Courts. Any cause of action which does not constitute an admiralty cause, within the decisions of the Supreme Court of the United States, is not affected by the Constitution of the United States. The State legislation may provide new liens and new remedies for such causes in all cases of vessels or parties coming within its territory and thereby becoming subject to its laws. It is simply a contradiction in terms to say that a cause which is not an admiralty or maritime cause belongs exclusively to a jurisdiction which is confined to such causes and can embrace no others.

I am of opinion that demurrers are well taken, and that the pleas are bad.

The Chief Justice and HAINES, J., concurred. VANDYKE, J., dissented.

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## ABSTRACTS OF RECENT AMERICAN DECISIONS.

### SUPREME COURT OF MASSACHUSETTS.[1]

*Note—Place of Contract—Statute of Limitations.*—A note, dated in this Commonwealth, and first delivered in this Commonwealth to the payee, who resided here, is to be deemed a contract made here, and to be construed according to the laws of this Commonwealth, although actually signed in another State: *Lawrence* vs. *Bassett.*

A note is not barred by the Statute of Limitations, although overdue for more than six years, if it was given by a person who was once an inhabitant of this Commonwealth, but has lived out of the Commonwealth ever since the cause of action accrued: *Id.*

*Note—Usury.*—If the maker of a note which is payable to his own order indorses it and employs an agent who sells it for him for less than its face, the transaction is usurious, although the purchaser supposes that he is merely purchasing the note in the market, and does not know that the seller is acting only as an agent: *Sylvester* vs. *Swan.*

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[1] From Charles Allen, Esq., Reporter; to appear in volume 5 of his Reports.

*Note—Common Carrier.*—A common carrier who, by a written agreement with the owner of notes, has undertaken to procure their renewal or to return them, cannot excuse himself for the non-performance of his undertaking by proving that an indorser, to whom he had delivered them for examination and comparison prior to the renewal, was summoned as trustee of a subsequent indorser, and thereupon refused to give them up or renew them: *Wareham Bank* vs. *Burt.*

*Assault and Battery—Mitigation of Damages.*—In an action to recover damages for an assault and battery, committed by the son of the owner of a house, upon one who had wrongfully intruded into the same, but, in compliance with orders given to him, had left the house and was going away, evidence is incompetent to prove, in mitigation of damages, that the plaintiff was of bad repute in the community, and was accompanied by his paramour, who was also of bad repute in the community; although the plaintiff's counsel, in opening his case, and throughout the trial, has claimed damages on the ground that the assault and battery were an indignity, calculated to injure the plaintiff's standing and reputation in the community: *Bruce* vs. *Priest.*

*Judge of Probate—Authority to revoke Decree.*—A judge of probate has no authority to revoke a decree passed by himself, making an allowance to a widow out of her husband's estate, and to pass a new decree allowing to her a less sum: *Pettee* vs. *Wilmarth.*

*Insolvent Debtor—Execution—Title of Assignee.*—A levy of an execution by a judgment-creditor upon the real estate of an insolvent debtor, made after the first publication of notice of the issuing of the warrant, is not valid against the title of the assignee, although the assignee has not recorded the assignment in the county where the land lies, and although the creditor has no actual notice of the insolvency: *Hall* vs. *Whiston.*

If a judgment-creditor of an insolvent debtor has levied his execution upon the debtor's reversion of real estate, after the first publication of notice of the issuing of the warrant, the assignee in insolvency may maintain a bill in equity to set aside the levy: *Id.*

*Insolvent Debtor—Homestead Exemption.*—Those creditors of an insolvent debtor, whose claims accrued before the passage of the statutes creating a right of homestead, are entitled to have the whole amount which has been realized by the assignee from the sale of the right of homestead,

applied towards the payment of their claims, in priority to the general creditors, and to take a dividend with the other creditors for the balance of their claims, if any. And the amount realized from the sale of the reversionary interest in the land, after the expiration of the right of homestead, is to be distributed among the general creditors: *White* vs. *Rice*.

*Town—Action against on Contract—Acceptance of Road—County Commissioners.*—In an action against a town to recover for work done under a contract in building a road, the plaintiff under a general count may recover the value of the work, provided it was done in good faith and is beneficial to the defendants, although the contract has not been fully performed: *Reed* vs. *Inhabitants of Scituate*.

