ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF MAINE.[1]

SUPREME COURT OF NEW HAMPSHIRE.[2]

COURT OF APPEALS OF NEW YORK.[3]

SUPREME COURT OF MISSOURI.[4]

AGENCY.

Power of Attorney to Agent—Notice of extent of Agent's Authority.—A power of attorney given by a principal to his agent to execute, sign, draw, and indorse notes and bills in the business of the principal, will not import an implied authority to use the name of the principal in joint transactions with other persons and for their benefit: *Mechanics' Bank* v. *Schaumburg*, 38 Mo.

A. gave W. a power of attorney, in her name, to borrow money, draw, sign, and indorse bills and notes, and to execute deeds, &c. B. also gave W. a similar power. W., who was president of the bank and kept an account with it in his own name, presented these powers to the bank as his authority to sign the names of A. and B. to joint notes, the proceeds of which notes went to W., of which the bank had notice: *Held*, that as the officers of the bank had, by the powers of attorney, notice of the extent of W.'s authority, the notes were not given in pursuance of the authority, and that the bank had notice of the want of power: *Id.*

ATTACHMENT.

Feme Covert as Trustee.—In an action against several principal defendants, the fact that a woman summoned as trustee is the wife of one of these principal defendants, is not of itself, in this state, sufficient to excuse her from making a disclosure, or from answering material questions as to her title to certain lands which were attached in the suit, and of which her husband was in possession at the time of the attachment: *Claremont Bank* v. *Clark*, Sup. Ct. N. H.

BANKS.

Loss of Deposit-Book by Depositor.—Where the plaintiff, at the time of making a deposit of money in a savings bank, accepted as the evidence thereof a book stating the deposit, and containing this clause, "Depositors are alone responsible for the safe-keeping of the book and the proper withdrawal of their money; no withdrawal will be allowed without the book, and the book is the order for the withdrawal:" *Held*, that the clause must be taken to have made part of the contract between the plaintiff and the bank: *Heath* v. *Portsmouth Savings Bank*, Sup. Ct. N. H.

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[1] From W. W. Virgin, Esq., Reporter; to appear in 53 Maine Rep.

[2] For these abstracts, we are indebted to the judges of the court. The cases will appear in 46 or 47 N. H. Rep.

[3] From Joel Tiffany, Esq., Reporter; to appear in 35 N. Y. Rep.

[4] From Chas. C. Whittlesey, Esq., Reporter; to appear in 38 Mo. Rep.

In *assumpsit* brought against the bank for such a deposit, where it appears that the plaintiff's book had, before the commencement of the action, been lost by, or stolen from, him, and that thereupon he exhibited to the bank evidence of this and demanded his deposit, which the bank declined to pay to him without indemnity, and that he commenced the action without offering any indemnity, he cannot recover: *Id.*

Bailment—Agency—Negligence.—A bank receiving promissory notes from its depositors for collection is responsible for the negligence of a notary appointed by it for a year, and from whom it required a bond for the faithful discharge of his duties, in failing to give notice to an indorser of a negotiable promissory note of a demand upon and refusal of payment by the maker, by which the indorser was discharged. The notary is not in such a case an independent officer, in the discharge of a duty devolved upon him by law, but is the agent of the bank: *Gerhardt* v. *Boatmen's Saving Institution*, 38 Mo.

Bond.

Delivery by Obligor with Blanks to be filled.—A party executing a deed, bond, or other instrument, and delivering the same to another, knowing that there are blanks in it to be filled, necessary to make it a perfect instrument, must be considered as agreeing that the blanks may be thus filled after he has executed it: *Inhabitants of South Berwick* v. *Huntress et al.*, 53 Me.

And this principle includes the insertion of the penal sum of a collector's bond: *Id.*

Criminal Law.

Evidence on Trial for Murder.—It is not erroneous, on the trial of one who was last seen with a murdered man a few moments before the homicide, to admit proof, by those who arrested him, that they found his clothing stained with blood: *The People* v. *Jose Gonzalez T. Fernandez*, 35 N. Y.

