counsel and member of Parliament. He is well spoken of by the English law journals, and the fact of his appointment being received at the hands of a political opponent, is, perhaps, evidence of his real fitness for the position, though it may not be too uncharitable to suggest that, in the present nice balance of strength in the House of Commons, the vacating of a seat in the opposition was of even more value to the Palmerston government than the rewarding of a political adherent.

J. T. M.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME COURT OF IOWA.[2]

SUPREME COURT OF MASSACHUSETTS.[3]

SUPREME COURT OF NEW HAMPSHIRE.[4]

SUPREME COURT OF NEW YORK.[5]

SUPREME COURT OF PENNSYLVANIA.[6]

ADMIRALTY.

Jurisdiction—Maritime Torts—Flow of the Tide—Concurrent Jurisdiction—Pleading—Averments.—The jurisdiction of the admiralty courts of the United States is not exclusive in all cases of maritime torts: *Trevor* vs. *The Steamboat Ad. Hine*, 17 Iowa.

A cause of action arising on a navigable river and not within the flow of the tide, was not within the admiralty jurisdiction of the courts of the United States, under the Judiciary Act of 1789: *Id.*

Under the Act of Congress of February 26th 1845, the state courts have concurrent jurisdiction with the Admiralty Courts of the United States of maritime torts on navigable rivers where one of the parties is a steamer or other vessel employed in the commerce or the navigation of such river: *Id.*

The state courts will not assume that a cause is within the exclusive jurisdiction of the United States courts, when the facts essential to such jurisdiction are not alleged in the pleadings: *Id.*

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[1] From N. L. Freeman, Esq., Reporter; to appear in 32 Illinois Reports.

[2] From T. F. Withrow, Esq., Reporter; to appear in 17 Iowa Reports.

[3] From Charles Allen, Esq., Reporter; to appear in vol. 9 of his Reports.

[4] For these abstracts we are indebted to the kindness of the Judges. The volume of Reports in which they will appear cannot yet be designated.

[5] From Hon. O. L. Barbour, Reporter; to appear in vol. 43 of his Reports.

[6] From R. E. Wright, Esq., Reporter; to appear in vol. 11 of his Reports.

ATTACHMENT.

Trustee Process—Unliquidated Damages.—A claim for unliquidated damages cannot be reached by foreign attachment: *McKean* vs. *Turner and Trustee*, Sup. Ct. N. H.

A claim arising upon a policy of insurance upon mills, machinery, gearing, fixtures, and lumber, until an adjustment of the loss, must be regarded as unliquidated: *Id.*

ATTORNEY.

Assignment of Verdict to Attorney—Set-off of Judgments.—An assignment made by a party to his attorney of a verdict and the judgment to be entered upon it, to pay the attorney for his services and disbursements in the action, is upon a good and valid consideration: *Mackey* vs. *Mackey*, 43 Barb.

After verdict for the plaintiff, in an action for a personal tort, but before judgment, the plaintiff assigned the verdict together with the judgment to be entered upon it, to his attorney, in payment for his services and disbursements. *Held*, that the assignment had the effect to transfer the verdict and the judgment when entered, to the assignee; and that the latter had not only a prior but a superior equity to that of the defendants claiming a right to set off a judgment previously recovered against the assignor: *Id.*

The equity to have one judgment set off against another cannot arise until judgment is actually recovered in the second action. An assignment made previous to that event, transferring a legal or even an equitable title to the demand, will have the effect of preventing the right of set-off from accruing: *Id.*

BASTARD.

Support of, when born in another State.—A complaint cannot be maintained in this Commonwealth for the support of a bastard child begotten and born in another state, if both of the parents were then residents of that state, and the complainant has never become a resident of this Commonwealth: *Grant* vs. *Barry*, 9 Allen.

CONSTITUTIONAL LAW.

Statutes affecting Municipal Corporations—Assent to—Validity.—The legislature, by an Act passed April 17th 1860, constituted certain persons, therein named, commissioners to locate and erect, in the city of New York, a suitable building to be used as a court-house, &c., with power to purchase the necessary grounds for that purpose; declared that the ground and buildings should be the property of the city; and required the board of supervisors of the county to levy by tax an amount not exceeding $50,000, for the purpose specified. The commissioners entered into a contract, on behalf of the city, with the plaintiff, for the purchase of a lot of land on which to erect the court-house. *Held*, on demurrer, that in the absence of any acceptance of, or assent to the act by the corporation of New York, the commissioners were not, by force

of the act, the agents of the corporation, and had no power to bind the city by their contracts: *Van Valkenburgh* vs. *The Mayor, &c., of New York*, 43 Barb.

