Where an estate is vested in trustees who sell plots for building, subject to restrictive covenants, each purchaser has an equity against the other purchaser to compel the observance of the covenants: *Eastwood* vs. *Leaver*, 12 W. R. 195—L. J.

Such equity may be lost by acquiescence: *Id.*

In a suit to enforce such an equity the trustees are necessary parties, and the remaining purchasers ought to be represented on the record: *Id.*

Forgery.—The drawer of a check on a bank which was duly honored, and returned to him by the bank, afterwards altered his signature in order to give it the appearance of forgery, and to defraud the bank, and cause the payee of the check to be charged with forgery: *Held*, that this alteration did not constitute a forgery: *Brittain* vs. *Bank of London*, 3 F. & F. 465; 11 W. R. 569; 8 L. T., N. S. 382—Q. B.

Making a false entry in what purports to be a banker's pass-book, with intent to defraud, is a forgery: *Reg.* vs. *Smith*, 1 L. & C., C. C. 168.

Larceny.—A lady wishing to get a railway ticket (the price of which was 10s.), finding a crowd at the pay-place at the station, asked the prisoner, who was nearer in to the pay-place, to get a ticket for her, and handed him a sovereign to pay for it. He took the sovereign intending to steal it, and instead of getting the ticket, ran away: *Held*, that he was guilty of larceny at common law: *Reg.* vs. *Thompson*, 9 Cox C. C. 244; 1 L & C., C. C. 225; 32 L. J., M. C. 53.

A prosecutor found a check, and being unable to read, showed it to the prisoner. The prisoner told him that it was only an old check of the Royal British Bank, and kept it. He afterwards made excuses for not giving it up to the prosecutor, withholding it from him in the hopes of getting the reward that might be offered for it: *Held*, that these facts did not show such a taking as was necessary to constitute larceny: *Reg.* vs. *Gardner*, 1 L. & C., C. C. 243; 9 Cox C. C. 253.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

Admiralty Practice—Exceptions to Commissioner's Report.—Parties excepting to a report of a commissioner in admiralty proceedings, must state, with reasonable precision, the grounds of their exceptions, with the mention of such other particulars as will enable the court to ascertain,

[1] From J. W. Wallace, Esq., Reporter; to appear in Vol. I. of his Reports.

without unreasonable examination of the record, what the basis of the exception is: *Ex. gr.*, "If the exception be that the commissioner received "improper and immaterial evidence," the exception should show what the evidence was. If that "he had no evidence to justify his report," it should set forth what evidence he did have. If that "he admitted the evidence of witnesses who were not competent," it should give their names, and specify why they were incompetent, what they swore to, and why their evidence ought to have been rejected: *The Commander in Chief.*

This same necessity for specification, it is declared—though the case was not decided on that ground, the point not having been raised on argument—exists in a high degree in regard to an answer put in to an admiralty claim, which answer ought to be full, explicit, and distinct; and hence a defence to a libel for collision, which sets forth that the injured vessel "lay in an improper manner, and in an improper place," without showing in any respect wherein the manner or why the place was improper, is too indefinite: *Id.*

Objections to want of proper parties being matter which should be taken in the court below, a party cannot, in an admiralty proceeding by the owners of a vessel to recover damages for a cargo lost on their ship by collision, object here, for the first time, that the owners of the vessel were not the owners of the cargo, and therefore that they cannot sustain the libel. Independently of this, as vessels engaged in transporting merchandise from port to port are "carriers" if not exactly "common carriers," and as carriers are liable for its proper custody, transport, and delivery, so that nothing but the excepted perils of the sea, the act of God, or public enemies, can discharge them, it would seem that they might sustain the action within the principle of the *Propeller Commerce*, 1 Black 582: *Id.*

Suit for Debt—Defence that Debt arose from receipt of void Bills—Bill of Foreclosure—Execution under—Practice.—It is no defence to a suit for debt that the debt arose from the receipt of the bills of a bank that was chartered illegally and for fraudulent purposes, and that the bills were void in law, and finally proved worthless in fact; the bills themselves having been actually current at the time the defendants received them, and they not having proved worthless in his hands, nor he being bound to take them back from persons to whom he had paid them away: *Orchard* vs. *Hughes.*

When a bond is given for appeal in a bill of foreclosure of mortgage, the condition of the bond being simply that the appellant shall pay costs and damages, it does not operate to stay a sale of mortgaged premises already decreed: *Id.*

Execution cannot issue on a decree for foreclosure of a mortgage in chancery for the balance left due after a sale of the mortgaged premises (*Noonan* vs. *Lee*, 2 Black 499, recognised), and this (by opinion, however, of but a majority of the court) applies to the Territorial Court of Nebraska, as much as to the courts of states organized under the Judiciary Act of 1789: *Id.*

