting the assignment aside, to decree distribution *pro rata* between plaintiff and other creditors, the latter of whom are not parties to the suit, since, as they would not be bound by a judgment against them, they cannot have the benefit of a judgment in their favor: Ryttenberg *v.* Keels, Supreme Court of South Carolina, MCINER, C. J., April 21, 1893, 17 S. E. Rep., 441.

PLEDGE.

4. *Left Secured.*

On borrowing money from a bank, the borrower deposited stock as collateral security, and gave a demand note providing that if he should come under any liability, or enter into any other engagement with said bank, the net proceeds of the sale of the pledged stock should be applied, either on this note or any of his other liabilities. *Held*, that only future

liabilities were contemplated by the parties, and that the stock could not be held as security for a responsibility which had accrued nearly five months before making the pledge: Franklin Bank *v.* Harris, Court of Appeals of Maryland, BRISCOE, J., April 21, 1893, 26 Atl. Rep., 523.

TITLE.

5. *Transferance of—Indorsement for Collection.*

An indorsement of a draft to a bank "for collection," accompanied by a credit of the amount of the draft upon the indorser's account with the bank, does not transfer to the bank the legal title to such draft, and a correspondent of the bank, who collects the draft for it, is responsible therefor to the indorser: Tyson *v.* West. Nat. Bk. of Balto., Court of Appeals of Maryland, BRYAN, J., March 16, 1893, 26 Atl. Rep., 520.

CRIMINAL LAW.

Cases selected by ROBERT J. BRYON.

CARRYING WEAPONS.

1. *Self-Defence.*

The fact that a weapon is drawn in self-defence does not exempt the one drawing it from indictment for unlawfully carrying arms: Miller *v.* State, Court of Criminal Appeals of Texas, SIMKINS, J., April 29, 1893, 22 S. W. Rep., 141.

EVIDENCE.

2. *Expert Testimony in Murder Trial.*

On a murder trial it is error to permit experts to give opinions as to the range of the bullet which passed through deceased's head, or the position of his hand and arm, when he was shot in the arm and body, where they are formed from proven facts, since it is for the jury to draw their own conclusions: Foster *v.* State, Supreme Court of Mississippi, WOODS, J., April 17, 1893, 12 So. Rep., 822.

SALE OF INTOXICATING LIQUORS.

3. *Defence.*

It is no defence to a prosecution for selling intoxicating liquors that defendant did not know that they were intoxicating: State *v.* Lindoen, Supreme Court of Iowa, ROBINSON, C. J., May 10, 1893, 54 N. W. Rep., 1075.

THEFT.

4. *What Constitutes.*

Where defendant, who wished to leave the neighborhood to avoid a difficulty, took his cousin's saddle on the pretense of borrowing it to go hunting, but left with him more than sufficient property to pay for it, with a letter directing him to take such property in payment, such taking did not constitute theft: Beckham *v.* State, Court of Criminal Appeals of Texas, SIMKINS, J., May 10, 1893, 22 S. W. Rep., 411.

EQUITY.

Cases selected by ROBERT P. BRADFORD.

EXPRESS TRUSTS.

1. *Part Performance.*

Where it is attempted to engraft an express trust on a conveyance absolute in its terms, the "doctrine of part performance" has no application: Pillsbury-Washburn Flour Mills Co. *v.* Kistler, Supreme Court of Minnesota, MITCHELL, J., April 27, 1893, 54 N. W. Rep., 1063.

RESCISSION OF CONTRACT.

2. *Concealment—Partners.*

The managing partner of a mining venture made a complete contract by correspondence to purchase the interest of his absent partner, the consideration being the release of the latter from liability upon a note given to the former. Before the deed was executed by the absent partner a rich vein of ore was discovered on the claim, of which discovery the absent partner was not informed. *Held*, That the absent partner could not maintain a bill to set aside the deed; 36 Fed. Rep., 138, reversed; Brooks *v.* Martin, 2 Wall., 70, distinguished: Patrick *v.* Bowman, Supreme Court of the United States, BROWN, J., FULLER, C. J., and BREWER, J., dissenting, April 24, 1893, 13 S. C. Rep., 811.

EVIDENCE.

Cases selected by WILLIAM DRAPER LEWIS.