Such stains upon the person and clothing of the accused are among the ordinary *indicia* of homicide; and the practice of identifying them by circumstantial evidence, and by the inspection of witnesses and jurors, has the sanction of immemorial usage in all criminal tribunals: *Id.*

Matters of common observation may ordinarily be proved by those who witness them, without resorting to scientific or mechanical tests, to verify them with definite precision: *Id.*

The testimony of the chemist who has analyzed blood, and that of the observer who has merely recognised it, belong to the same legal grade of original and primary evidence; and though one may be entitled to greater weight than the other with the jury, the exclusion of either would be illegal: *Id.*

Each party is at liberty to offer such proof as he has at his command; and if it be admissible in its nature and relevant to the issue, it cannot be rejected on the ground that, by greater diligence, it might have been made more satisfactory and conclusive: *Id.*

The clothes, identified as those worn by the accused on the evening of the homicide, were properly submitted to the inspection of the jury: *Id.*

Nothing legitimately connected with the *res gestæ* of the crime should be excluded from the consideration of the jury, whether its tendency be to inculpate or to exonerate the party accused: *Id.*

Contract.

Slavery—Warranty.—A note was given in consideration of the sale of a slave, the vendor by bill of sale warranting that the slave was a slave for life. Subsequent to the sale, slavery was abolished in this state by the ordinance of the convention: *Held*, that the covenant did not warrant against the action of the state in abolishing the *status* of slavery, and that there was no failure in the consideration of the note: *Phillips* v. *Evans et al.*, 38 Mo.

Debtor and Creditor.

Fraudulent Sale of Chattels.—Where A. delivers cattle to B. under the agreement that they are to remain the property of the former until paid for by B., the arrangement is not, as matter of law, fraudulent as to the creditors of B.: *Esty et al.* v. *Aldrich*, Sup. Ct. N. H.

Nor is such an agreement within the fourth clause of our Statute of Frauds, as it may be fully performed within a year: *Id.*

Payment—Tender.—A payment made in United States treasury notes, declared by Act of Congress to be a legal tender in payment of debts between individuals, is a good tender, although the contract to pay stipulate that the debt "shall be paid in the current gold coin of the United States in full tale or count, without regard to any legal tender that may be established or declared by any Act of Congress:" *Appel* v. *Woltman*, 38 Mo.

As a legal medium of payment, there is no distinction between United States treasury notes made a legal tender, and the gold coin of the United States: *Id.*

Divorce.

Joining a Religious Society, disbelieving in the Marital Relation.—Where the husband and wife together united with a religious society which professed to believe the relation of husband and wife to be unlawful, and after remaining so united several years, the husband separated from them and requested his wife to do so and cohabit with him, which she refused to do, or to cohabit with him, for more than six months: *Held*, that the case was within the statute, and that a divorce should be decreed: *Fitts* v. *Fitts*, Sup. Ct. N. H.

Equity.

Decree where some of the Parties are not in the Jurisdiction of the Court.—As a general rule, when, by a fair construction of the bill, or at any stage of the proceedings, it becomes certain that the judgment or decree must necessarily be directly against such of the respondents named as reside without the jurisdiction; and, that no judgment or decree can be rendered or made against the respondent before the court, without embracing and being binding on them or the estate in which they have an interest, the hearing cannot ordinarily proceed without them: *Lawrence* v. *Rokes et al.*, 53 Me.