If, in such action, the plaintiff seeks to recover the contract price, on the ground that the road has been accepted by the town, it is erroneous to rule that, if the road was ordinarily used for travel by the public before the time limited for its completion, with the knowledge and consent of the selectmen or highway surveyors, it is competent for the jury to infer from this fact that the town had adopted and accepted it. Highway surveyors have no authority so to accept a road: *Id.*

County commissioners can only accept a road which they have ordered to be built by a town, when acting together, and by a majority vote: *Id.*

If county commissioners, in their specifications of the manner of constructing a road, have provided that "the gravel on the whole distance, or any part thereof, must be on a regular inclined plane of not more than twelve inches in twenty feet," and that the whole road be made "hard, durable, safe, and convenient," the former stipulation is not qualified by the latter; and it is not a sufficient compliance with the specifications, to build a road which is safe and convenient, if it is of higher grade than that specified: *Id.*

## SUPREME COURT OF NEW YORK.[1]

*Wild Animals—Liability of Owners.*—The liability of the owner or keeper of an animal of any description for an injury committed by such animal, is founded upon negligence, actual or presumed: *Scribner* vs. *Kelley*.

It is not in itself unlawful for a person to keep wild beasts, though they may be such as are of a nature fierce, dangerous, and irreclaimable;

[1] From the Hon. O. L. Barbour, Reporter; to appear in the 38th volume of his Reports.

but the propensity of such animals to do dangerous mischief being inherent and well known, the owner or keeper is required to exercise such a degree of care in regard to them as will absolutely prevent the occurrence of an injury to others, through such vicious acts of the animal as he is naturally inclined to commit: *Id.*

Where an injury happened to the plaintiff, in consequence of his horse taking fright at an elephant passing along the highway in the charge of a keeper, prior to the passage of the Act of April 2d, 1862, regulating the use of public highways: *Held*, that to render the owners of the animal liable, it would be necessary to show, not only that such is the effect of the appearance of an elephant upon horses in general, but also that the owners knew or had notice of it: *Id.*

*Sheriff—Liability for neglect of Duty—Assignability of Claim—Insolvency of Debtor.*—Taking the body of a debtor in execution is the highest form of satisfaction of a judgment. Hence, the neglect of a sheriff to arrest the debtor, upon an execution issued against his person, is a wrong to the property, rights, or interests of the judgment-creditor, which would survive to his executors or administrators, and is therefore assignable: *Divinney* vs. *Fay, late Sheriff.*

A wrongdoer is liable to the executor or administrator of the person injured, in an action for a neglect of duty, whether the wrongdoer was benefited by the wrong or otherwise: *Id.*

In an action on the case against a sheriff, for neglecting to take the body of a defendant in execution, the sheriff should be allowed, by way of mitigating damages, to prove the pecuniary circumstances and condition of the defendant in the execution: *Id.*

*Husband and Wife.*—A married woman living with her husband, and having no separate estate, cannot in the absence of her husband, and without his knowledge or consent, enter into an agreement in writing for the purchase of real estate on credit: *Rose* vs. *Bell & Wife.*

Such an agreement being a mere nullity, the possession of the premises is, in law, the possession of the husband, and in no respect that of the wife. She is, therefore, improperly joined with her husband in an action by the vendor to recover the possession of the premises for a default in the payment of the purchase-money: *Id*

*Public Officers—Proof of their Appointment—Decision of an inferior Tribunal as to jurisdictional Facts—Election of Trustees of School Dis-*

*tricts—Tax-Warrants.*—Proof that an individual is represented to be, and has acted, notoriously, as a public officer, is *primâ facie* evidence of his official character, without producing his appointment: *Colton* vs. *Beardsley.*

In an action against a person for doing an act which he has no right to do unless an officer, he must show that he was *primâ facie* an officer *de jure.* Proof of acting as such under color of authority, and of reputation, is admissible evidence for that purpose, and, if proved, is sufficient in a collateral proceeding to establish that character: *Id.*

Proof of a call by the trustees of a school district, for a special meeting of the inhabitants, for the purpose of filling vacancies in the office of trustee, of the assembling of the inhabitants under that call, the election of two persons as trustees to fill vacancies, and of their entering upon the duties of the office, is proof of an election by the competent authority, and constitutes the persons thus elected *primâ facie* trustees *de jure*: *Id.*

To defeat such *primâ facie* title to the office, a party attacking it cannot be allowed to give evidence, showing that no vacancy in the office of trustee existed when the persons were chosen: *Id.*