PRIVILEGED COMMUNICATIONS.

1. *Attorney and Client.*

Communications between an attorney and his client concerning proposed infractions of law are not privileged: Hickman *v.* Treen, Supreme Court of Missouri, SHERWOOD, J., GANTT, P. J., dissenting, May 2, 1893, 22 S. W. Rep., 455. See in this connection 1 Wharton's Crim. Evid. (3d ed.), § 590 and cases cited; also 7 Amer. and Eng. Ency. of Law, 103.

WITNESSES.

2. *Credibility of—Old Slaves.*

Testimony of a witness, who was formerly a slave, that he is 117 years old, does not affect his credibility as to events to which he testifies, nor does the discrepancy as to dates in the statements of other witnesses, who also were slaves, affect their credibility: Davis *v.* Meaux, Court of Appeals of Kentucky, BENNETT, C. J., May 6, 1893, 22 S. W. Rep., 324. The Court's opinion as to the reality of this great age is seen from the following abstract from the opinion: " . . . It is to be remembered that they are old slaves, who knew but little about dates, time, or numbers.

3. *Expert Witnesses in Murder Trial.* See CRIMINAL LAW.

INSURANCE.

Cases selected by HORACE L. CHEYNEY.

CANCELLATION.

1. *Notice of.*

In an action on a fire insurance policy an affidavit of defence setting up cancellation of the policy, and notice thereof to the representatives of the insured, was adjudged insufficient on the ground that notice of cancellation served on the brokers who procured the insurance was invalid. *Held* error, the policy having provided for notice of cancellation to the insured or his representatives, and the affidavit of defence having alleged the giving of notice to the brokers in question, and that they were the agents and representatives of the plaintiffs in all matters respecting the insurance; 53 Fed. Rep., 340, reversed: Grace *v.* Insurance Co., 3 Sup. Ct. Rep., 207, 109 U. S., 278, distinguished: Royal Ins. Co. *v.* Wight, U. S. Circuit Court of Appeals, Third Circuit, ACHESON, Cir. J., April 25, 1893, 55 Fed. Rep., 455.

PREMIUM NOTE.

2. *Action on—Parol Agreement for Rebate.*

A parol agreement made by a mutual life insurance company with a policy holder at the time that the latter executes his premium note, payable four months after date, that the maker should have a rebate of 30 per cent. of the face of the note, is not contradictory of the written obligation, and in action by such company against the maker, an affidavit of defence setting up such parol agreement is sufficient: Michigan Mut. Life Ins. Co. *v.* Williams, Supreme Court of Pennsylvania, DEAN, J., MITCHELL, J., dissenting, May 22, 1893, 26 Atl. Rep., 655; 32 W. N. C., 353

WAGERING CONTRACT OF LIFE INSURANCE.

3. *Insurable Interest—Husband and Wife.*

A man may insure his own life, paying the premiums himself for the benefit of another, who has no insurable interest, and such a transaction is not a wagering policy: Scott *v.* Dickson, 108 Pa., 6, followed: Overbeck *v.* Overbeck, Supreme Court of Pennsylvania, PER CURIAM, January 3, 1893, 155 Pa., 5; Hill *v.* United Life Ins. Assn., 154 Id., 29; 31 W. N. C., 483.

A policy was taken out by William H. Overbeck upon his own life "payable at his death to his wife, Mary Overbeck, or to the heirs at law of said William H. Overbeck." The Mary Overbeck mentioned in the policy was not the legal wife of the assured, by reason of his prior marriage with another. *Held*, that Mary Overbeck was entitled to the amount of the policy: Overbeck *v.* Overbeck, *supra.*

Not decided, whether a woman who marries a man, in ignorance of the fact that he had previously contracted a legal marriage with another woman who is still in full life, and from whom he had never been divorced, has an insurable interest in his life: *Ibid.*

4. *Tontine Assignment—Payment to Fiducial Agency.*

Where ten persons take out policies of insurance on their respective lives and then execute to an agency a tontine assignment, providing for

the distribution of the proceeds of the assignor's policy among the survivors of the ten, and the appointee or legal representatives of the assignor, the agency so appointed is the only party entitled to collect the insurance money from the company. Such a payment to the agency discharges the insurance company from all liability to pay to the legal representatives or appointees of the insured. *Not decided*, whether the legal representatives of the insured could recover from the agency that collected the money from the company: Hill *v.* United Life Ins. Ass'n, Supreme Court of Pennsylvania, PAXSON, C. J., January 3, 1893; 31 W. N. C., 483; 154 Pa., 29.