Held also, that for the legislature to appoint agents to purchase property for the city, and at its expense, was an extraordinary assumption of power, to which the court could not assent: *Id.*

CONTRACT.

Parol Evidence—Changing a Contract.—Where an instrument sued upon is payable in "current bank notes," it is not competent to show by extrinsic evidence that by such bills was meant depreciated bank bills, and that they were not of the value of coin. To permit such proof would be to alter, change, or modify the agreement of the parties, which cannot be allowed: *Osgood* vs. *McConnell*, 32 Illinois.

CORPORATIONS.

Services before Organization — Liability — Evidence — Experts.—Where, after the charter and before the organization of a corporation, services were rendered which were necessary to complete that organization, and after it had been perfected the corporation elected to take the benefit of such services, knowing that they were rendered with the understanding that compensation was to be made, it will be held liable to pay for the services upon the ground that it must take the burthen with the benefit: *Low* vs. *Connecticut & Passempsic Railroad*, Sup. Ct. N. H.

Held also, that a suit at law will lie to recover such compensation—but that no promise to pay would be implied from the fact that such services were rendered at the request of any number of the grantees less than a majority: *Id.*

Held also, that the sole power of determining by what measures, and by what agency, such organization shall be effected, rests in the body of the grantees, a majority of whose votes must govern: *Id.*

Where the value of the plaintiff's services in obtaining subscriptions to the capital stock, and arousing public attention to the enterprise, was drawn in question, *Held*, that correspondence between him and others interested in the subject was admissible as bearing upon the extent of his services—and also that evidence of his having previously conducted successfully business requiring qualifications similar to such as would be needed for the business in question, was admissible: *Id.*

Held also, that parol evidence that subscriptions to stock to a large amount were solicited and obtained by him, was admissible, there being no controversy that such subscriptions were made: *Id.*

Evidence of the statement of the president of the corporation that the plaintiff ought to be paid for his services if any one was paid, is not admissible without showing some authority, beyond the mere fact of his holding that office: *Id.*

The value of horses is not a question of science, trade, or skill, in this state, and therefore the opinion of one acquainted with the price of such property is not admissible: *Id.*

Currency.

The term "currency" means bank bills, or other paper money, which passes as a circulating medium in the business community, as and for the constitutional coin of the country. "Current bank bills" mean precisely the same thing as "currency:" *Osgood* vs. *McConnell*, 32 Illinois

Damages.

Instruments payable in "Current Bank Notes."—The true measure of damages in an action of assumpsit, upon a certificate of deposit of "current bank notes," which is to be "paid in like funds," is the number of dollars specified as having been received: *Osgood* vs. *McConnell*, 32 Illinois.

Equity.

Weight of Evidence—New Trial.—In the case of issues awarded in equity, and a motion for a new trial upon the ground that the verdict is against evidence, the court will, ordinarily, be governed by the rules and principles applied to such motions in suits at law; and will not grant a new trial merely because on weighing the evidence the court would have reached a different result: *Mark* vs. *Congregational Society*, Sup. Ct., N. H.

Estoppel.

Admission.—A party who gives a certificate of deposit for "current bank notes," thereby admits that to be the character of the money received, and by such admission he is estopped from showing the funds received were not current, or to claim the right to pay in anything but the same character of funds: *Osgood* vs. *McConnell*, 32 Illinois.

Evidence.

Value, how it may be proved.—When the question is as to the market value of any article of property at a given time and place, sales of the same article, and other articles proved to be similar, if not too remote in time, place, or other circumstance, are evidence of such value: *Kingsbury* vs. *Moses*, Sup. Ct., N. H.

