David W. Sellers, for the assignee.—Where the estate of the debtor *is divested by operation of law* dower is barred. The Act of 1867 divests the estate as much as a sale for the payment of debts. The exceptions in section 14 do not save the rights of married women. The Act of 1841 did; and hence the ruling in *Worcester* v. *Clark*, 2 Grant 84, does not apply.

CADWALADER, J.—The wife's right of dower having been established by the Pennsylvania decisions against the assignee in insolvency, there is no doubt that the purchaser's objection to the title is valid.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF INDIANA.[2]

SUPREME COURT OF MISSOURI.[3]

SUPREME COURT OF NEW HAMPSHIRE.[4]

COURT OF CHANCERY OF NEW JERSEY.[5]

SUPREME COURT OF PENNSYLVANIA.[6]

SUPREME COURT OF TENNESSEE.[7]

ABANDONED PROPERTY.

Seizure of.—Under the Act of Congress, approved March 12th 1863, authorizing the secretary of the treasury to appoint agents to collect abandoned property, the right to collect abandoned property does not depend upon the "loyalty" or "disloyalty" of the owner. That becomes a question only upon application to the government to restore the proceeds: *Hart* v. *Reynolds*, 1 Heiskell.

Property was not subject to seizure as abandoned, unless the owner was engaged in rebellion, either in arms or otherwise, or gave aid and comfort to those so engaged: *Id.*

Property left in the care of another person, under a colorable sale,

[1] From Jno. Wm. Wallace, Esq.; to appear in vol. 10 of his Reports.

[2] From J. B. Black, Esq., Reporter; to appear in 32 Ind. Reports.

[3] From C. C. Whittlesey, Esq., late Reporter; to appear in 46 or 47 Mo. Rep.

[4] From the Judges of the Court; to appear in 49 N. H. Rep.

[5] From C. E. Green, Esq.; to appear in vol. 6 of his Reports.

[6] From P. F. Smith, Esq., Reporter; to appear in 63 Penn. Rep.

[7] From J. B. Heiskell, Esq., Reporter; to appear in vol. 1 of his Reports.

by one publicly residing in an adjoining county, visiting the place where the property was, and not in arms or encouraging the rebellion, is not abandoned: *Id.*

A conveyance of property during the war, with intent to evade confiscation, was not an abandonment of the property sold, which would authorize the seizure of it: *Id.*

A person seizing property as agent of the government, could not justify under proof of probable cause to suspect that it was abandoned: *Id.*

Action.

Parties Plaintiff—Assignee.—The assignee of an account must sue in his own name as plaintiff as being the real party in interest, although the statutes of 1865 have omitted the provision making accounts assignable: *Long* v. *Heinrich*, 46 or 47 Mo.

Advancement.

Presumptions in regard to.—Advancement is always a question of intention, and where there is no evidence of what occurred at the time of the alleged advancement, the attendant circumstances are to be considered in determining whether it be a loan, gift, or advancement: *Weaver's Appeal*, 63 Penna.

Among the circumstances, the most important are, the amount as compared with the parent's estate, the number of children, and the purpose of the advance: *Id.*

It is always a presumption that a parent means to treat his children equally: *Id.*

If his estate is large, a comparatively small sum will raise the presumption of a gift: *Id.*

If the purpose was education, it will be presumed until rebuttal to have been in discharge of parental duty: *Id.*

A conveyance to a child either directly or by payment of the purchase-money, and having the deed made to the child, is *primâ facie* an advancement: *Id.*

Evidence—Declarations.—All declarations of intent made by an ancestor during the execution of a settlement of property among a set of his children are admissible in evidence, to aid in determining whether the purpose of the ancestor was to make an advancement or a gift: *Duling* v. *Johnson*, 32 Ind.

A father of two sets of children, the first set consisting of three, in directing the conveyance of certain lands to two of said first set, the land so received by each being nearly equal in value to a tract which the father had previously caused to be conveyed to the third child of said first set, said, that he desired such conveyance to be made to said two children because their mother had worked very hard and had not lived to enjoy the property, and he therefore desired her children to have a share over and above the other set of children by his second wife. *Held*, in a suit for partition of other lands, owned by the father at his death, that all said conveyances to the first set of children were gifts: *Id.*

AGENT.

A real estate broker finding a purchaser for the land of his principal is entitled to his commissions, although the principal vary the terms of the sale or sell part of the land at a higher price than that at which he authorized the agent to sell: *Woods et al.* v. *Stephens*, 46 or 47 Mo.

