CHASE, C. J. of the United States, after consultation, stated his opinion to be, that at the times the freight receipts in question were issued, they were not subject to stamp duty under the Acts of Congress then in force, and that the demurrers to the indictments upon them would have to be sustained.

JACKSON, D. J., stated that his first impression was that the terms of the Act of 1864 were sufficiently comprehensive to embrace receipts for goods delivered to a common carrier for transportation, and to subject them to stamp duty; but that since he had heard the argument of the counsel, and had come to construe the Act of 1864, in connection with the several other acts of Congress *in pari materia*, his views had undergone a change, and if the question were now to be decided, he should not dissent from the opinion of the Chief Justice to sustain the demurrers. He added, however, that if the counsel so desired, division of opinion between the judges might be entered *pro forma* upon the record, so that the cases might be taken to the Supreme Court of the United States.

CHASE, C. J., said that upon the second point made by Lee for the demurrer, both the district judge and himself were inclined to think the demurrer could not be sustained, but that they were willing to hear argument upon it if necessary, or desired.

Upon this intimation of opinion, however, the cases were settled by counsel.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

COURT OF CHANCERY OF NEW JERSEY.[1]

SUPREME COURT OF NEW YORK.[2]

SUPREME COURT OF VERMONT.[3]

BANK.

Negotiable Papers—Certificate of Deposit—Pleading.—The holder of a certificate of deposit, properly indorsed to him, and payable on presentation, cannot maintain an action thereon until special demand has been made: *Bellows Falls Bank* v. *Rutland County Bank*, 40 Vt

[1] From C. E. Green, Esq., Reporter; to appear in Vol. 3 of his Reports.

[2] From Hon. O. L. Barbour, Reporter; to appear in Vol. 51 of his Reports.

[3] From W. G. Veazey, Esq., Reporter; to appear in Vol. 40 Vt. Reports.

The plaintiff held a writing as indorsee in words and figures as follows: "No. 82, Rutland County Bank, Rutland, Vermont, March 11th 1863. This certifies that O. B. Clark, Esq., has deposited in this bank eleven hundred dollars, payable to the order of himself on the presentation of this certificate properly indorsed. $1100. (Stamp, J. M., 1863,) James Merrill, Cashier." *Held*, that special demand should have been made before an action could be maintained to recover thereon. *Held, also*, that the same is negotiable within the meaning of the law merchant: *Id.*

BRIDGE.

Title to Public Bridge—Taking for different Public Use.—The title to the public bridges constructed by a county is vested in the board of chosen freeholders of that county. It is a corporation created for the purpose of representing the county and holding its property, and suits for the protection of such property are properly brought in the name of that corporation: *Freeholders of Monmouth County* v. *Red Bank and Holmdel Turnpike Co.*, 3 C. E. Green.

The bridges belonging to a county are public property held for public use, and are not within the protection of the constitutional provision which forbids private property to be taken for public use without compensation. The legislature has the power to direct in what manner such bridges shall be appropriated to public use, and may authorize them to be taken by a turnpike company for part of its road without compensation: *Id.*

When the charter of a turnpike company authorizes it to construct a road on a route which includes a public county bridge and requires it to pay to the owners of lands, over which the road should pass, all damages sustained, the compensation clause applies to a county bridge, which is included in the term *land*, and of which the county is the owner: *Id.*

Even if the damages by taking the county bridge would be only nominal, the county is entitled to restrain the turnpike company from using it as part of their road until the damages are assessed and the title of the bridge vested in the company, so that the county may be relieved from the obligation to repair it: *Id.*

When a turnpike company is entitled to take toll on two continuous miles of its road when finished, and a county bridge not purchased or acquired forms part of such two continuous miles, the taking toll on that section will be restrained until the bridge is acquired: *Id.*

CONSTITUTIONAL LAW. See *Bridge*.

Legislative control of Tide Waters—Riparian Owners.—Under the act to incorporate "The Keyport Dock Company" (Pamph. L. 1851, p. 25) "the dock or wharf now owned by the said company" must be construed to mean now owned by the individuals composing said company: *Keyport Steamboat Co.* v. *Farmers' Transportation Co.*, 3 C. E. Green.