Nor does it make any difference as to the admissibility of the evidence of such sales, whether they were made before or after the commencement of the suit: *Id.*

But the motives and interest of the parties, and other circumstances of the sale, may be inquired into and considered by the jury in determining the weight to be given to such evidence: *Id.*

Where A., a house-carpenter, worked for B., by the day, upon a house for C, in a suit by A. against B. for these services, where the question is as to their value by the day, it is competent for B. to show that he has settled with C. for the services of A., and been paid a certain sum per day for such services soon after they were rendered, as tending to show their value: *Id.*

And though it appears that on such settlement and payment B. gave to C. a receipt in writing for the money received for A.'s services, yet

it is competent to prove such settlement and payment by parol, without producing the receipt or accounting for its absence: *Id.*

Where a witness testifies what he "understood" from a conversation between others, he may mean to state what the parties in fact or in substance said, as he understood them, or he may mean merely to give his inferences from what they said. In the former case the testimony is competent; in the latter it is not: *Id.*

So the "impression" of a witness is competent, if derived from recollection; but if it be merely his belief, founded upon hearsay, or his mere inference, it is incompetent: *Id.*

What a witness "presumes" to be true, without actual knowledge upon the subject, is not competent as evidence of the fact presumed: *Id.*

If a party taking a deposition and using it on the trial, has proposed a question on the direct examination, which is competent and proper both in form and substance, but the witness in answering makes an improper statement, not competent as evidence, and not responsive to the question, the party using the deposition may object on the trial to such incompetent testimony, and it should be excluded, though no objection was made at the caption: *Id.*

Parol—Under Plea of Former Recovery.—Where the amount declared for in a proceeding for entering a judgment by confession under a letter of attorney, is "a thousand dollars," the note declared upon being for $2000, and judgment entered for the same amount; this judgment may be pleaded in bar of another recovery upon such note, and parol proof would be admissible, if necessary to establish the identity. Under the plea of former recovery parol proof is often resorted to for such purpose: *Hall* vs. *Jones*, 32 Illinois.

Former Recovery—Of the Evidence that will establish the Plea.—But in such case, the note, warrant of attorney, and cognovit, all being for the true amount, and corresponding with the judgment in that regard, would, of themselves, prove the identity, and show that the discrepancy between these and the declaration was a mere clerical error: *Id.*

Husband and Wife.

Validity of Judgment by Husband to Wife.—A judgment admitted to be unobjectionable in point of honesty, given by a husband to his wife to secure her separate estate, is not void either in law or equity because of the legal unity of the parties: *Williams's Appeal*, 11 Wright.

Charging Wife's Separate Estate.—In order to charge the separate estate of a married woman with a debt, prior to the Act of 1860, there must have been an intention to charge the same, stated in the contract itself, or the consideration must have been one going to the direct benefit of the separate estate: *White* vs. *Story*, 43 Barb.

The subsequent promise of the married woman to pay the debt out of her separate estate, will not supply the defect of proof in the original contract: *Id.*

The furnishing of a supper, on the occasion of her daughter's marriage, will not be deemed a consideration going to the direct benefit of the separate estate: *Id.*

Insurance.

Prohibition of Alienation.—Waiver of Condition.—A transfer by one tenant in common to co-tenant, or from one partner to another, is within the prohibition of a policy of insurance which declares that alienation by sale or otherwise shall forfeit the policy: *Buckley* vs. *Garrett*, 11 Wright.

But a provision in a policy of insurance that it should become void upon a sale or transfer of property insured, unless it was also transferred to the purchaser and the transfer accepted by the president or secretary of the company within twenty days after the sale or transfer, or before a fire, the assignment to be indorsed on or annexed to the policy, does not apply to a case where the assured had parted with his interest in the policy by an assignment approved by the company: and the policy is not avoided by such assignment: *Id.*

Where the policy was to continue so long as the yearly payments stipulated therein were made, and after its assignment approved by the insurance company, one of the partners of the firm insured sold and transferred his interest in the property insured to his copartner who continued for several years thereafter to make the yearly payments required by the policy to the treasurer, the authorized agent to receive them, but no notice of sale of the partnership interest was regularly given or any transfer of the policy executed to the purchaser, it is not thereby necessarily made void: but the facts were evidence to be submitted to the jury upon the question whether the state of the policy was known to the company; if so, their receipt of the annual premiums for years after the assignment tended to show an acquiescence in the alienation, and therefore a waiver of the forfeiture and consequent estoppel: *Id.*

Hence it was error to instruct the jury that the transfer by one of the partners to the other having made the policy void, the payment of the annual instalment to the treasurer and acceptance by him would not render it valid, and that under the evidence the plaintiff was not entitled to recover: *Id.*

Interest.