But, if the bill only seeks a remedy and decree against the respondent who appears or is within the jurisdiction, and such judgment or decree will not bind, and cannot be enforced here or elsewhere against, but leaves all questions open as to those residing without the jurisdiction, then, although they would, if before the court, have an interest in the question, and a decree might be made against them; yet, not being before the court, the cause may be heard and a decree made affecting, legally or equitably, only the party before the court, even if it might be apparent that if within the jurisdiction their joinder would be required: *Id.*

It seems, that where persons, not within the jurisdiction, are named as parties, the court *may*, before a hearing on the merits, require *satisfactory* evidence that such parties have actual knowledge of the pendency of the bill against them, and that they can, if they see fit, appear and answer: *Id.*

Fuller v. *Benjamin*, 23 Me. 255, questioned: *Id.*

Estoppel

Adoption of Signature with Knowledge that it was Forged.—In an action by a bank, upon a promissory note, purporting to have been signed by the defendant, the instruction, that, if the plaintiffs, relying on the defendant's admission, were induced to refrain from obtaining security from him who actually wrote the defendant's signature to the note, by his arrest, or by an attachment of his property, and they thereby sustained an injury, then the defendant would be estopped from denying his signature, is correct, when taken in connection with the fact proved, that the defendant knew that the president of the bank went to him for the express purpose of ascertaining whether or not the signature was genuine, and that he thereupon admitted it was: *Casco Bank* v. *Keene*, 53 Me.

So, also, is the instruction, that if the defendant, knowing that the signature was not genuine, told the president that it was his signature, it was such an adoption of it as would render him liable upon the note, when predicated upon the same facts: *Id.*

A person will be barred by his adoption of a signature, if made with the knowledge that it was a forgery: *Id.*

When a defendant has adopted the signature of the note in suit, knowing it to be a forgery, the rule of damages will be the whole amount of the note: *Id.*

And the same rule applies when the defendant is estopped from denying the signature: *Id.*

Gift.

Gift mortis causâ, and subsequent Bequest of same Article.—Where the payee of a note placed it in the hands of a third party, and directed the maker to pay it to such third party on the payee's decease, and afterwards died: *Held*, that such third party was not entitled to the note as against one who by the subsequent will of the payee is made legatee of the note and executor of the will: *Craig, Ex.*, v. *Kittredge*, Sup. Ct. N. H.

Highway.

What is not an Obstruction that will make a Town liable.—Neither the rightful use by individuals of a highway, which is itself in reasonably safe and fit condition, nor their mere misconduct upon it, though such misconduct may amount to a public nuisance, will of itself constitute an "obstruction" under the statute of this state: *Ray* v. *City of Manchester*, Sup. Ct. N. H.

Nor in such case will the town in which the highway is situate be liable to a traveller injured by reason of such use or misconduct: *Id.*

And the liability of the town is not enlarged by the fact that it had notice of such use or misconduct: *Id.*

Husband and Wife.

Sale to Wife on her separate Credit.—Where a wife having a separate income purchased solely upon her own credit suitable furniture for a house held for her by trustees and occupied by herself and her husband, and subsequently died, having bequeathed the furniture to her husband: *Held*, that the vendor, who had thus sold the furniture to her with knowledge of the facts, could not recover for it of the husband in *assumpsit*: *Hill* v. *Goodrich*, Sup. Ct. N. H.

Homestead of Widow—Second Marriage of Widow—Remedy for Recovery of Homestead.—By her second marriage, a widow does not lose her right of homestead, whether it was assigned to her before such marriage or not: *Miles and Wife* v. *Miles*, Sup. Ct. N. H.

A bill in equity is a proper proceeding for the recovery and assignment of such homestead, and the minor children are proper, if not necessary, parties: *Id.*

Rights vested before the Act of 1860.—Where bank stock was transferred to the wife on the fifth day of July 1860, it was *held* that the husband's marital right to reduce it to possession was not affected by the Act of July 4th 1860, as that act did not take effect until August of that year, and therefore that the husband's interest on the stock was to be determined by the rules of the common law: *Atherton, Admr.*, v. *McQuuester*, Sup. Ct. N. H.

Where in such case the husband survived the wife, and afterwards died without having reduced the stock into possession, it was *held* that the administrator of the wife, who owed no debts, could not maintain an action for this stock, against the husband's representative: *Id.*

Held, also, that on the death of the wife the husband was entitled absolutely to the stock, subject only to her debts, and that on his subsequent death this interest vested in his representative: *Id.*

Insurance.