Declaration of Agent.—The declaration of an agent made, not in the course of his agency, but after the transaction to which they relate, in casual conversation with persons not parties to such transaction, are not binding on his principal: *Bennett* v. *Holmes*, 32 Ind

ALTERATION OF INSTRUMENT.

Test of Liability.—H. bought property from K., and in payment gave him a note at eighteen months payable to W. and by him endorsed. On the same day, after the delivery of the note to K., he returned with it to the clerk of H., said it was to have been drawn with interest, and the clerk, with the assent of H., added "with interest." The note being unpaid by the drawer at maturity, K. sued W. and gave in evidence the note with the addition taken out. *Held*, the alteration not having been fraudulently made, that W. was liable notwithstanding the alteration: *Kountz* v. *Kennedy*, 63 Penna.

Restoring the note to its original condition by erasing the alteration was not a fraud on the endorser, for it left the note as it was when he endorsed it. The material test as to liability on an altered instrument is whether its identity remains: *Id.*

If the alteration of a note, &c., be made fraudulently or with an illegal intent, or the original words cannot be certainly restored, or any party has become interested in it or affected by it or related to it since the alteration so that the alteration will do him wrong, the party making the alteration must abide by it and its consequences; otherwise he may restore the note to its original form and force: *Id.*

If when satisfaction of a note is demanded it be the same as before without having been fraudulently tampered with, it is not to be regarded as having been altered materially: *Id.*

There is no rule of law, independent of intention, by which an alteration not affecting ultimate liability makes the instrument void: *Id.*

ATTORNEY AT LAW.

Not an Officer—Oath.—The Act of 1868, c. 2, s. 5, requiring the courts to administer the abjuration of the Ku-Klux to "all officers," did not apply to attorneys: *Ingersoll* v. *Howard*, 1 Heiskell.

The courts had no power to require such oath by a general rule: *Id.*

Lien for Fees—On Property in Litigation.—Attorneys, solicitors and counsel have a lien upon property recovered or protected by their services, which may be declared by order in the cause in which the services are rendered: *Hunt* v. *McClanahan*, 1 Heiskell.

The client cannot, while the suit is pending, so dispose of the subject-matter in suit, as to deprive the attorney of his lien, nor afterwards, to any purchaser, with notice: *Id.*

BROKER. See *Agent.*

Champerty.

Assignment of a bid at chancery sale, after sale set aside and resale made, is void for champerty: *Newland* v. *Gaines*, 1 Heiskell.

Common Carrier.

Public Enemy—United States was.—In the late civil war, the troops of the United States were a "public enemy," against whose act a common carrier within the Confederate lines did not insure: *So. Express Co.* v. *Womack*, 1 Heiskell.

If a common carrier accepts goods to be carried for hire, the fact that the freight was paid and accepted in an illegal currency, would not affect his liability for the loss of the goods by negligence: *Id.*

Delivery of Goods to—Unsigned Receipt may be proved by Parol—Connecting Lines—Liability for Loss on any part of the Line.—Where flour was brought to Ogdensburg by the Northern Transportation Company, consigned to the plaintiffs at Concord, N. H., and to go over the railroad of the Northern (N. Y.) Railroad Company, and was deposited in a store-house under the general control of the Transportation Company, and according to the course of business there for six or seven years, a clerk of that company forwarded to the plaintiffs a way-bill marked "duplicate," and headed "Northern Railroad Company," and dated "Ogdensburg Depot," but not signed by any one, but reciting that said company had received of the Transportation Company the flour in question, and promising to deliver it to the consignees subject to charges as specified; and at the same time sent to the Northern Railroad Company a duplicate of such way-bill, which was entered by them in a book called the "Receipt Book," or the "Lake Freight Ledger," and the Transportation Company also drew upon the consignees for the freight to Ogdensburg; after which sending of the way-bills, in the usual course of business, orders and applications respecting the freight were addressed by the consignees to the Railroad Company, and were acted upon and answered by its agents, without any communication with the Transportation Company on the subject. And where also the plaintiffs' evidence tended to prove that after the loss of the flour by fire they applied to the defendants, then the trustees of said Railroad Company, to adjust their loss, and received no notice that defendants had not received the flour, or that any other party had possession of it at the time of the fire, or was responsible for it, and that plaintiffs had no knowledge that the defendants had not received the flour, or that they denied the receipt of it, until after the suit was brought: It was *held*, that if these way-bills were sent to the consignees with the knowledge of the defendants and with the intention on their part that they should be received and acted upon by the plaintiffs as the representations and undertakings of the defendants, and they were so received and acted upon by the plaintiffs who were induced thereby to make this claim and to bring this suit, the defendants would be estopped to deny that they had so received the flour. It was also *held*, that upon this evidence it was competent for the jury to find all the facts necessary to constitute such estoppel. It was also decided that while the defendants held the flour, so received, at Ogdensburg, awaiting the means to forward it, they held it as common carriers, and not as warehousemen,

unless by some order or agreement of plaintiffs, they were authorized to store it for them, and this would be so, even if plaintiffs had reason to expect delay of some weeks at Ogdensburg by reason of the accumulation of freight there. It was also *held*, that the counting of the flour when delivered by the Transportation Company to the railroad might be waived by them, and that it was competent for the jury from the circumstances stated to find that they had done so, and that the delivery was complete: *Barter & Co.* v. *Wheeler et al.*, 49 N. H.