From what Time computed—Vendor and Vendee.—The title of a grantee of land was defeated through a prior mortgage, which was foreclosed after his purchase, the premises sold under the decree of foreclosure, and a master's deed executed to the purchaser. The grantee whose title was thus defeated, sought, by bill in chancery, to recover back from his grantor the purchase-money which he had paid prior to the foreclosure, with interest. It was *held* the interest should be computed only from the date of the master's deed: *Ohling* vs. *Luitjens*, 32 Illinois.

Judgment.

For Want of Plea—Lien of.—A judgment for want of a plea is final, and a lien upon real estate of the defendant from the date of the entry, though the damages may not be assessed, if the claim in the action be for a sum certain, or the amount may be ascertained by calculation

from the demand set forth in the pleadings: *Sellers* vs. *Burk et al.*, 11 Wright.

Where, in an action of assumpsit upon a valued policy of insurance against an insurance company, insurers in case of total destruction of the vessel insured by fire, the value being fixed in the policy and claimed in the declaration, judgment was taken for want of a plea, the judgment was final, and a lien from its date though damages were not presently assessed: *Id.*

Hence, title to a ground-rent owned by the defendants at the date of the entry of the judgment, for want of a plea passed to a purchaser at sheriff's sale upon execution issued thereon: *Id.*

Jurisdiction.

General Rule.—When a statute upon a general subject has provided a tribunal for the determination of questions connected therewith, the jurisdiction thus conferred is exclusive, unless otherwise clearly expressed or manifested: *Macklot* vs. *Davenport*, 17 Iowa.

Revenue Law.—When a statute in relation to revenue provides a tribunal for the correction of the errors of revenue officers, by proceedings in the nature of an appeal to it, such quasi-appellate jurisdiction is exclusive: *Id.*

Extent of Rule.—Such exclusive jurisdiction does not prevent a party from resorting to the ordinary tribunal for a remedy against the malice or corruption of a revenue officer, or availing himself of the general remedies of *certiorari* or *mandamus* to such special tribunal: *Id.*

Justice of Peace.

Liability of Surety of, for Money collected.—A surety on the official bond of a justice of the peace is liable for money collected by him in his official capacity, though without suit; it is not necessary that it should be collected by process: *Ditmars et al.* vs. *Com. ex rel. Scott*, 11 Wright.

Landlord and Tenant.

Notice to quit—Joint Lessors.—A notice to quit by two of three joint lessors will not terminate the entire tenancy, so as to enable the three lessors to maintain summary proceedings under the Landlord and Tenant Act: *Pickard et al.* vs. *Perley*, Sup. Ct., N. H.

Where the party giving the notice assumed to act for the three lessors, but had in fact no authority from one of them, a subsequent ratification made after the time when the notice was to take effect, will not be equivalent to a prior authority: *Id.*

Lease.

Waiver of Exemption by Lessee.—Under a clause in a lease stipulating that all personal property on the premises should be liable to distress for rent in arrear, and that all right of exemption should be waived, the waiver extends only to the property upon the premises and not to the debt for rent: *Mitchell* vs. *Coates*, 11 Wright.

Hence, where the lessor gave notes without waiver for the rent, and afterwards a judgment instead, upon which choses in action were attached, he is entitled to claim his exemption therein: *Id.*

Limitations.

Acknowledgment to avoid.—To avoid the plea of the Statute of Limitations, in an action on a note brought more than six years after maturity, the evidence of a new promise, or of such acknowledgment of the particular debt as are consistent with a promise to pay it, must be clear and satisfactory; if so, the plea of the statute is answered, though the promise and acknowledgment were made after six years from maturity of the original contract: *Yaw* vs. *Kerr*, 11 Wright.

The action must be brought upon the original undertaking and not upon the new promise, and when the statute is pleaded the new promise is proved to show that the objection to the old promise has been waived: *Id.*

Malicious Prosecution.

Evidence of Malice and want of Probable Cause.—Evidence that a criminal prosecution was commenced for the purpose of obtaining possession and ownership of personal property, alleged to have been stolen, is, in an action on the case for malicious prosecution, proof of want of probable cause, and consequently of malice: *Schofield* vs. *Ferrers*, 11 Wright.

But want of probable cause is evidence of malice only and not malice itself, and therefore must be referred to the jury for them to decide as to the existence of malice; hence, an instruction to the jury that if there was not probable cause they should find for the plaintiff, was error: *Id.*

In the action for malicious prosecution, the record of a replevin for the same property which was alleged to have been stolen is not admissible; it was for a different cause of action: *Id.*

Mortgage.