Patent Machine—Grant of Right to make and use—Duration of Right—Parol Evidence to prove Contracts.—A grant of a right by a patentee to make and use, and vend to others to be used, a patented machine, within a term for which the patent has been granted, will give the purchaser of machines from such grantee the right to use the machine patented as long as the machine itself lasts; nor will this right to use a machine cease because an extension of the patent, not provided for when the patentee made his grant, has since been allowed, and the machine sold has lasted and is used by the purchaser within the term of time covered by this extension. The rule differs from that applied to the assignee of the right to make and vend the thing patented, who holds a portion of the franchise which the patent confers, and whose right of course terminates with the term of the patent, unless there is a stipulation to the contrary: *Bloomer* vs. *Millinger.*

Bloomer vs. *McQuewan*, 14 How. 549, and *Chaffee* vs. *The Boston Belting Co.*, 22 Id. 223, approved.

How far parol proof may be introduced to show verbal agreements of the parties at the time when deeds were executed, and so to prove mistake or fraud in not executing what it was understood should be executed, discussed but not decided: *Id.*

Statute authorizing Consolidation of Connecting Roads—Effect on Contracts—Practice—Pleading.—The statute of Indiana, passed February 23d, 1853, which authorizes connecting railroad corporations to merge and consolidate their stock, and make one joint company of the roads thus connected, causes, when the consolidation is effected—as is declared by the Supreme Court of the state, in *McMahon* vs. *Morrison*, 16 Ind. 172—a dissolution of the previous companies, and creates a new corporation, with new liabilities derived from those which have passed out of exist-

ence. Hence, where the declaration avers that the defendant had agreed that stock of a particular railroad in Indiana should be worth a certain price at a certain time and in a certain place, and the plea sets up that under the above-mentioned statute of February 23d, 1853, the stock of the railway named was merged and consolidated by the consent of the party suing with a second railway named, so forming "one joint stock company of the said two corporations," under a corporate name stated, such plea is good, though it does not aver that the consolidation was done without the consent of the defendants. And a replication which tenders issue upon the destruction of the first company, and upon the fact that its stock is destroyed, rendered worthless, and of no value, traverses a conclusion of law, and is bad: *Clearwater* vs. *Meredith et al.*

Such a plea as that just mentioned contains two points, and two points only, which the plaintiff can traverse, the fact of consolidation and the fact of consent, and these must be denied separately. If denied together, the replication is double and bad: *Id.*

When a plaintiff replies to a plea, and his replication being demurred to, is held to be insufficient, and he withdraws that replication and substitutes a new one—the substituted one being complete in itself, not referring to or making part of the one which preceded—he waives the right to question in this court the decision of the court below on the sufficiency of what he had first replied. The same is true when he abandons a second replication, and, with leave of the court, files a third and last one: *Id.*

On demurrer to any of the pleadings which are in bar of the action, the judgment for either party is the same as it would have been on an issue in fact joined upon the same pleading, and found in favor of the same party; and judgment of *nil capiat* should be entered, notwithstanding there may be one or more issues of fact, because, upon the whole, it appears that the plaintiff had no cause of action. This rule of pleading declared and applied: *Id.*

SUPREME COURT OF MASSACHUSETTS [1]

Accommodation Note—Usury—Notice.—If an accommodation note is disposed of by the payee for less than its face, the transaction is usurious, although the indorsee takes it without notice that it was an accommodation note: *Whitten* vs. *Hayden.*

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

Sale—Mistake of Fact—Rescission by Agent.—The omission to discover the want of a signature to the indorsement of a bill of lading of goods which have been purchased and agreed to be forwarded, is such a mistake of fact as will entitle the purchaser to recover back money which he has paid to the agent of the vendor upon a draft for the price, with the imperfect bill of lading annexed; and the agent may properly yield to a demand for such repayment, without a suit, and if he has done so, he is not liable to an action by his principal: *Quimby* vs. *Carr.*

Alien—Suit in State Court—Seaman—Shipping Articles.—One alien may sue another in the courts of this commonwealth upon a contract made abroad, if the parties are transiently here: *Roberts* vs. *Knights.*

A seaman is not bound by shipping articles, which describe the contemplated voyages of the vessel as follows: "From Liverpool to Calcutta, thence if required to any ports or places in the Indian, Pacific, and Atlantic Oceans, and China and Eastern Seas, thence to a port for orders, and to the continent of Europe, if required, and back to a final port of discharge in the United Kingdom; the term not to exceed three years:" *Id.*