Where goods are delivered to a transportation company to be transported over its route and over several railroads to the place of its destination, the companies having associated and formed a continuous line, an intermediate company is liable for the loss of goods happening upon its part of the line: *Id.*

Where several distinct corporations associate together and form a continuous line of common carriers, each being empowered to contract for freight and passengers for the whole line, and to receive pay for the same, which is to be divided in prescribed proportions, they are jointly liable for losses or injuries upon any part of the line: *Id.*

Where a contract is made in one state to transport goods over a line extending through two or more states, and the goods are lost, the rights of the parties will be governed by the laws of the state where the loss happened: *Id.*

Where common carriers by water, in their bill of lading made at Toledo, Ohio, stipulate to deliver goods to consignees at Concord, N. H. the dangers of navigation, fire, and collisions on the lakes and rivers and the Welland Canal excepted, it was *held*, that this limitation did not extend to losses by fire on the railroads: *Id.*

Where the trustees under a second mortgage of a railroad have taken possession of it, and have afterwards by a bill in equity obtained a decree of foreclosure with a provision for a sale of the railroad in accordance with the power conferred by the mortgage, and have themselves become the purchasers as they were authorized to do by the decree, and to hold the property in trust for the bondholders, and they continued to keep possession of the railroad and operate it as such trustees, it was *held*, that they were liable as common carriers for the loss of goods received for transportation: *Id.*

Confederate Notes.

Payment in, executed.—To bring a payment in Confederate currency, made on a note, within the rule as to executed contracts, it is not necessary that the payment be of the entire sum due, nor that it be endorsed as a credit on the note: *Cross* v. *Sells*, 1 Heiskell.

Sale for.—A party who has sold property for Confederate treasury notes, cannot, upon a tender of the Confederate notes, refuse to accept them and bring detinue or trover for the property: *Williams* v. *Elkins*, 1 Heiskell.

Whether he can recover for the value of the property, *quere? Id.*

Consideration.—Confederate treasury notes possessed during the existence of the "Confederate States," such elements of value as rendered the loan of them a valuable consideration, which would support a contract: *Naff* v. *Crawford*, 1 Heiskell.

Not Illegal.—The judgment in *Thorington* v. *Smith*, 9 Wall. 1, approved, holding that Confederate treasury notes were issued and imposed on the community by irresistible force; that the use of them by parties who had no illegal purpose in such use, was not unlawful: *Sherfy* v. *Argenbright*, 1 Heiskell.

Enemy Relation.—Confederate treasury notes, as a consideration passing from a person resident within the Confederate lines, to an attorney in fact of one resident in the loyal states, were not a valid and legal consideration: *Conley* v. *Burson*, 1 Heiskell.

Such payment amounts to a mere deposit, to the use of the payer: *Id.*

A power of attorney from a person in a loyal state to one in the Confederate States to sell land in Tennessee, was revoked by the war, and a sale being made under such power of attorney for Confederate treasury notes, received by the agent, the loss by the failure in value of the notes falls upon the buyer: *Id.*

Payment in, to Agent or Bailee.—A note placed in the hands of another as a collateral security, or as agent for collection, being paid to the holder in Confederate money, did not bind the payee or release the debtor, where the payor knew the nature of the holder's right, or was put upon inquiry as to it: *Scruggs* v. *Luster*, 1 Heiskell.

The bailee having received Confederate notes, will be required to account to the payor for their value at the time they were received: *Id.*

Collateral Security.—Where a debtor transferred a note payable in Confederate treasury notes, to be credited, if paid, otherwise he to stand bound for the original debt; held that the contract was not affected by the Confederate consideration of the note, and was not a contract to pay in Confederate notes: *Marshall* v. *Dodson*, 1 Heiskell.