By that act an adjoining shore owner is not deprived of the privilege obtained by charter or license, of wharfing out in front of his own lands, even if it prevent vessels from landing at the side of the complainants' wharf: *Id.*

The exclusive right of the shore owner as supposed to exist before the Wharf Act of 1851, and as confirmed or conferred by that act, is to the

shore and lands under water *in front* of him, giving the same right to the adjoining shore owner, and *ex necessitate* excluding him from acquiring any right taking away the right of the adjoining shore owner: *Id.*

The act to incorporate the Keyport Dock Company cannot be construed, by mere implication, to take away the rights of the adjoining shore owner to the water in front of him; and the power to enlarge and extend the wharf, though given by express words, must be construed so as to authorize such extension in front of lands of the company only: *Id.*

The question, whether in New Jersey the legislature has power to grant to a stranger the right to cut off a shore owner from access and other advantages of adjacency to the water directly in front of his shore along tide-waters, is an open one so far as any question is to be considered open upon which there is no judicial decision: *Id.*

It would seem that in the decision of *Gough* v. *Bell*, the Supreme Court and the Court of Errors were of opinion that the shore owner has vested rights in the waters in front of him that cannot be taken away by the state: *Id.*

Taking Private Property.—The legislature has no power, by special act, to transfer to one man the property of another without his consent either with or without compensation. This want of power does not depend upon any constitutional restriction, but upon the fact that it is not the exercise of the power of making laws or rules of civil conduct, which is the branch of sovereign power committed to the legislature: *Coster* v. *Tide-Water Co.*, (Court of Chancery) 3 C. E. Green.

A grant of power to one man to improve the property of another, without his consent, at an annual compensation to be fixed by commissioners to be appointed for that purpose, not limited to the cost of the improvements, or the interest on the cost, or the benefit received by the property, but to be fixed by the arbitrary discretion of the commissioners, is a grant to one of profit out of the land of another to the extent that such compensation may exceed the cost or interest on the cost. It therefore is beyond the power of the legislature and void: *Id.*

The grant to one of the power to manage and improve the property of another without his consent and contrary to his judgment, even if exclusively for his benefit, is an infringement of the right of acquiring, possessing, and enjoying property guaranteed to every one by the Constitution: *Id.*

The power of eminent domain is a legislative power; these by the Constitution are vested in the legislature. Private property may be taken for public use, but only on adequate compensation: *Id.*

The public use for which property may be taken by the power of eminent domain is the use of the property itself by the government or by the general public or some portion of it, not by particular individuals or for the benefit of certain estates: *Id.*

Whether the use for which property is taken is a public use is a question of law to be settled by the judicial power. Where the use is a public use the legislatures are the sole judges of the necessity or expediency of exercising the power of eminent domain in the particular case. But it cannot evade the constitutional limitation of its power, or make a private use a public use, simply by enacting that it is such: *Id.*

The laws regulating partition fences, party-walls, the enclosure of woodlands, the ditching and embanking of meadows, and other like police regulations, whether general or special laws, are an ancient branch of legislation. Their object is to regulate the management and enjoyment of property by the owners or a majority of them at their common expense, and they are a proper and constitutional exercise of legislative power: *Id.*

Taking Private Property without Compensation.—For the purpose of reclaiming large tracts of lands the rights of eminent domain and of taxation may be employed: *Tide-Water Co.* v. *Coster* (Court of Appeals), 3 C. E. Green.

Whether a scheme of improvement be of such public utility as to justify a resort, for its furtherance, to the power of taxation and eminent domain, is a matter to be decided by the legislature: *Id.*

By the charter of "the Tide-Water Company," commissioners were to be appointed who were authorized to make a contract with such company for the draining of large tracts of meadow-land, the property of various individuals—said commissioners being also empowered to assess upon said lands, when reclaimed, a just proportion of the contract price. *Held*, that such scheme was illegal and void, inasmuch as the expense to be levied on the land was not limited in amount to the extent of the benefit to be conferred: *Id.*

The cost of a public improvement may be imposed on the property peculiarly benefited; but the cost beyond this measure must be levied from the public at large: *Id.*

To compel the owner of property to bear the expense of an improvement, except to the extent of his particular advantage, is *pro tanto* to take private property for public use without compensation: *Id.*

CONVEYANCE.