A seaman who, having sailed under shipping articles which are void, has left the vessel without the consent of the master, at a port where another seaman might readily be procured to supply his place, may recover his wages to that time, although an entry has been made in the log-book that he has deserted: *Id.*

Agreement—Specific Performance—Mistake—Equity.—A bill in equity may be maintained for the specific performance of an agreement to transfer shares of a corporation upon the payment at maturity without grace of a note given for the price thereof, although, owing to a mistake as to the phraseology of the agreement and note, payment of the amount is not offered until the last day when it would have become due if the note had been made in the usual form, if there were circumstances to excuse the mistake, and to show that the defendant ought not to avail himself thereof: *Todd* vs. *Taft.*

Equity—Amendment after Demurrer—Laches.—In a suit in equity brought to enforce against directors of a manufacturing corporation a personal liability for the corporate debts, under Revised Statutes, ch. 38, § 25, the plaintiff will not be allowed to amend his bill after a demurrer to it has been sustained, and after his demand is barred by the Statute of Limitations, provided he has been guilty of great laches in the prose-

cution of his suit, and in applying for leave to file an amendment: *Merchants' Bank* vs. *Stevenson et al.*

Assault and Battery—Damages.—In an action for an assault and battery, the plaintiff cannot be allowed, for the purpose of showing special damages, to prove that by reason thereof he lost a position to which he was about to be appointed, although the declaration contains averments to that effect: *Brown* vs. *Cummings.*

Senior Counsel—Liability of Party for Services.—A party to a suit, in which the employment of senior counsel is necessary, is liable for the reasonable value of the services of a counsellor at law who acts as senior counsel at the trial, in his presence, in consultation with him, and without objection from him, under a retainer for that purpose by the attorney of record, although there was a secret agreement between him and the attorney of record that such services should be paid for by the latter: *Brigham* vs. *Foster.*

Lease—Time of commencing.—A lease for a term of years "from the 1st day of July," begins on the 2d of July: *Atkins* vs. *Sleeper.*

Adjoining Lands—Uncertain Boundary—Oral Agreement as to.—If the owners of lots are in doubt as to the dividing line between them, and fix the line by an oral agreement, and occupy according to such agreement, no exception lies to an instruction to the jury that "although the presumption is that such was the true line, yet if it could be shown not to be so, such oral agreement and occupation would not bind the parties nor fix their rights, unless the line had been adhered to for the full term of twenty years: *Proprietors of Liverpool Wharf* vs. *Prescott.*

If a boundary line has been erroneously run between adjoining owners of land without fraud, and under a mutual mistake, there being no determination of the line by arbitration or other judicial decision, one owner is not estopped from claiming his land to the true line, because the other has with his knowledge erected buildings or incurred expense in consequence of the mistake: *Id.*

Insolvency—New Promise to pay.—A new promise in writing to pay a debt, made after the commencement of proceedings in insolvency, and before the granting of a certificate of discharge, is valid and binding: *Lerow* vs. *Wilmarth.*

Bankruptcy—Plea of Discharge.—In New York, a discharge in bankruptcy may be pleaded in bar to an action upon a judgment recovered in

that state before the granting of a discharge, but after the commencement of the proceedings in bankruptcy, upon a debt which existed prior to the commencement of such proceedings; and the same defence may be made to an action brought upon such judgment in this commonwealth: *Haggerty et al.* vs. *Amory.*

Married Woman—Trustee—Money lent to Husband.—If a portion of trust funds, the income of which is to be paid to a married woman for her life, and after her death to her husband for his life, with remainder over of the principal fund, is lent to the husband upon his note payable with interest semi-annually, and it is agreed by all the parties that the trustee shall not collect the interest, in order to avoid the trouble of receiving the same from the husband and paying it over to the wife, and in pursuance of this agreement the trustee omits for more than six years to collect the interest, the note is not thereby barred by the Statute of Limitations; but the trustee may set off the same in equity, after the wife's death, against a claim of the husband for the income: *Upham* vs. *Wyman.*

COURT OF APPEALS OF NEW YORK.[1]

Agent or Servant under Contract—Death of—Measure of Compensation for Services.—The compensation of an agent or servant, employed under a special contract, the complete performance of which is prevented by his sickness and death, is not confined to a *quantum meruit*, but is to be measured by the contract: *Clark* vs. *Gilbert.*

Whether the compensation is to be reduced by an allowance in the nature of damages for a loss of profits which, but for the agent's death, would have accrued to the principal as a result of his further services, *quære*: *Id.*

An agent was employed to superintend an engineer work under a contract by which he was to receive as wages one-third of the profits. He died after a considerable portion of the work had been done, and it was completed afterwards at a large profit. The case not showing how the profits were distributed as to time, they are to be deemed to have accrued rateably in proportion to the amount and cost of the work accomplished, and his compensation is measured by one-third of such a proportion of the whole profits as the cost of the work done at the time of his death bears to the entire cost of the work when completed: *Id.*

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[1] To appear in Vol. XII. of E. P. Smith's Reports.