CONFEDERATE STATES. See *Carrier; Confederate Notes; Contract; Duress; Evidence; International Law; Stamp; Tax Sale.*

Seizure of Arms.—The seizure by a Confederate colonel within the Confederate lines, of arms, which could be made available for purposes of war, concealed, belonging to a Federal soldier, was justifiable under the belligerent rights of the Confederate States: *Cummings* v. *Diggs*, 1 Heiskell.

To exclude evidence of the official character of the defendant, who justified as an officer, under the Confederate States, was error, and parol evidence was admissible to prove that defendant was such officer: *Id.*

Justification.—In an action of trespass, a plea, which attempts to justify an act under the belligerent powers of the Confederate state, is defective if it fails to show the defendant was a soldier. That he was "liable to perform military duty" is not sufficient: *Bayless* v. *Estes*, 1 Heiskell.

If a soldier could justify under the laws of the Confederate States to compel the service of citizens in the armies, the laws and order under which he acted must be pleaded specially: *Id.*

CONTRACT.

Illegal—Knowledge not Participation.—It seems that a statement

that a note was given for a horse, which the seller knew was to be used in "the rebel service," without more, does not show a meritorious defence against the note: *Gillam* v. *Looney*, 1 Heiskell.

Corporation.

Amendment of Charter.—A corporator, when sued upon a contract with the corporation, cannot plead an amendment of the charter without his consent, in discharge of his liability: *Hope Mut. F. Ins. Co.* v. *Beekman*, 46 or 47 Mo.

Covenant.

Interference by Equity.—Where a corporation, by its own voluntary act, has bought lands charged by covenants inseparable from the deed by which the land was originally conveyed and which were part of the consideration of the grant; a court of equity cannot strike out a part of the covenants, because though originally intended to operate for the equal benefit of both parties, they have become in progress of time oppressive and burdensome to the grantee; or because the purchase would make the corporation partners with the grantor in working the land, whether they would or not, contrary to their duties as a corporation—and the contract would thus become one restraining the alienability of property: *Marble Co.* v. *Ripley*, 10 Wall.

Criminal Law.

Amendment of Indictment.—An indictment charging the commission of a burglary on a day subsequent to the time of finding the indictment, may under our statute be amended on demurrer, or on motion, so as to state the true date of the commission of the offence, and if the indictment is not thus amended such defects will be cured by verdict: *State* v. *Blaisdell*, 49 N. H.

Debtor and Creditor.

Fraud of Debtor—Equity—Laches of Creditor.—Where the presentation of a claim against an estate settled in the insolvent courts within the time limited by the statute, has been prevented by the fraudulent concealment by the deceased, a bill in equity may be maintained to obtain satisfaction out of the surplus in the hands of heirs, and distributees, if commenced promptly after the discovery of the claim: *Sugar River Bank* v. *Fairbanks et al.*, 49 N. H.

A delay to commence proceedings for four years after the discovery of the claim would be altogether too long, and ordinarily the proceedings should be commenced within a few months, in analogy to the time allowed for the presentation of claims to the commissioners of insolvency: *Id.*

Conveyance fraudulent as to Creditors—Wife's Alimony—Execution for.—Where a person conveyed his property to a creditor in satisfaction of his debt, and received back security for the support of himself and wife during life, it appearing that the value of the property was greater to a substantial amount than the debt, and that the obligation for support was a substantial part of the consideration for the con-

veyance; it was *held*, that such conveyance was fraudulent and void as to the grantor's creditors: *Morrison* v. *Morrison*, 49 N. H.

Where the wife had commenced proceedings for a divorce about the time of such conveyance, and for causes existing before, and afterwards obtained a decree of divorce, and for alimony for those causes, and the conveyance was made to defeat her claim for alimony, it was *held* that she stood in relation of a creditor to the grantor and might avoid the conveyance: *Id.*

Where there was an ante-nuptial agreement under which mutual bonds were given, and in the one given by the wife it was stipulated that it should be void if upon the decease of her husband she should release her right of allowance and dower, and all other rights she might be entitled to by law in his estate, it was *held*, that although there were terms in the recital in the bond looking to a release by the wife in case of a dissolution of the marriage otherwise than by death, yet by a fair construction of the bond the right to alimony was not cut off: *Id.*

And also that alimony is to be regarded as an allowance to the wife for present support, which under the circumstances she could not be required to take at the husband's house, and therefore it was reasonable that he should contribute to her support elsewhere: *Id.*

Where upon an execution for alimony the body of the husband was arrested and imprisoned, but released on his giving bond to take the poor debtor's oath within the year, or surrender himself at the jail at the end of it, a levy of the same execution upon the debtor's real estate within the year, the debtor not having taken the poor debtor's oath, is void: *Id.*

Duress.