The authority to call a special meeting to fill a vacancy in the office of trustee being vested in the remaining trustees, and the power to fill it in the meeting when assembled under such a call, the act of the trustees in calling the meeting, and of the meeting in filling the vacancy, are *quasi* judicial acts: *Id.*

Hence, whether there was or was not a vacancy in fact, and if there was, whether it had existed for over one month before the election; and, if it had, whether it arose from a cause which authorized it to be filled by the supervisor of the town, is immaterial in an action against the persons elected, for an act done by them as trustees; those not being questions which can be traversed in such an action: *Id.*

Matters of that nature can only be traversed in a direct proceeding to set aside or quash the election. Until the election be so set aside or quashed, the persons claiming to be elected are protected for all acts done by virtue of the office held under color of such election: *Id.*

When the jurisdiction of an inferior tribunal depends upon a fact, which such tribunal is required to ascertain and determine by its decision, such decision is final until reversed in a direct proceeding for that purpose: *Id.*

The test of jurisdiction in such cases, is whether the tribunal has power to enter upon the inquiry, and not whether its conclusions in the course of it were right or wrong: *Id.*

A general non-performance of the duties of an office is a refusal to

serve. A refusal to serve may be as clearly and strongly inferred from the acts of an incumbent, as from a direct assertion that he will not discharge the duties of the office: *Id.*

The insertion of an improper item in a tax-warrant issued by the trustees of a school district will not vitiate the warrant, if otherwise valid, or render the trustees liable in trespass. The warrant is void for the excess only, and the trustees personally liable in an action to recover back any part of such excess paid or collected. But an action to recover the value of the property sold on the warrant cannot be maintained: *Id.*

## SUPERIOR COURT OF NEW YORK.[1]

*Bill of Exchange—Notice of Dishonor—Residence of Parties.*—Where a bill of exchange has been negotiated by the indorsement of several parties, the holder has the next day after receiving notice of dishonor, to notify any prior indorser whom he desires to charge; and each successive indorser who receives notice, has at least one day thereafter to give notice to any antecedent indorser: *The West River Bank* vs. *Taylor.*

This rule is not confined to holders for value. An agent or banker intrusted with a bill to obtain acceptance or payment, is entitled to the same time to give notice to his principal, and the principal is entitled, after such notice, to the like time to notify any prior indorser as if he had received notice from the true owner, instead of his banker or agent: *Id.*

Where the party thus giving the notice and the party to whom it is given do not reside in the same town, the notice may be sent by mail: *Id.*

There is no rule requiring that an indorser residing in the same town as the acceptor, shall be personally notified the next day after presentment, where the banker, at whose instance the bill is protested, and to whom notices of protest are sent, does not reside in that town: *Id.*

The fact that the true owner knows that the indorser resides in the same place as the acceptor, does not, in such a case, entitle the indorser to notice on the day next after the presentment and protest: *Id.*

It is enough to charge him, that the true owner mails notice to him by the first mail of the day next after that on which he, in due course, receives notice of dishonor, such owner and indorser residing in different towns: *Id.*

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1 From Hon. Joseph S. Bosworth, Chief Justice and Reporter; to appear in Vol. 7 of his Reports.

*Negotiable Paper—Collateral Security—Good Faith.*—A person who takes negotiable paper as security for a loan made on the security thereof, from one holding it for collection merely, and without authority to dispose of it, and takes it with knowledge of such circumstances as would excite suspicion and lead a man of ordinary prudence to make inquiry, but makes such inquiries as a man of ordinary prudence would make, and the information he gets is such as would naturally be credited, and removes all suspicion, he acts in good faith, and will acquire a title, so far as it depends upon the question of good faith: *Belmont Branch Bank* vs. *Hoge.*

Where the loan, in such a case, is made in the State of New York to a corporation, the true owner of the paper thus pledged cannot impeach the title of the lender and reclaim the paper, on the mere ground that the loan was at more than seven *per cent.*, where, apart from the force of the fact that the loan was usurious, the lender is a *bonâ fide* holder for value. (ROBERTSON, J., dissented): *Id*

*Corporations—Subscriber to Certificate filed to organize a Bank—Suit by Receiver of Insolvent Bank—Assignment by Subscriber of his Interest.*—A subscriber to the certificate filed to organize a bank, is liable to pay for the number of shares therein stated to have been subscribed by him, and payment can be enforced at the suit of a receiver, appointed on its becoming insolvent, to satisfy the just demands of creditors of the bank: *Dayton* vs. *Borst.*