PLEADING AND PRACTICE.

Cases selected by ARDEMUS STEWART.

PLEADING.

MALICIOUS PROSECUTION.

1. *Declaration—Sufficiency.*

A declaration for malicious prosecution, stating that the grand jury had made a return of "no bill" upon a bill of indictment, and "expressed" in their finding that the prosecution was malicious, sufficiently alleged that the prosecution had ended; Woodruff *v.* Woodruff, 22 Ga., 237, followed: Horn *v.* Sims, Supreme Court of Georgia, PER CURIAM, April 17, 1893, 17 S. W. Rep., 670.

2. *Plea of Justification—Right to Open and Close.*

In a suit for malicious prosecution, a plea to the effect that the defendant, without any malice whatever, consented to become prosecutor as a matter of friendship to another, and upon the assurance of the solicitor general that so doing was "only a matter of form," is not a plea of justification, and does not entitle the defendant to the opening and conclusion: Horn *v.* Sims, *supra.*

STATEMENT.

3. *Rule for More Specific Statement—Demurrer.*

A rule absolute for a more specific statement, on the ground that the statement does not set forth a good cause of action, is erroneous, as the proper and only way to raise that question is by demurrer: Bradly *v.* Potts, Supreme Court of Pennsylvania, MITCHELL, J., May 22, 1893, 26 Atl. Rep., 734; 155 Pa., 418.

PRACTICE.

NEW TRIAL.

4. *Misconduct of Judge—Private Communication with Jury.*

Where the trial judge, without the knowledge or consent of the parties, enters the jury room while the jury are deliberating on their verdict, and communicates with them in reference to ordering supper if they were not likely to agree before meal time, the verdict will be set aside, and a new trial granted, though the communication is harmless in itself, and made with the best of motives: Davies *v.* Pearson, Appellate Court of Indiana, LOTZ, J., April 11, 1893, 33 N. E. Rep., 976.

FEDERAL PRACTICE.

5. *Distinction between Law and Equity in Federal Courts.* See EQUITY, I.

PROPERTY.

Cases selected by WILLIAM A. DAVIS.

CONTRACT FOR SALE OF LAND.

1. *Merger in Deed—Voluntary Payment—Taxes Paid by Vendor.*

A contract for sale of land obligated the vendor to execute a deed on payment of the price on a specified date, the vendees to pay all taxes in the meantime. *Held*, that such contract became merged in the deed subsequently executed by the vendor, and that since the taxes assessed during the existence of the contract became a lien on the land, and created no personal liability as against the vendor, he was not entitled to recover from the vendees for such taxes paid by him after the execution of the deed; also, *held*, that the payment by him of the taxes was purely voluntary, and for this additional reason he is not entitled to recover: Keator *v.* Colorado Coal and Iron Development Co., Court of Appeals of Colorado, BISSELL, J., March 27, 1893, 32 Pac. Rep., 857.

COVENANT IN LEASE.

2. *Quiet Enjoyment—Measure of Damages for Breach.*

Where a lessor recovers judgment for rent against a lessee by default, the lessee is not barred from seeking damages for a breach of an implied covenant for quiet enjoyment by his failure to plead it in defense of the action for rent.

Where a lessee is excluded from possession, but is compelled to pay rent during the period of exclusion, the measure of damages for a breach of the covenant for quiet enjoyment is the difference between the agreed rental and the actual rental value, increased by the amount paid by the lessee: Riley *v.* Hale, Supreme Judicial Court of Massachusetts, ALLEN, J., March, 1893, 33 N. E. Rep., 491.

ELEVATED RAILROADS.