When an Assignment and not a Lease.—An instrument, made since 1787, by one person to another, conveying lands in fee, in the state of New York, operates as an assignment, and not as a lease; and hence the strict relation of landlord and tenant is not created thereby: *Lyon* v. *Chase*, 51 Barb.

Presumption of Payment of Rent.—There is, therefore, no distinction between the covenant contained in such an instrument and other sealed instruments, so far as the presumption of payment or extinguishment is concerned: *Id.*

Where, in an action upon the covenant to pay rent, contained in such an instrument executed in 1799, there was no evidence to show that any rent had ever been paid upon it, during a period of sixty-four years, and it appeared affirmatively not only that the defendant had not paid rent within twenty-two years prior to the commencement of the action, but that the plaintiff had not *claimed the same*. *Held*, that upon these facts the law raised the presumption that the cause of action had been released, discharged, or extinguished, and the plaintiff could not recover: *Id.*

The presumption of payment, in such a case, will not be repelled by an admission of the defendant that there had been a general resistance and refusal to pay rent, for the last twenty-five years, by the tenants of the manor of which the lands in question constituted a part: *Id.*

CORPORATION.

Bonds and Bondholders—Coupons.—A coupon, payable to bearer, detached from a bond, and owned by one party, while the bond is owned by another, is still a lien under the mortgage given to secure the bond: *Miller and Knapp, Trustees,* v. *The Rutland and Washington Railroad Co. and Others,* 40 Vt.

The coupon, when payable, is a part of the mortgage-debt, and an assignment of a portion of the mortgage carries with it, in equity, a corresponding interest in the mortgage security; and the coupon holder, in a foreclosure of the mortgage, is entitled to a *pro ratâ* distribution with the holders of the residue of the mortgage-debt: *Id.*

The loss of a bond is no objection to its being paid, provided an indemnity is furnished against its being enforced in the hands of others: *Id*

DEED.

Reservation.—Reservation of the use and occupancy for a stated period in a deed by the grantor, will not be determined either in whole or in part, if the grantor leases a portion of that which he has reserved, if the reservation is not explicitly personal in its terms: *Cooney* v. *Hayes and Others,* 40 Vt.

In construing reservations in deeds, the intent of the parties to be gathered from the nature of the subject-matter, and the language used, must control: *Id.*

ENGLISH LANGUAGE.

Signs and Figures.—The signs of degrees and minutes (° ′) commonly in use to show the meaning of figures with which they are connected are not part of the English language within the statute of this state, which requires declarations and other pleadings to be drawn in the English language; and an indictment for not making a highway pursuant to an order of the court, which was described by courses and distances only, and in the description these signs were used instead of words, was *held* insufficient on demurrer: *State of Vermont* v. *Town of Jericho,* 40 Vt.

FIXTURES.

What are such.—The more sensible rule, in regard to what are to be deemed fixtures, seems to be that if articles are essential to the use of the realty, have been applied exclusively to use in connection with it, are necessary for that purpose, and without such or similar articles, the realty would cease to be of value, then they may properly be considered as fixtures, and should pass with it: *Hoyle et al.* v. *The Plattsburgh and Montreal Railroad Co. et al.*, 51 Barb.

HUSBAND AND WIFE.

Marriage Settlement.—A marriage settlement, by which an intended wife conveyed to trustees all property which she then had, and *to which she might thereafter become entitled,* does not, at law, convey the after-acquired property. Equity will construe such instrument as a contract to convey and enforce its performance only when necessary to effect the plain intent of the parties: *Steinberger's Trustees* v. *Potter,* 3 C. E. Green.

Such settlement construed as an agreement to convey only such property as the wife might acquire *during marriage*: *Id.*

INSURANCE (FIRE).