In a suit by such receiver, against an original subscriber, a judgment in favor of a third person against the bank, in a court of record, in an action in which the bank appeared and defended, is *primâ facie* evidence that the bank owes the sum recovered: *Id.*

The fact that a subscriber assigns all his interest in the bank, does not discharge his liability upon his subscription, and it can be enforced for the benefit of one who subsequently becomes a creditor of the bank: *Id*

*Corporations—Subscription to Stock—Assignment of Certificate of Shares as Security, &c.*—The defendant subscribed for 80 shares of the plaintiffs' capital stock, and afterwards, by his authority, other 66 shares were subscribed for in his name, and certificates for the whole 146 shares were issued to him; and as security for payment of his note for $2000, he assigned 46 shares, and delivered, with the assignment, a certificate for such shares, to a bank which became insolvent; and the receiver of such bank sued the defendant and obtained judgment for the sum due on

the note, and subsequently sold the 46 shares, and applied the proceeds on the judgment; and the purchaser of the 46 shares applied to have them transferred on the plaintiffs' books to him, when it was discovered that 130 shares had already been transferred by the defendant in person, or by attorney; whereupon the plaintiffs transferred to the purchaser 16 shares, and paid to him for the remaining 30 shares $301.25, the sum he paid therefor, and took a surrender of the certificate; and defendant subsequently, with knowledge of all the facts, promised to pay to the plaintiffs the said sum of $301.25; *held*, that he was bound by said promise, and that an action would lie against him thereon, to recover the sum so promised to be paid: *St. Nicholas Ins. Co.* vs. *Howe*.

*Election of Remedies.*—In an action commenced in November, 1858, by plaintiff against defendants, to recover proceeds of wool consigned in the early part of 1858, by the former to the latter, for sale on the plaintiff's account, the defendants alleged in their answer that the wool was the property of one A.; that prior to June 9, 1858, A. employed B. as his agent to purchase 20,000 lbs. of wool in Wisconsin and forward it to Albany, agreeing to either pay B. half of the profits or one per cent. for commission, as A. might elect; that between June 9 and July 14, A. furnished B. $6000 and 105 sacks worth $52.50; that B. bought 7041 lbs. at $2112.30, and sent it to A. with 34 sacks, worth $17; and with residue of the money he bought wool in his own name, and assigned it (the wool in question), with the other sacks, to the plaintiffs; that A. had notified the defendants of the facts, and required the proceeds of the wool to be paid to him; and it appeared that in July, 1858, A. brought suit in the Supreme Court against B., and in his complaint alleged the same facts; and that B. refused to return the residue of the sacks or deliver the residue of the wool bought, or account for the moneys advanced to him, and prayed judgment for the $6000 advanced, less the $2112.30, and for the value of the sacks not returned, and recovered a judgment therefor February 14, 1860; and issued a *ca. sa.* thereon, on which B. was arrested and imprisoned, and that such imprisonment continued up to the time of the trial of the present action, June 14, 1860; it was *held*; that the action by A. against B., and the recovery of judgment therein, estopped A. from claiming property in the wool bought with the moneys for which such judgment was recovered: *Bank of Beloit* vs. *Beale*.

That the bringing of the action by A., with knowledge of the facts, to recover the residue of the $6000, and recovering judgment therefor, was

an election by A. between remedies, by virtue of which A. repudiated the use which B. made of the residue of the moneys as unauthorized, and waived all claim of property in the wool bought, and that such facts were a bar to the defence alleged in the answer of the present defendants: *Id.*

*Held* (by ROBERTSON, J.), that the suit of A. against B. was not an election of remedies affecting his right to pursue the wool until that suit had gone to judgment; and that as judgment therein was not recovered until after issue joined in this action, the defence herein was valid, when *pleaded*, and it was error to exclude proof of it at the trial: *Id.*

*Held* (by BOSWORTH, C. J.). that as no such question was made by the defendants at the trial, or raised on the argument of the appeal, and as they did not object at the trial to proof being made of the fact of such recovery by A. against B., but only to the character of the evidence offered to establish it, no such question was presented by the appeal; and that the only question was, whether the decision at the trial, as to the effect of such suit and recovery, was correct: *Id.*

*Held*, also, that such suit and recovery by A. against B., and the taking of B.'s body in execution on the judgment, was a satisfaction of all claims of A. pending such imprisonment: *Id.*