Parties to Foreclosure—How far Foreclosure is a Satisfaction of the Debt.—A mortgage was given upon several tracts of land. Upon the death of the mortgagor, his devisees sold and conveyed one of those tracts. Afterwards, the mortgage was foreclosed in equity, without the subsequent purchaser being made a party to the suit. All the lands were sold *en masse*, by the master under the decree of foreclosure, for the whole amount of the debt. It was *held*, the sale was void as to the tract so purchased from the devisees, their grantee not being a party to the suit for foreclosure; but as to the residue of the lands was valid, and operated to satisfy the debt, and discharge the tract held by the grantee of the devisees from the mortgage: *Ohling* vs. *Luitjens*, 32 Ills.

Account—Tender.—When the mortgagor of real estate has demanded of the mortgagee an account of the amount due upon the mortgage, such account must not only be seasonably rendered, but must be a just and true account, otherwise the mortgagor may bring his bill in equity to redeem, or file his petition at the trial term of the Supreme Judicial

Court to have the amount justly due determined, at his election: *Currier* vs. *Webster*, Sup. Ct., N. H.

When an account rendered by a mortgagee contains certain items that are just and true, with others that are incorrect and unjust, the mortgagor may tender the amount justly due, and rely upon his tender, but he is not compelled so to do, but may file his bill or petition in order to have the true amount determined: *Id.*

An error in the footing of such an account, where all the items are given, and the computation is plain, and the mistake so evident that no one in the exercise of ordinary care could be misled by it, will not vitiate the account: *Id.*

Municipal Bonds.

Sale in Violation of the Law authorizing them—Rights of the County.—Where bonds issued by a county in payment of its subscription to the stock of a railroad company were sold below par in violation of the statute authorizing their issue, the county may by proceeding in equity compel the holder to receive in satisfaction of the bonds the sum paid by the first purchaser with interest thereon: *County of Armstrong* vs. *Brinton*, 11 Wright.

In such a proceeding against a holder who was the original purchaser, it is not necessary to make the railroad company a party defendant: *Id.*

The suggestion as to the proper course to be taken by counties in such cases made in *Thomas' Case*, 8 Casey 230, and repeated in *Diamond* vs. *Lawrence County*, 1 Wright 358, re-affirmed: *Id.*

Municipal Corporation.

Boundary Lines of Cities on their Water-Fronts—Jurisdiction follows the advancing Shores—Effect of Taxation upon the Status of Property.—For the purpose of ascertaining whether particular property is situated within the city of Brooklyn, the line of low water, as the water flows in the East River after the land is reclaimed from the river or bay by the erection of wharves and piers, and the filling in from the shore for that purpose, is to be deemed the dividing line between the cities of New York and Brooklyn: *Luke et al.* vs. *The City of Brooklyn*, 43 Barb.

The jurisdiction of the city of Brooklyn must from necessity follow the shore as it advances into the river or bay, whether the accretion proceeds from alluvion or artificial deposits and erections: *Id.*

Piers and buildings which are taxed in the city of Brooklyn, must, in an action against the city to recover the value thereof on its being destroyed in consequence of a mob or riot, be regarded as within the corporate limits and boundaries of Brooklyn: *Id.*

Taxation—Extension of Limits—When Taxes may be assessed—General Rule.—While the courts will not interpose to prevent the mere extension of the boundaries of a municipal corporation, they will limit the exercise of the taxing power, as nearly as practicable to the line where it ceases to be for purposes beneficial to the proprietor in a municipal point of view: *Fulton* vs. *The City of Davenport et al.*, 17 Iowa.

When the owners of property embraced within the corporate limits by extensions of the boundaries thereof, cause the same to be laid out into

town or city lots with streets and alleys, and plotted as such, it becomes subject to municipal taxation for all proper municipal purposes: *Id.*

Where property situated within the limits of a municipal corporation has never been dedicated as town or city property, by being laid out and plotted as such, but is in such close proximity to the settled and improved parts of the town, that the corporate authorities cannot open and improve streets and alleys, and extend to the inhabitants the usual police regulations and advantages without incidentally benefiting the proprietors of such property in their personal privileges and accommodations, or in the enhancement of their property, the power to levy municipal taxes thereon arises; but it should be exercised with great circumspection: *Id.*

Negligence.