In an action on a policy of insurance, the defendants cannot, by way of defence, avail themselves of the condition in the policy that, "no holder of a policy shall be entitled to maintain any action thereon against the company, until he shall have offered to submit his claim to a reference," unless that defence has been set up in their specifications: *Dyer* v. *Piscataqua Fire and Marine Ins. Co.*, 53 Me.

To render an insurer liable, the peril insured against must be the sole

proximate cause of the loss, so causing it and so connected with it that it could not have been otherwise produced: *Id.*

And the loss must be so dependent upon the peril, that it is not only the natural result, but is the necessary and inevitable effect of it: *Id.*

Where a vessel runs upon a reef and is obliged to put into an intermediate port for repairs, and, for want of funds or credit, the master is obliged to sell a portion of the cargo to pay expenses of such repairs, such sale is not the necessary result of the peril at sea: *Id.*

To render property a subject of general average, it must have been sacrificed to avoid an impending peril, and for the benefit of all concerned: *Id.*

A part of a cargo sold by the master at an intermediate port, to make *permanent* repairs of damage, caused by a peril passed, and not for the benefit of all parties, is excluded from general average: *Id.*

INTEREST.

Contract made in one State payable in another—Application of Payments.—The parties to a contract made in one state and payable in another, may lawfully stipulate for the rate of interest allowed in either; provided it be done in good faith, and not as a cover for usury: *Townsend, Admr.*, v. *Riley*, Sup. Ct. N. H.

Therefore where a promissory note was made payable in one state, and after its maturity the maker, in another state, where he had his domicil, agreed to pay the lawful rate of interest of the latter state upon such note, it was held that such agreement was not usurious, although the rate of interest was greater than in the state where the note was originally payable; unless the arrangement was made merely as a cover for usury: *Id.*

Where, upon a note payable with interest annually, payments are made of sums less than the interest due, the surplus of interest can in no case be taken to augment the principal. For the detention of the annual interest after it is due, simple interest alone is to be computed: *Id.*

When interest annually is stipulated, payments are to be applied: first to the interest on the annual interest; then to the annual interest itself; and the remainder to the principal: *Id.*

In all cases general payments are to be applied in the first place to the interest due, whether the agreement be for simple or annual interest, and then to the principal: *Id.*

Upon a note with interest annually, the computation at the end of the year should not be with rests on account of the intermediate payments, but if such intermediate payments were, on account of the interest, accruing, but not yet due, they should be deducted at the end of the year, but without interest upon them: *Id.*

When a note bears simple interest, and yearly payments are made of sums just equal to the interest, it is not correct to cast the interest upon such payments to the time of the final adjustment; as in process of time the whole debt would thereby be extinguished without the payment of any principal whatever; but the payments should be applied at the time they were made: *Id.*

Landlord and Tenant.

Notice of increase of Rent—Implied Assent.—Where more than three months prior to the expiration of the term the landlord served the tenant with a notice informing him that if he desired to retain the premises he could have them at a specified rent, provided he signified his assent by a certain designated day, but that if he did not accede to the terms thus offered, and continued to hold possession, a certain additional rent would be exacted, and the tenant made no answer to this notice and held over, it was *held* by the court that the tenant continuing in possession and remaining silent, raised an implied assent or acquiescence to the increased rent: *Hunt* v. *Bailey*, 38 Mo.

Taking of Property leased, for the Public use.—As a general rule, whenever the estate which the lessor had at the time of making the lease is divested or determined, the lease is extinguished with it. If, therefore, a lot of land or premises under lease are required to be taken for city or other public improvements, the lease, upon confirmation of the report of the commissioners condemning the property, becomes void: *Barclay* v. *Pickles*, 38 Mo.

Limitations.