*Claim against a State—Judgment of a Board of State Officers having legal authority to pass on such Claims will be Conclusive in Actions in another State.*—Where a claim against a State, for the purpose of obtaining a decision that it is just, and of the amount thereof, is presented before a Board of Officers of said State, which Board is created by the Constitution and Laws of such State, and vested with jurisdiction to hear and determine such claim, and such claim is allowed, the decision is to be regarded as a judgment of a competent judicial tribunal; and in an action afterwards brought in a Court of Equity, in another State, to recover back the money paid by the first-named State, in pursuance of such decision, it will be held conclusive, notwithstanding proofs, which show that there was no original liability to the claimant for the claim so allowed; and such decision can only be impeached by proof of fraud in procuring the same: *The People of Michigan* vs. *The Phœnix Bank.*

Where the claim on the State was for an advance by the claimant (to a person assuming to act on behalf of the State) of drafts on banks situated therein, holding funds of the claimant, the amount of which drafts never came to the use of the State, and the advance of which the State never authorized (one of which was never paid, and the other was paid

to a third bank); and the claimant had allowed his agent in that behalf (with the assent of one of the State officers, given with the reservation that the liability of the State should not be thereby admitted nor affected), to receive from such banks choses in action and other property in full settlement and payment, but to be held by him for the claimant or for the State, whichsoever might assume or be charged with the debt; of which settlement the State, through its Legislature and its State officers, had full notice; the decision of the said Board, created by the State, is to be taken as conclusive that notwithstanding these facts the claimant is entitled to recover; and although prior to the trial and decision by that Board, such agent and trustee, with the assent of the claimant, has collected from such choses in action a part of the amount due thereon, and converted others into other property, and the claimant has settled with him, taken a transfer of a part of the property (being that received from one of such banks), and released him from all liability, the omission of the claimant to apprise the State of such dealings and release, and the concealment by the claimant, on presenting his claim before such Board, of such dealings and release of the agent and trustee, though such concealment be practised in the belief that if known the claim would be disallowed, and though practised in order to obtain the allowance of the claim, are not a fraud sufficient to impeach the decision of the Board in favor of the claimant and entitle the State to recover back the money paid in pursuance of the decision and in ignorance of the facts thus concealed. (WOODRUFF, J., dissented): *Id.*

In such case, knowledge by the State of the said settlements with the banks, and that the said agent and trustee held the said choses in action and other property in trust for the purposes aforesaid, is sufficient to put the State upon inquiry as to the then situation of the trust fund; and if by due diligence the facts might have been discovered and proved by the examination of witnesses, it is the fault of the State that the facts were not proved before the Board, and the claimant by omitting to give notice thereof to the State, and failing to disclose them to the Board (though with the intent and belief aforesaid), violated no duty and committed no fraud which entitles the State to impeach the judgment and recover back the money paid thereon in ignorance of such facts. (WOODRUFF, J., dissented): *Id.*

*Mortgage—Unexpired Lease—Mistake—Deed by Executors—Implied Covenants in Conveyances.*—In a suit to foreclose a mortgage given to

secure the purchase-money agreed to be paid for the mortgaged premises, where no covenant in the deed is broken and there has been no fraud on the part of the grantors, it is no defence that a part of the premises at the time of the grant and mortgage, was incumbered by an unexpired lease thereof: *Sandford* vs. *Travers*.

Where there is a mutual mistake as to a material fact for which a Court of equity would relieve, a party desiring relief on that ground must, on discovering the mistake, offer to rescind: *Id.*

A deed by executors, as such, with a covenant against their own acts, cannot be construed as containing an implied covenant that their testator was seised of an estate in fee simple; or a covenant on their part to put the purchaser in possession: *Id.*

No covenant can be implied in any conveyance of real estate, whether such conveyance contains special covenants or not: *Id.*

*Negligence—Liability of Contractor.*—Where a person employs another to do a piece of work, and the one so employed does it by his own workmen, using his own discretion as to the manner of doing it, having exclusive control of the matter, and a third person is injured while the work is in progress, by the careless manner in which it is done, the contractor and his servants guilty of the negligence are alone liable for the injury: *O'Rourke* vs. *Hart*.