Child not accompanied by Parent.—The fact that a father has voluntarily and unnecessarily sent his child of two years and four months old, unattended, to his home, which was across a public street in a large city, and at a distance of thirty feet down the street, and then turned away and exercised no further oversight or care over him, shows such a want of care, that no action can be maintained by the child against one who ran over and injured him: *Callahan* vs. *Bean*, 9 Allen.

Partnership.

Bill for Account—What Rights to be adjudicated.—Upon a bill in equity for an account, filed by one partner against his copartners after the termination of the partnership, all the parties are to be regarded as actors, and the decree should settle the partnership concerns between all the partners, as if each was a complainant filing his bill against his copartners: *Raymond* vs. *Came*, Sup. Ct., N. H.

Hence, in such a proceeding, not only the claims of the complainant against the defendants, but the claims of each defendant among themselves, should be adjusted and adjudicated, and executions may be issued in favor of each partner to whom a balance is found due against such as are equitably liable to pay the same: *Id.*

In such a proceeding, if a balance is found against the complainant in favor of the defendants, or any of them, a decree may be entered in favor of such defendants upon the plaintiff's bill: *Id.*

Railroad.

Liability as Carrier of Goods.—A railroad corporation, as a common carrier of goods, can by contract exempt itself from all liability for the loss of, or an injury to goods, from negligence: *Lee et al.* vs. *Marsh, receiver, &c.*, 43 Barb.

The plaintiffs made an agreement with the defendant as receiver of the Erie Railroad Company, for the transportation of live-stock over the road. The contract exonerated the defendant from all liability for loss or damage that might happen from any other cause than wilful negligence or fraud; and stated that the rate of freight to be paid by the plaintiffs had been reduced in consequence of their assuming these risks. *Held*, that the defendant was not liable for the damages to the plaintiff's cattle arising from the cars being thrown off the track, where it was

found by the referee that the occurrence was without any wilful negligence on the part of the defendant or his agents: *Id.*

Where animals transported by railroad were killed, by an accident for which the company was not liable, and the agents of the company offered to convey the dead stock through, if the owner, who accompanied the train, would take charge of them, who refused to do so: *Held*, that the owners had no claim to recover of the railroad company, on the ground that they had failed to deliver the carcasses of the dead animals: *Id.*

Res Adjudicata.

Contract—Acceptance.—In an action on a contract for building a house for and on the land of the defendant, the defence was, non-performance by the plaintiff—verdict and judgment for the defendant. In an action on a *quantum valebat* for the same material and labor, it was alleged, that since the trial of the former action the defendant had accepted the work and entered into the possession of the building: *Held*, that if the defendant accepted the work, the former judgment would not conclude the parties as a prior adjudication; but that such acceptance was not manifested by mere use and occupation: *Corwin* vs. *Wallace*, 17 Iowa.

Sale.

Time of Passing of Title—Constructive Delivery.—If a bill of sale of barrels of mackerel, describing them as marked No. 1, No. 2, and No. 3, respectively, includes all that the vendor has on hand of any particular number, the title thereto will pass to the purchaser, although the same are not separated from other barrels of mackerel. But if the bill of sale does not include all that the vendor has on hand of any particular number, and no separation or special designation is made of those which are intended to be sold, the title will not pass, although the vendor gives to the vendee a storage receipt for them: *Ropes* vs. *Lane*, 9 Allen.

If property is sold and a constructive delivery thereof made to a common agent of two purchasers, without any separation of their respective portions, another purchaser of the same property from the original owner cannot avail himself of such want of separation and division of their portions between themselves to defeat their title: *Id.*

Ship Broker.

Commissions.—A ship broker does not entitle himself to receive commissions from the sellers of a ship, merely by introducing their customer to them, unless he is employed by them as their broker or agent, upon a contract express or implied, or proves a custom for ship brokers to receive commissions from the sellers in such cases: *Cook* vs. *Welch*, 9 Allen.

Shipping.

Freight—Foreign Law.—In the absence of any express agreement to the contrary, a payment made in advance to the owner of a ship for freight, may be recovered back, if the freight is not earned: *Chase* vs. *Alliance Insurance Co.*, 9 Allen.

If, under a charter-party made in Scotland, money is advanced there by the charterer to the owner of a ship towards the freight, the question whether it can be recovered back if the freight is not earned, depends upon the law of Scotland: *Id.*

The law of Scotland upon a question of commercial law will be presumed to be the same as our own, in the absence of Scottish adjudications or evidence to the contrary, although the law of England upon the subject is different: *Id.*

Stamps.