What Property is covered by Policy.—The plaintiffs, as trustees of a railroad company, effected a policy of insurance with the defendants "on any property belonging to the said trust company, as trustees and lessees as aforesaid, and on any property for which they may be liable, it matters not of what the property may consist, nor where it may be, provided the property is on premises owned or occupied by the said trustees, and situate on their railroad premises in the city of Racine, Wisconsin." *Held*, that a dredge-boat belonging to the plaintiffs, in their employ in the city of Racine and attached to their wharf where the road terminated, was thereby in the plaintiffs' possession and annexed to the railroad premises, and therefore covered by the policy: *The Farmers' Loan and Trust Co.* v. *The Harmony Fire and Marine Insurance Co.*, 51 Barb.

Held, also, that whether the plaintiffs (a New York corporation) could hold real estate in Wisconsin must depend on the statutes of that state. But that so long as they were allowed to remain in possession and use the railroad property conveyed to them in trust, they had such an interest as would bring all their property connected therewith under the terms of the policy: *Id.*

LANDLORD AND TENANT.

Right to Assign.—The words "the right to use and occupy," are equivalent to the right to the use and occupancy, and import a general right in the grantors to use and occupy, either by themselves or others, limited only by the implied legal duty to occupy in a prudent manner: *Cooney* v. *Hayes*, 40 Vt.

A tenant has a right to occupy by himself, his agent, or assignee, unless restrained by express stipulations in the lease. It is not necessary that the word "assigns" should be used to give this right: *Id.*

MORTGAGE.

Separate Defeasance—Fraud on Creditors.—If a mortgage was given in the form of an absolute deed, and the defeasance withheld from the records for the purpose of misleading and delaying the mortgagor's creditors, the right of redemption will not thereby be lost. In such case, the aid of the court is not asked to enforce a fraudulent instrument. The fraud, if any, is in the deed, not in the defeasance which the complainant claims to enforce according to its legal effect. The defeasance is honest as between the parties, and was not to injure creditors: *Clark* v *Condit*, 3 C. E. Green.

NEGLIGENCE.

A Question of Fact.—The question of negligence is peculiarly a question of fact to be determined by the jury; and the case must be very clear which will justify the court in withholding it from their consideration: *Wooden* v. *Austin*, 51 Barb.

NUISANCE.

Suit by Private Person.—The grant of a franchise to operate a railroad does not confer the right to use upon it locomotives so constructed as to throw out burning coals that may set fire to buildings along the line. But the road must be operated with engines so constructed as to cause the least danger: *King* v. *Morris and Essex Railroad Co.*, 3 C. E. Green.

That a building was erected after a railroad was laid out and constructed is no impediment to relief against any nuisance arising from operating the road. The owner of a lot does not lose the right of using it for any lawful purpose by reason of any erection on adjoining property, or any use to which the same was put while the lot was vacant: *Id.*

Where a nuisance is an injury to the property of an individual a suit to restrain it may be brought in his name, although many others are injured in the same way by it, and it is not necessary to proceed in the name of the Attorney-General. The proceeding must be in the name of the Attorney-General only in case of a public nuisance, which is a nuisance that interferes with the enjoyment of a public or common right: *Id.*

Where a defendant, who has been doing what amounts to a nuisance, disclaims the intention to continue it, and is proceeding with diligence to remove and abate it, the court will, if satisfied that the cause of complaint will be removed as speedily as practicable, refuse an injunction: *Id.*

PARENT AND CHILD.

Contract—Implied Promise.—The rule, that where a child, after becoming of age, remains in a parent's service, the law will imply no promise, on the part of the parent, to pay for the labor, but an express promise must be proved, applies also to adopted children: *Lunay* v. *Vantyne*, 40 Vt.

The plaintiff was an adopted daughter of the defendant. After it was understood she was of age, the defendant agreed to pay her for her labor. Subsequent to this agreement she and her foster parents learned that they had been mistaken one year in her age, that she, in fact, arrived at her majority one year earlier than she had supposed, and, consequently, had been in the defendant's service for one year after she became of age without pay, and without any agreement or expectation of pay. *Held*, that the law would imply no promise or contract to pay her for that year: *Id.*

PARTNERSHIP.