It makes no difference, in such a case, that the work done consists in altering a public street. When the work to be done cannot itself be dangerous to others, unless it becomes so by the dangerous or unskilful manner of executing it, and is done by one contracting to do it, and having exclusive control of the men employed, and injury results from such unskilfulness, the remote principal is not liable. The liability is confined to the persons guilty of the negligence, and to their principal: *Id.*

*Surety—Variation of Contract without knowledge of Surety.*—Where, by a sealed contract between two persons, one is to serve the other in a specified business for a term of years, at a fixed sum per annum, and the laborer as part of the arrangement gives a bond with surety to the employer, conditioned for the performance by the laborer of the contract on his part, and subsequently a verbal contract is made and acted upon between the employer and laborer by which the latter is to receive compensation graduated by the amount of work he may perform, and this is done without the knowledge or consent of the surety, the latter is discharged: *Bagley* vs. *Clark*.

Where, after the contract has been made and the bond executed and delivered, the employer forms a partnership with third persons, and the laborer, by verbal agreement between him and the firm, contracts to serve the firm, and pursuant to such agreement does subsequently serve the firm for nearly two years, upon a different agreement as to compensation, the sealed contract and bond are thereby abandoned and superseded, and no action will lie thereon for an alleged breach occurring after such a term of service under the new arrangement: *Id.*

*Shipping—Bill of Lading—Purchase of Goods in Transitu—Claim for Freight.*—The master of a vessel, who signs a bill of lading by which he acknowledges the receipt, on board, of goods, of a designated kind and a specified quantity, and agrees to deliver the same to the shipper or his assigns, on payment of freight, at a specified rate per ton, is bound to deliver to one purchasing the goods *in transitu* and taking from the shipper, an assignment of the bill of lading, in good faith, and relying thereon, goods of the kind so designated, and the specified quantity thereof: *Byrne* vs. *Weeks.*

An acceptance of goods of the designated kind, but less than the specified quantity thereof, after discovering that there are more goods of one designated kind and less of another on board than the bill of lading calls for, but the same aggregate quantity in all, does not absolve the master from the liability contracted by the bill of lading, nor impose upon such an assignee of it a duty to take more of one kind or accept less of another, than the bill of lading specifies: *Id.*

Where, in such a case, after a part delivery, the master refused to make a further delivery, unless the assignee would accept a delivery of all the goods on board as a performance of the carrier's contract, which the assignee declined to do, and the master thereupon sued the assignee and recovered judgment for the whole freight; issued execution thereon, and caused the goods remaining on board to be levied on as the defendant's property, and to be removed and stored, and they were subsequently sold by the depositary to satisfy his claim for storage, and at such sale they were purchased by such assignee—the master thereby loses his lien on the goods so levied on for freight; and the assignee obtaining possession as such a purchaser, does not obtain a delivery under the bill of lading, and is not liable for the freight of such goods—they having been so bought in ignorance of any claim or lien thereon in favor of the master for freight: *Id.*

SUPREME COURT OF MICHIGAN.[1]

*Land Contract—Failure to "improve," and to pay Taxes—Evidence of Intention of Vendor to rescind—Compound Interest, where Vendee in Default asks Specific Performance.*—The failure of the vendee to tender performance and demand a deed before filing a bill for the specific performance of a contract for the sale and conveyance of lands, only affects the question of costs: *Morris* vs. *Hoyt.*

A stipulation in such a contract, that the vendee shall "improve the premises," but specifying neither the kind nor extent of the improvements, is so indefinite that the intention of the parties cannot be known; and on a bill for specific performance, it will be treated as immaterial: *Id.*

A failure of the vendee to pay the taxes as stipulated in such a contract, stands upon the same basis, as respects specific performance, as a default in the payment of instalments of the purchase-money: *Id.*

A provision in such a contract, that on failure by the vendee to fulfil the agreements on his part at the time specified, the vendor may re-enter and take possession of the land, and all rights of the vendee under the contract shall be null and void, and all payments and improvements made by him shall be forfeited, does not make time so far of the essence of the contract, as that all rights of the vendee become *ipso facto* forfeited merely by a failure to pay at the times agreed upon, without any act on the part of the vendor indicating an intention to insist upon the forfeiture: *Id.*

Under such a provision, the only mode by which the vendor can forfeit the rights of the vendee, is by re-entering and taking possession of the land, or some act equivalent thereto: *Id.*

Where a vendee seeks the specific performance of a contract after default in the payment of instalments of principal and interest, he will be required to pay interest on the instalments of interest from the time they fell due: *Id.*