Depositions in Legal Proceedings.—If the original writ in an action is duly stamped, depositions taken to be used therein need not be stamped: *Cardell* vs. *Bridge*, 9 Allen.

Surety.

Subrogation—Purchase by Surety.—When a debtor has given any pledges or security to his surety, the creditor is entitled to the benefit of the same, and may, by proceedings commenced in equity, before the surety has surrendered or discharged the same, subject them to the payment or discharge of his debt: *Rankin et al.* vs. *Wilsey et al.*, 17 Iowa.

Where the rents arising from certain property were pledged to the surety for the payment of debt, and the surety afterward became invested with the legal title to the property, it was held that the pledge was merged and could not be asserted by the creditor.

Absolute Liability.—The general rule that a discharge of a principal releases the surety, does not apply when a person *sui juris* guarantees the obligation of, or becomes surety for a married woman, minor, or other person incapable of contracting: *Jones* vs. *Crosthwaite et ux.*, 17 Iowa.

Taxation.

Remedy when void—When erroneous.—When the property of a party is seized to satisfy a tax levied under an unconstitutional act, or without authority or jurisdiction under the law, he may recover his property by replevin; or, when matters of equitable cognisance are also involved, he may restrain their collection by injunction; or he may by proper action make the collector and those who act under him liable for damages resulting from enforcing the collection of the same: *Macklot* vs. *Davenport*, 17 Iowa.

The remedy of a party against whom taxes are *erroneously* assessed, is by application to the board of equalization for a correction of the error: *Id.*

Vendor and Vendee.

Executory Contract for purchase of Land—Death of Vendee.—Where a contract for purchase of land is, after decease of vendee, upon petition of his administrator duly proved in the Common Pleas and decree made to that effect, the vendor cannot, in ejectment for the land, set up want of notice of the taking of testimony to prove the contract; the proof of

the time and place of taking the testimony was *primâ facie* concluded by the decree made as to the sufficiency of the proof of the execution of the articles: *Thompson* vs. *McKinley's Admr.*, 11 Wright.

A vendee under articles who tenders the balance of purchase-money due thereon to the vendor and demands a deed for the land, may, upon refusal to receive the money and make the deed, in an ejectment for the land by the vendor brought without a tender of the deed, upon the trial prove the tender of the money and pay the amount of it into court, and in such a case he is not liable for interest between the time of the tender and the trial: *Id.*

A conditional verdict in ejectment should always fix the time when the money is to be paid: *Id.*

Fraudulent Representations.—One, who has been induced to purchase and take a conveyance of real estate described as "lot No. 66" in, &c., by the false and fraudulent representations of the vendor that the boundaries of that lot were certain specified lines, including two parcels, which in fact were not parts of the lot, may maintain an action on the case against the vendor for such false and fraudulent representations: *Newell* vs. *Horn*, Sup. Ct., N. H.

What Rights pass by Mortgage or Deed.—A party having purchased lands, most of the purchase-money payable at a subsequent day, mortgaged the premises to a third person. After this mortgage was recorded, the mortgagor and his vendor rescinded their contract, the latter selling and conveying the lands to another person. *Held,* that whatever right the mortgagor had in the premises at the time he executed the mortgage, passed thereby to the mortgagee, and no more. That was simply a right to purchase the property for the consideration stipulated in the contract of purchase: *Alden* vs. *Garver*, 32 Illinois.

Even if the mortgagee had taken an absolute conveyance instead of his mortgage, he would have acquired no more than a right to receive a conveyance from the original vendor, or his grantee, upon payment of the purchase-money: *Id.*

Subsequent Purchaser.—His Rights.—The party purchasing from the original vendor, after such mortgage was recorded, took the premises subject to the rights of the mortgagee, as above described. He also held as good a position as against the mortgagee, as his vendor held before the original contract of sale was rescinded: *Id.*

Merger—Prior Lien.—The prior lien held by such original vendor upon the premises, for the purchase-money, was not merged in the contract of rescission, so as to give his vendee's mortgagee a first lien even as against such subsequent purchaser: *Id.*

WILL.

Devise of Real Estate free of Mortgage.—If a testator in his will devise certain real estate, and directs that a mortgage therein shall be paid from his other property, and afterwards executes a deed thereof to the devisees, subject to the mortgage, it is the duty of the executor to pay off the mortgage: *Bradford* vs. *Forbes*, 9 Allen.