Arbitrament and Award.—The presence of one partner, who was a Frenchman, and understood English imperfectly, at, and participation to some extent in, a conversation between his co-partner and the defendant, concerning a matter in dispute between the plaintiff partnership and the defendant, which resulted in a submission by the copartner and the defendant of the matter to arbitration, *held*, not to be conclusive of the Frenchman's assent to the award, he not having understood that his copartner agreed to submit, and having never assented thereto: *St. Martin* v. *Thrasher*, 40 Vt.

A partner has no authority, by virtue of his relation as partner, to bind his copartner by a submission of a copartnership matter to arbitra-

tion, so as to make the award in pursuance of such agreement binding on the firm: *Id.*

Dissolution—Distribution of Effects.—If articles of partnership provide for its continuance during the existence of a lease renewable at the option of one of the partners, it is at the option of such partner to continue the partnership by renewing the lease, or to end it by refusing to renew. He has a right to refuse to renew for the purpose of ending the partnership: *Phillips* v. *Reeder*, 3 C. E. Green.

That a partner having the option to renew such lease and continue the partnership may have talked and acted as if he intended so to do, will not bind him to renew if he made no contract to do it: *Id.*

Upon the dissolution of a partnership in which the articles provided that the effects, on dissolution, were to be equally divided among the partners, the property and effects of the firm belong to the individuals who compose it as tenants in common; part of the former members of the firm cannot dispose of the property of any other member without his consent: *Id.*

If some of the members of a dissolved partnership dispose of the property of one of the partners without his consent, he may, at his option, call on them to account for its value: *Id.*

In many cases if some of the partners after dissolution continue the business with the property of the late firm, the retiring partner will be entitled to call on them for a share of the profits, as well as for his capital: *Id.*

But this principle will not be applied to a case when the chief contribution to the business was personal skill and labor, and a new partnership was formed with strangers, merely because some of the property of the retiring partner was used in the new business after being sold to the new firm by the continuing partners, without authority so to sell it: *Id.*

A majority of the partners of a firm that is dissolved, have no right, without judicial proceedings, to compel another partner to sell or divide the property, or to choose an appraiser for the purpose of valuation; or if he refuses, to choose appraisers themselves and purchase or sell his share at such valuation. But if they have appropriated or sold the property they must account to him for the real value of his share and interest thereon: *Id.*

Failure of one Partner to Pay in his Share of Capital.—A part of the partners cannot exclude from the partnership one of their number who has failed to pay in part of the amount which he agreed to contribute as his share of the capital; but if part of his capital has been paid in, accepted, and used, and the business has been commenced in the name of the firm, he is a partner until the partnership is legally dissolved: *Hartman* v. *Woehr & Stegmuller*, 3 C. E. Green.

A partner excluded from the business of the firm by the illegal acts of his copartners is entitled to an account of profits, and to his share of them until the partnership is legally dissolved; and is entitled to a decree of dissolution on the ground of such illegal exclusion from the business: *Id.*

REAL ESTATE.

Conversion.—The surplus of the proceeds of lands of a decedent, sold

by order of the Orphans' Court for the payment of his debts, above the amount needed for the payment of debts, retains the character of real estate, and upon the death of the person entitled thereto, will pass by succession as real estate. So also will the proceeds of lands sold by order of a court on proceedings for partition, because incapable of partition: *Oberle* v. *Lerch*, 3 C. E. Green.

Such proceeds retain their character of real estate for the purposes of succession until they vest in some person who is not an infant or lunatic, and who has capacity to change the nature of the estate, and who by accepting it as money, or doing some act recognising it as personal estate, gives it the character of personalty: *Id.*

The income from lands and the interest on the proceeds of the sale of lands are personal estate, and will, upon the death of an infant to whom they belong, be transmitted as such, while the lands and the proceeds of their sale pass as real estate: *Id.*

Where lands of an infant in another state are sold by partition proceedings there, if by the law of that state the proceeds are to be considered personal estate and to be transmitted as such, they will pass as such in this state, although they are at the death of the infant in the hands of the guardian appointed in this state, and the infant is a resident of this state: *Id.*

REPLEVIN.