Accumulated Disabilities.—Where to an action of *assumpsit* commenced September Term 1850, the defendant pleads the Statute of Limitations, a replication that the plaintiff at the time her cause of action accrued was an infant, and so continued until the 7th day of April 1841, when she was lawfully married to one N., and from that time to the commencement of her action was a married woman under the coverture of said N., is bad upon demurrer: *Nutter et ux.* v. *De Rochmont*, Sup. Ct. N. H.

Where the plaintiff at the time her cause of action accrued and afterwards until her marriage was an infant, and subsequently from the termination of her infancy to the commencement of her suit was a *feme covert*, the two disabilities cannot be connected to extend the time for commencing her action limited in section 8 of chapter 181 of the Revised Statutes: *Id.*

Lis Pendens.

Notice of.—By the Code, as it existed in 1859, a notice of *lis pendens* might be filed before the service of the summons or complaint upon the defendant in the action. The filing of the complaint was then the period at or after which the notice might be filed: *Stern* v. *O'Connell*, 35 N. Y.

A. commenced an action to foreclose a mortgage on the 23d day of July 1859, and at 12½ P. M. of that day filed his summons and complaint and notice of *lis pendens* in the clerk's office of Albany county. Copies of the summons and complaint were delivered to the sheriff, within an hour thereafter, for service upon the defendant, and were actually served on the 25th day of the same month. B. made a loan to the defendant and received a mortgage on the same premises, on the same 23d day of July, between the hours of 2 and 4 P. M., and the same was put upon record at 5 o'clock of that day: *Id.*

Held, that B. could not maintain an action for a foreclosure of his mortgage against a purchaser under the foreclosure of A.'s mortgage,

but that the lien of B.'s mortgage was cut off and barred by the filing of the notice of *lis pendens* in the action commenced by A.: *Id.*

MORTGAGE.

As security for Notes—Order of Payment of Notes.—Upon the foreclosure of a mortgage securing notes maturing at different dates, the notes are to be paid from the proceeds of sale in the order in which they mature: *Thompson* v. *Field*, 38 Mo.

Deed of Trust—Power of Sale.—A. made to B. as trustee, a deed of trust of lands to secure the payment of a debt due by A. to C. The deed provided, that, in default of payment of the debt secured, B., or in case of his death or absence from the state, the sheriff of the county, might sell the land in accordance with the terms prescribed. In default of payment, B. being absent from the state, the sheriff advertised and sold the land in accordance with the terms prescribed by the deed, and executed a deed to the purchaser; which after reciting the deed of trust and the powers given, the advertisement, sale, and receipt of the consideration, contained the following granting clause: "I, J. C. V., sheriff and trustee as aforesaid, in consideration, &c., and by virtue of the authority in me vested by said deed and appointment, do hereby assign, transfer, and convey to him (the purchaser) all the right, title, and interest in me vested by said deed and appointment, that I may or can sell and convey as sheriff and trustee as aforesaid, by virtue of said deed, appointment, and advertisement, of, in, and to the said real estate, &c." *Held*, that the sheriff took a power under the deed, that in the cases provided by the deed he could execute said power, that he held the power for the benefit of the holder of the notes, that the power was not revocable by the grantors in the deed of trust, the debt remaining unpaid: that the deed delivered by the sheriff properly executed the power, and the purchaser thereby acquired an estate in fee: *McKnight* v. *Wimer*, 38 Mo.

NEGLIGENCE.

Railroad Company—Highway Crossing.—The omission by a railroad company to give the signals required by the statute, on the approach of a locomotive within eighty rods of a highway crossing, is a breach of duty to the passengers whose safety it imperils, and to the wayfarer whom it exposes to mutilation and death: *Ernst* v. *Hudson River Railroad Co.*, 35 N. Y.