*Constitutional Law—Control of Detroit City over Ferries to the Canada Shore, not an interference with the Power of Congress over Commerce.*—The Ordinance of the City of Detroit, requiring ferry-boats running to the Canada shore to pay a license-fee, and imposing a penalty for its violation, is not unconstitutional as an interference with the power of Congress over commerce. And the master of a boat, enrolled and licensed under the

[1] From Hon. T. M. Cooley, Reporter; to appear in 11 Michigan Reports.

acts of Congress for the coasting and foreign trade, is liable to the penalty for running it as a ferry-boat without first obtaining a license from the city: *Chelvers* vs. *People.*

*Usury a personal Defence.*—Usury is a personal defence, to be made by a party to the contract. One who has purchased lands subject to a mortgage, cannot make this defence to the mortgage in a suit to foreclose it: *Sellers* vs. *Botsford.*

*Constitutional Law—"Due Process of Law"—Seller of Property cannot purchase of Himself.*—Unless in proceedings to collect the public revenue, no person can legally be divested of his property without remuneration or against his will, unless he is allowed a hearing before an impartial tribunal, where he may contest the claim set up against him, and be allowed to meet it on the law and the facts: *Ames* vs. *The Port Huron Log-Driving and Booming Co.*

The statute for the formation of log-driving and booming companies, in so far as it undertakes to authorize companies formed under it, without any necessity arising from the obstruction of their own business, to assume the control and management, on the public waters, of the logs of unconsenting parties who have made insufficient provision for running them, and to enforce compensation against the logs for thus controlling and managing them, is unconstitutional:

1. It allows persons thus organizing to assume a police power over the waters used, and thus to exercise a public office without either an election or an appointment.

2. It deprives persons of their property without due process of law, since under the statute the company or its agents must of necessity determine when the case arises which justifies assuming such control, and the company afterwards assesses its own charges, and proceeds to sell the property to pay them: *Id.*

No one without express authority of law can become a purchaser of property, which it is his duty to sell for the best price it will bring: *Id.*

*Equity of Redemption in Chattels.*—A mortgagor of chattels is entitled to redeem in equity, at any time before the mortgagee has foreclosed by reducing the property to possession, or by selling it under the power of sale in the mortgage: *Van Brunt* vs. *Wakelee.*

*Sale of Chattel Interests in Lands on Execution.*—Chattel interests in lands are to be sold on execution as personal estate. The sale of an estate

for years in lands, made in accordance with the statutory provisions for the sale of real estate, is void: *Buhl* vs. *Kenyon*.

*Statute prohibiting Ejectment on Mortgages—Bill to quiet Title by Party not in Possession.*—The statute taking from mortgagees the right to bring ejectment before foreclosure, is inoperative as to mortgages given prior to its passage: *Blackwood* vs. *Van Vleet*.

The fact that the statute allows two new trials in an action of ejectment, is no reason for the interposition of equity to try titles to land: *Id.*

Bill in equity was filed against one in possession of lands claiming them under tax titles, to have these titles declared void; and complainant's title to the lands quieted; and also for an injunction to restrain defendant from the commission of waste. Complainant had not established his right at law, and had brought no suit for that purpose. It was held that the bill could not be sustained: *Id.*

*Mortgage for Sums not specified—Statute of Limitations and Lapse of Time.*—A mortgage given to secure all existing debts of the mortgagor to the mortgagee, but not specifying their amount, is valid not only against the mortgagor, but against subsequent purchasers with actual or constructive notice: *Michigan Insurance Co.* vs. *Brown*.

The remedy by foreclosure of a mortgage, is not lost by an action at law upon the debt becoming barred by the Statute of Limitations. The equitable remedy may be pursued at any time before a presumption of payment arises by the lapse of twenty years' time. And this presumption differs from a limitation of action at law, in that it is not an *absolute* bar to the remedy: *Id.*

Where an action at law upon the debt is barred, a Court of equity will not, in a foreclosure suit, make a personal decree against the mortgagor. But the mortgagor is still a necessary party to the foreclosure suit: *Id.*

*Damages for False Imprisonment.*—If one is arrested on a void execution, and gives bond for the jail limits, the bond is void, and he cannot, in an action for false imprisonment, recover damages for remaining on the limits according to the terms of the bond: *Fuller* vs. *Bowker*.

*Review of the Evidence on Certiorari.*—On common law certiorari, only questions of law are open. and the Court cannot weigh the evidence to determine whether questions of fact have been correctly decided. It is only where there is an entire absence of proof on some material fact