Bond or Undertaking.—Where the plaintiff in an action for the claim and delivery of personal property, dies after the execution of an undertaking to him by the defendant for the purpose of regaining possession of the property, and before the trial, and another person is substituted in his place, as plaintiff, the person so substituted is the party entitled to recover, and as such, the undertaking takes effect in his favor as the plaintiff entitled to a return of the property: *Emerson* v. *Booth*, 51 Barb.

The defendant's liability becomes fixed on the recovery of a judgment by the plaintiff, either to return to the plaintiff the property, or to pay the value thereof, to the extent of the penalty: *Id.*

In a suit upon such an undertaking judgment may be rendered for the plaintiff for the penalty of the undertaking and interest thereon from the date of the judgment: *Id.*

STATUTE.

Construction.—The only just rule of construction of a law, especially among a free people, is the meaning of the law as expressed to those to whom it is prescribed and who are to be governed by it: *Keyport Steamboat Co.* v. *Transportation Co.*, 3 C. E. Green.

If the legislator who enacted the law should afterward be the judge who expounded it, his own intention which he hath not skill to express, ought not to govern. But circumstances known to all the public, such as what the law was at the time, or what it was supposed to be, are proper to be considered in looking for the intention of the legislature when not explicitly expressed: *Id.*

STREAMS. See *Constitutional Law.*

Rights of Riparian Owners.—Where an old division line between

lands lying on tide-water has for more than forty years been treated by the owners as extending over the shore or the lands between high and low water, and regarded as the division line of their right upon the shore, the line so recognised will be established as the line which will govern their rights to reclaim and appropriate the shore under the Wharf Act: *Stockham* v. *Browning*, 3 C. E. Green.

No rule for ascertaining the line by which the shore in front of coterminous shore-owners shall be divided between them has been adopted in New Jersey. But if a line claimed by one of them is more favorable to the other than that given by any of the different rules adopted by the courts of the several states, he will be protected to the line so claimed unless a different line has been adopted by the owners, by acquiescence or otherwise: *Id.*

The owner of lands along tide-waters has an easement in the shore in front of them, and the inchoate right to appropriate them to his exclusive use. But until reclaimed the fee is in the state, and he cannot maintain ejectment. But as he has a vested right in the shore, he will be protected in equity against any encroachment on or appropriation of them: *Id.*

TRUST AND TRUSTEE.

Contributions to Fund for Specific Purpose.—The contributors to a fund, raised and placed in the hands of trustees for a specific purpose, have a right to have any surplus not needed for the object, repaid to them in proportion to their contributions. The claim is founded in equity and will be enforced in this court: *Abels and Others* v. *McKeen and Others*, 3 C. E. Green.

The fund is in the control of the association only for the purposes for which it was raised. It may be disposed of for any purpose within the object for which it was contributed at any regular meeting of the association, by the voice of the majority of the members present, even if a minority of the whole number: *Id.*

But the vote must be for some purpose for which the money was contributed. A majority cannot devote the money of the minority, or even of a single member, to any other purpose, without his consent: *Id.*

So surplus funds, contributed for enlisting men to fill the quota of a city or ward, under a call of the President, and to clear the contributors from draft, cannot, by a vote of the majority, be donated to a charitable institution, without the consent of the minority: *Id.*

All persons present at the meeting at which the vote is taken disposing of the fund, if no one dissents, are considered as voting with the majority for the motion and assenting thereto; their right to the fund is concluded. *Aliter*, as to those not present: *Id.*

Where, under a resolution of the majority, the surplus fund has passed into the hands of new trustees, between whom and the original contributors there is no privity, such trustees are not accountable to them for the fund; their remedy is against the original trustees only: *Id.*

Compensation to Trustee who has abused the Trust.—A trustee who has abused his trust, is entitled to no commissions as *trustee* but he will be allowed reasonable compensation for special and extraordinary *services* rendered to the *cestui que trust*: *Moore* v. *Zabriskie*, 3 C. E. Green.