The omission of the customary signals is an assurance by the company to the traveller, that no engine is approaching from either side within eighty rods of the crossing: *Id.*

When the passer-by knows of the immediate proximity of an advancing train, whether the warning be by signals or otherwise, and, having a safe and seasonable opportunity to stop, he voluntarily takes the risk of crossing in front of it, he is guilty of culpable negligence and forfeits all claim to redress: *Id.*

But when the usual warning is withheld, the wayfarer has a right to assume that the crossing is safe, and he is not bound to stop or to look up and down an intersecting railway track before crossing: *Id.*

Ordinarily, in cases of this description, the question whether the party

injured was free from culpable negligence, is one of fact to be determined by the jury, under appropriate instructions, and subject to the revisory power of the courts: *Id.*

Where the proof is undisputed and decisive, that the plaintiff was guilty of misconduct, and that this contributed to the injury, a nonsuit is matter of right: but it is equally matter of right to have the issue of negligence submitted to the jury, when it depends on conflicting evidence, or on inferences to be deduced from a variety of circumstances, in regard to which there is room for fair difference of opinion between intelligent and upright men: *Id.*

The decision in this case, on a former occasion, is reported erroneously in 24 How. Pr. R. 97: *Id.*

Power of Sale.

Under Deeds of Trust.—Where the trustee in a deed of trust with a power of sale at public auction upon giving notice for a certain number of days, advertises the property and puts it up for sale, and the property is struck off to a bidder, the trustee cannot upon the same day resell the property because the purchaser refuses to complete his contract; there must be a new publication of notice: *Barnard* v. *Duncan*, 38 Mo.

Practice.

Rules of Court as to Evidence.—By the 9th rule of the Supreme Judicial Court, parties filing specifications of the nature and grounds of defence with the clerk, * * shall, in all cases, be confined, on the trial of the action, to the grounds of defence therein set forth; and all matters set forth in the writ and declaration, which are not specifically denied, shall be regarded as admitted for the purposes of the trial: *Fox et al.* v. *Conway Fire Ins. Co.*, 53 Me.

This rule is not repugnant to law; and the Supreme Judicial Court had not only statute, but inherent authority to establish it: *Id.*

Specifications of defence may be amended at the discretion of the presiding judge: *Id.*

When the declaration on a policy of insurance alleges due notice and proof of the loss, according to the conditions of the policy, and the specifications of defence do not deny such allegations, the plaintiffs need not show that they had notified the defendants of the fire, or that they had furnished them with any proofs or statements of loss or damage, verified by oath or affirmation: *Id.*

If the specifications of defence contain no reference to the notice required by c. 34, § 5, of the Public Laws of 1861, and no question in relation thereto is made at the trial at *Nisi Prius*, the objection cannot be made before the court *in banc*: *Id.*

It may well be doubted whether more was intended by said section than that the preliminary proof therein set forth, should, in all cases, be deemed sufficient to authorize the plaintiff to maintain his suit: *Id.*

It does not interdict the maintenance of a suit, where the notice required by the conditions of the policy has been given: *Id.*

Sheriff.

Sixty days allowed for Return of Process of Execution.—The sixty days allowed by statute to the sheriff to execute and return the process

of execution is for the benefit of the sheriff, to prevent compulsory proceedings, &c., against him until he has had a reasonable time to execute such process: *Renaud and Others* v. *O'Brien and Others*, 35 N. Y.

In a proper case, a creditor's bill can be maintained, where the action is commenced after the return, in good faith, of *nulla bona*, though it be within the sixty days allowed by law as the possible life of an execution: *Id.*

Stamp.

Stamping in presence of Court under Act of June 30th 1864.—The provisions made by the law of the United States of June 30th 1864, § 163, for stamping in the presence of the court where it is used, any instrument before that law signed or issued without being stamped, are not repealed or affected by the law of March 3d 1865, which applies to instruments requiring stamps under the law of June 30th 1864: *Garland* v. *Lane and Wife*, Sup. Ct. N. H.

Surety.

Discharge—Extension of the Debtor's Time.—Where the holder of a note gives for a valuable consideration, to the principal debtor an extension of the time of payment, but reserves to himself the right to sue whenever required by the sureties, the sureties are not thereby discharged. To discharge the sureties, the creditor must do some act by which he deprives himself of the right of proceeding at law in the collection of the obligation: *Rucker* v. *Robinson*, 38 Mo.