3. *Injury to Abutting Property Owners.*

Though an elevated railroad constructs a station projecting into a side street, infringing on the public right therein, the abutting owner, in his capacity as a citizen merely, cannot maintain an equitable action for its removal, nor can he maintain it as the abutting owner, where it does not appear that he owns the soil occupied by the station, or that he has sustained any substantial injury by the encroachment, to any right appurtenant to his premises: Adler *v.* Metropolitan El. Ry. Co., Court of Appeals of New York, ANDREWS, C. J., April 25, 1893, 33 N. E. Rep., 935 (reversing S. C., 18 N. Y. Supp., 858). See Collins *v.* Northeastern Elevated Railway Co., 32 W. N. C. (Pa.), 379; Decker *v.* Evansville Suburban Railway Co., 33 N. E. Rep. (Ind.), 349, 32 AMERICAN LAW REGISTER AND REVIEW, 608.

EMINENT DOMAIN.

4. *Parties—Rights of Lessee—Res Judicata—Suits at Law and in Equity.*

A judgment condemning land for public use does not affect a lessee's right of possession when he is not made a party.

Where a lessee who was not made a party to condemnation proceedings brings suit to enjoin a city from opening a street through the leased premises, a decree finding that the equities are with the defendant, and dismissing the bill, does not bar the lessee from maintaining a subsequent action at law to assert his legal right of possession: Baltimore & Ohio R. R. Co. *v.* Parrette, Circuit Court, Southern District of Ohio, E. D., SAGE, D. J., March 10, 1893, 55 Fed. Rep., 50.

GIFT.

5. *Validity—Revocation—Delivery and Record of Deed.*

The grantor executed and acknowledged a deed of land to his son, and filed it for record, and the son took possession and remained thereon for seven weeks, when he died. Thereafter the clerk died without putting the deed on record, and the grantor obtained possession of the deed and destroyed it. *Held*, a valid gift, and that the destruction of the deed could not revoke it: Vaughan *v.* Moore, Supreme Court of Appeals of Virginia, FAUNTLEROY, J., March 30, 1893, 17 S. E. Rep., 326.

POST-NUPTIAL SETTLEMENT.

6. *Dower—Judgment Lien.*

At the time of the marriage the husband's lands were all free from judgment liens, but after judgments were obtained against him, in consideration of a settlement on her of a portion of his lands, the wife relinquished her right of dower in all his other lands, which right of dower was of greater value than the lands settled on her. *Held*, that the post-nuptial settlement was valid as against such judgment creditors: Ficklin's Adm'r. *v.* Rixey, Supreme Court of Appeals of Virginia, LEWIS, P., April 6, 1893, 17 S. E. Rep., 325.

RIPARIAN RIGHTS.

7. *Obstruction of Navigable Stream—Right to Damages—Rights of Public in Private Canal.*

The owner of land near, but not adjoining, a navigable stream cannot maintain an action for damages for the obstruction of the stream by a viaduct, unless he has sustained some special damage thereby, distinct from the public at large.

Where such owner alleges that his lands are suitable for purposes of manufacturing, docking, etc., but it is problematical whether there will ever be a demand for them for such purposes, his damages for such obstruction are purely speculative.

A canal constructed and maintained at private expense is like a private highway, over which the public is permitted to travel, but in which it obtains no vested rights: Potter *v.* Indiana & L. M. Ry. Co., Supreme Court of Michigan, GRANT, J., April 21, 1893, 54 N. W. Rep., 956.

TORTS.

Cases selected by ALEXANDER DURBIN LAUER.

ACTION AGAINST UNITED STATES SOUNDING IN TORT.

1. *Non-liability of Government.*

The United States, while it may be sued as upon an implied contract for the value of land actually appropriated to public use, when the right of the plaintiff is acknowledged, is yet not subject to such suit when plaintiff's right of property has never been acknowledged; nor can a claim be legally framed to evade the settled distinction between a trespass by government officers and an implied contract to compensate for use and occupation; the action is founded upon a tort, and the government is not suable: Hill *v.* United States, Supreme Court of the United States, GRAY, J. (SHIRAS, J., dissenting), May 15, 1893, 13 Sup. Ct. Rep., 1011.

CONVERSION.