Purchase by Execution-creditor under a previous Execution—Estoppel—An execution-creditor who, at the sale of his debtor's chattel upon a previous execution, purchased it subject to a mortgage which the officer making the sale assumed to be a valid lien prior to both executions, is estopped from disputing the validity of such mortgage: *Horton* vs. *Davis*.

Landlord and Tenant—Destruction of Building by Fire—Discharge from Covenant to pay Rent.—At common law, and independently of the statute, ch. 345 of 1860, the lessee of apartments in the upper story of a building, where there is no covenant, by either landlord or tenant, to rebuild, is discharged from his covenant to pay rent by the burning of the building, so that his enjoyment of the space in air demised to him becomes thereby impracticable: *Graves* vs. *Berdan*.

Otherwise, *it seems*, where the demise is such as to give the tenant an interest in the soil, and to authorize him to rebuild, so that thereby or otherwise he may have some beneficial enjoyment of the demised premises: *Id.*

Agent—Fraudulent Conduct of—Liability of Principal for.—Where a principal authorized an agent to draw and negotiate commercial paper for his use, and by a course of dealing in the recognition of such paper, drawn for legitimate purposes, had accredited drafts having nothing on their face to discriminate them from such as the agent had the right to issue, he is responsible to a purchaser for value and without notice, though the paper was issued fraudulently for the accommodation of a third party. *Exchange Bank* vs. *Monteath et al.*

The doctrine of *Aymar* vs. *North River Bank*, 3 Hill 263, reaffirmed for the fourth or fifth time, notwithstanding the known reversal of the judgment in that case by the late court for the correction of errors, the reversal remaining unreported, except by such posthumous remembrances as the present: *Id.*

Promissory Notes—Rights of Indorsee.—The transfer of bills of exchange given for the purchase price of chattels, but not accepted in absolute payment, does not transfer to the indorsee any right of action against the vendees for the unpaid purchase-money, except as they are liable on the bills: *Battle* vs. *Coit et al.*

Accordingly, where a partner sold his interest in the firm to the other members, receiving therefor bills to which some, but not all, of them were parties: *Held*, that his release of the partners not liable on the bills

was a defence to a suit against them for the purchase-money by the indorsee of the bills: *Id.*

Marine Insurance—Total Loss—Notice of Abandonment.—A notice of abandonment to the underwriters of a marine policy will not support a claim for a constructive total loss, unless it states, in such terms as to render the inference clear, that the damages exceed half the value of the subject insured: *McConochie* vs. *The Sun Mutual Ins. Co.*

A notice held insufficient which stated that a vessel containing the sugar insured had put into port in distress with several feet of water in her hold; that on landing the cargo it was found very seriously damaged; and that the insured abandoned the sugar and claimed a total loss: *Id.*

SUPREME COURT OF NEW YORK.[1]

Assignment for the benefit of Creditors—Duty of Assignee—Injunction —Statute of Limitations.—It being the duty of an assignee, under an assignment to him in trust for the benefit of creditors, to take care of and protect the assigned property, he may maintain an action of trespass against any person who interferes therewith: *McQueen* vs. *Babcock et al.*

The bringing of such an action by the assignee against one who assumes to take the assigned property out of his possession, is in furtherance of his duty, and hence is not an intermeddling with the property improperly, or within the sense and meaning of an injunction order prohibiting him from "intermeddling with, receiving, or collecting" any of the property of the assignor: *Id.*

Such an injunction is no bar to a suit against the sheriff, for taking the assigned property out of the hands of the assignee; and if suit is not brought within three years, the Statute of Limitations will be a good defence: *Id.*

Banks—Their Liability as Collecting Agents.—For the purposes of protest, a collecting agent occupies the position, and is held to the obligations, of a holder of commercial paper: *The State Bank of Troy* vs. *The Bank of the Capital.*

In the case of a bill or note sent to a bank as agent for *collection* merely, in the absence of proof of an express contract or commercial usage, it is not obligatory on the collecting bank to notify and duly charge *all* the prior parties to the paper, but only its own principal or immediate indorser: *Id.*

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[1] From Hon. O. L. Barbour, to appear in Vol. XLI. of his Reports.