Tenants in Common.

Conveyance by one Tenant of his Portion.—One tenant in common cannot convey, by metes and bounds, a distinct portion of the whole tract held in common with others, so as to prejudice his co-tenants or their assignees, although the deed may bind him and those claiming under him by way of estoppel: *Primm et al.* v. *Walker*, 38 Mo.

Testamentary Capacity.

Requisites of.—The testator should be capable of comprehending the condition of his property, and his relations to the persons who are or might have been the objects of his bounty: *Van Guysling* v. *Van Kuren and Others*, 35 N. Y.

He should be able to collect in his mind, without prompting, the elements of his business to be transacted, and hold them there until their relations to each other can be perceived, and a rational judgment in respect thereto be formed: *Id.*

Trust.

Transfer of Trust Estate by Trustee without consideration.—Where a person holds an estate in trust, with the power to dispose of it for the benefit of herself and certain others, a disposition of the same to one acquainted with the nature and character of the trust, without any consideration for the benefit of *cestuis que trust*, will be deemed fraudulent as to the beneficiaries: *Smith and Others* v. *Bowen and Wife*, 35 N. Y.

The vested interest of *cestuis que trust* cannot be impaired or destroyed by the voluntary act of the trustee, in breach of the trust; but will

follow the land in the hands of the person to whom it has been conveyed by the trustee with knowledge of the trust: *Id.*

WATERCOURSE.

Dam across River.—Where one by means of a dam wrongfully causes the water of a river to flow back upon the lands of a riparian proprietor perceptibly higher than its natural level, he is liable therefor to such proprietor in nominal damages, though no actual damage is caused: *Amoskeag Manufacturing Co.* v. *Goodale*, Sup. Ct. N. H.

Where a party can maintain an action for a nuisance he may enter and abate it, though at the time it caused but nominal damage: *Id.*

An Act of the Legislature authorizing a corporation to erect and maintain a dam on their own land across the Merrimac river, confers upon the corporation no right to overflow the lands of another riparian proprietor without his consent: *Id.*

WITNESS.

As to Value of Land.—Farmers and residents of the immediate neighborhood are competent witnesses to fix the price of land in their neighborhood: *Robertson and Others* v. *Knapp*, 35 N. Y.

One, who has formerly been a farmer, but has changed his occupation to that of a mechanic, is, nevertheless, a competent witness to testify to the value of land in his neighborhood: *Id.*

Where witnesses are called to give testimony upon questions of skill, &c., reference is had to subjects upon which the jury are supposed to have less knowledge than the witnesses: *Id.*

Matters about which a Party is excused from answering.—Under the Statutes of 1857 and 1858, relating to the competency of witnesses, a party may be required in a deposition to testify to all matters in issue, except disclosing the names of his witnesses and the manner of proving his case: *State ex rel. Eaton* v. *Farmer*, Sup. Ct. N. H.

If the party declines to answer, because it will disclose his witnesses or the manner of proving his case, and it reasonably appears to the court that it may do so, he will not be required to state how it will have that effect, lest in doing so he will be compelled to disclose the very facts which the law excuses him from stating: *Id.*

A defendant is not excused from stating what may bear upon, or support, his defence, unless it will disclose his witnesses or the manner of proving his case; and therefore in a suit against a railway conductor charging him with receiving money in the cars for the fare of passengers which he has not accounted for, he may be required to state the condition of his property at the commencement and close of his service, to be weighed with other evidence in the cause; even if it be alleged that this is part of his defence: *Id.*

If the court can see that his answers may supply some link in a chain of circumstances tending to accuse him of crime, and he declines to answer upon that ground, he will not be required to make such answer: *Id.*

If a servant of a railway corporation having custody of passenger tickets that had once been sold and taken up, fraudulently abstracts them and sells them for his own use, it will be larceny of such tickets: *Id.*