2. *What Constitutes—Collection of Tolls by Officers of Road Company.*

The facts found by the Court in its special findings showed that defendants were respectively president and treasurer of plaintiff gravel road company, and that as such they took possession of and managed the gravel road and collected tolls belonging to plaintiff, but it was not found that they wrongfully took possession of the road and collected tolls, nor that they converted such tolls to their own use, nor that on demand they refused to account therefor. *Held*, that since plaintiff based its right of recovery on a conversion, the facts found did not warrant a judgment in its favor: Sloan *v.* Lick Creek and N. B. Grand Road Co., Appellate Court of Indiana, ROSS, J., April 28, 1893, 33 N. E. Rep., 997.

DECEIT.

3. *Measure of Damages.*

In an action of assumpsit for the price of certain ores, the evidence showed that the defendants were induced to enter into the contract by plaintiff's false statements, but accepted the ores after discovering the falsity of the statements. *Held*, that the true measure of damages for the *deceit* was the difference between the contract price of the ores and their value in the market at the time, unaffected by the false representation, and not such sum as the jury might find from all the evidence was the value of the ores to defendants; Peek *v.* Derry, 37 Ch. Div., 541, and Smith *v.* Bolles, 10 S. C. Rep., 39; 132 U. S., 125, distinguished: McHose *v.* Earnshaw, Circuit Court of Appeals, Third Circuit, DALLAS, C. J., April 17, 1893, 55 Fed. Rep., 584.

4. *Question for Jury.*

Plaintiff was in the employ of a city, working in a ditch at a point where it crossed the street under defendant's track; defendant's employes, in charge of a car which struck plaintiff, omitted to give any warning of the approach of such car; previously they had given such warning each time that the car approached such point. *Held*, that the question of defendant's negligence was a question of fact for the jury,

though such employes moved the car very slowly, and excused the omission of the warning on the ground that they looked ahead and saw the way was clear: Owens *v.* Peoples' Pass. Ry. Co., Supreme Court of Pennsylvania, May 22, 1893, 26 Atl. Rep., 748, 32 W. N. C., 313, 155 Pa., 334.

WILLS, EXECUTORS AND ADMINISTRATORS.

Cases selected by MAURICE G. BELKNAP.

COLLATERAL INHERITANCE TAX.

1. *Choses in Action—Non-residents—Conveyance to take Effect after Grantor's Death.*

Choses in action, such as bonds, stocks, debts, etc., have their *situs*, for the purpose of taxation, at the domicile of their owner, and that the legal title is in a non-resident trustee will not free such property from subjection to collateral inheritance tax where the grantor has retained a beneficial interest therein and control of the disposition of the property upon his death.

A resident of Pennsylvania transferred securities to a corporation in New York, in trust, to pay the income during his life, and on his death to distribute the property to certain beneficiaries, reserving the power to alter or revoke the trust; he died domiciled in Pennsylvania without having exercised the power. *Held*, that while the New York corporation had the legal title to such securities, the deceased was the beneficial owner, and in every proper sense of the term they were his personal property, and his residence was their *situs* for the purposes of taxation, including collateral inheritance tax: Lines' Estate, Supreme Court of Pennsylvania, STERRETT, C. J., May 22, 1893, 26 Atl. Rep., 728, 32 W. N. C., 376, 155 Pa., 378..

PROBATE.

2. *Mandamus—Setting Aside Probate of Will.*

A mandamus will not be granted to compel a probate judge to vacate an order admitting a will to probate: Corby *v.* Wayne, Probate Judge, Supreme Court of Michigan, HOOKER, C. J., June 1, 1893, 55 N. W. Rep., 386.

RIGHT OF WIDOW IN DECEDENT'S ESTATE.

3. *Waiver—Failure to Show Foreign Law.*

Where testator in his will devised all his estate to his nephews and nieces, declaring that his wife had already received the major portion of his estate, an agreement made during his lifetime, while he and his wife were residing with his cousin, by which in consideration of his securing to her a certain sum, she waived such claims as she might have as widow by or under the laws of Wisconsin, was held insufficient to defeat her claim to an allowance and a distributive share of his personal estate under the laws of Michigan, because the law of Wisconsin giving her like rights was not shown in the petition enjoining her claim, and therefore the Court presumed the common law rule prevailed there, which gave her neither: Knapp *v.* Knapp, Supreme Court of Michigan, HOOKER, C. J., May 31, 1893, 55 N. W. Rep., 353.