Proof to support Verdict.—Proof that a payor of a note, with a friend, met the payee in the road; payor told him they had come to pay the note; payee went to his son's house and returned, they awaiting his return; went to his house; payee said, "You have come to pay that note;" went into another room to get it; counted interest, and took pay in Confederate notes, and delivered note; inquired if they knew who would borrow the money; put it away in another room, and coming out, said he would keep an account of the men who paid him in that kind of money; the payor and friend being unarmed, and using no threats or force, but being rebels, and the payee being Union, and being within the Confederate lines, and "there being a general state of fear in regard to refusing to take Confederate money, many Union men having been arrested." *Held*, insufficient to prove duress, or to support a verdict: *Rollings* v. *Cate*, 1 Heiskell.

Charge on foregoing facts that, "if through a present exciting fear, a person was forced" to take Confederate money, the payment would not be binding, without anything in charge defining what result feared would suffice, is error: *Id.*

Proof of a *general state* of fear, &c., as above, is inadmissible: *Id.*

Entry.

Burden of Proof—Injunction.—Where a person makes an entry on land owned by others jointly interested with him in working it, but which is held by these last subject to a right of entry and possession

in him, for failure or refusal by them to fulfil certain conditions and stipulations about the products of the land, which they have covenanted to fulfil—so that *primâ facie* his entry is a deforcement of the owners and an invasion of their rights as such—the burden is on the party entering to show that his entry was justifiable: *Marble Co.* v. *Ripley*, 10 Wall.

Where a deed from one owner conveyed quarry lands to his co-owners, reserving a right in the grantor—if the grantees did not furnish marble from them—to enter and keep possession and take the marble himself, till the grantees should be ready and willing to fulfil the conditions of the contract on their part, an injunction which, after unwarrantable and illegal entry for alleged condition broken, enjoined the grantor from hindering the grantees from retaking possession and occupying and using the premises *until the further order of the court*, was held too broad; and on appeal was modified so as only to enjoin against an entry for any cause *theretofore* existing; thus leaving the grantor to enjoy his reserved right *thereafter* untrammelled: *Id.*

EQUITY. See *Covenant; Debtor and Creditor; Entry.*

Specific Performance.—Specific performance of a contract will not be decreed:—

(*a*) Against one party in favor of another who has disregarded his own reciprocal obligations in the matter; as *ex. gr.*, against a grantee of land charged with certain duties in regard to it, in favor of a grantor who has made a re-entry both unlawful and fraudulent:

(*b*) Nor where the duties to be fulfilled by the grantee are continuous, and involve the exercise of skill, personal labor, and cultivated judgment; as *ex. gr.*, to deliver marble of certain kinds, and in blocks of a kind that the court is incapable of determining whether they accord with the contract or not:

(*c*) Nor where there is a want of mutuality in the contract; as *ex. gr.*, where it is stipulated that one of the parties may abandon the contract at any time on giving a year's notice:

(*d*) Nor where the party (a grantor) has a complete remedy at law; as *ex. gr.*, in a grant of quarry land, the grantee agreeing to quarry and deliver to the grantor certain sorts of marble from it, and the grantor reserving a right of re-entry in case of non-performance in order to supply himself; and having moreover a remedy by an ordinary suit at law on the contract: *Marble Co.* v. *Ripley*, 10 Wall.

Injunction—Bond—Measure of Damages.—In a suit in equity against R., a large stockholder in a corporation, and against the corporation itself, a temporary injunction was granted to restrain R. from removing the machinery and other personal property of the corporation out of the state, and to restrain both defendants from selling the real estate of the corporation in this state where the business was carried on. And afterwards the injunction was modified so as to allow the machinery and personal property to be removed from the state upon furnishing a sufficient bond, with condition to pay the plaintiff such sum as the court upon the final decision of the bill in equity might award. Upon a final decree against R. for the payment of a large sum of money it was *held* that the sum to be paid by the obligors in the bond was not necessarily the

full amount of the decree against R. but the amount of damages occasioned to the plaintiff by such removal of the machinery and other personal property, and that this amount should be ascertained and fixed by the decree: *Moulton, Adm'r*, v. *Richardson*, 49 N. H.

Evidence.

Opinions of Parties on Political Questions.—It is error to permit a defendant to prove the "disloyalty" of the plaintiff in a civil action, for trespass in taking goods: *Hart* v. *Reynolds*, 1 Heiskell.

But while in most cases foreign to the issue, it may, in cases of circumstantial evidence, form part of the chain, and become legitimate proof. As where the question is one affecting the action of persons during the war, which may be controlled by their relation to the one party or the other: *Ellis* v. *Spurgin*, 1 Heiskell.

Or where the question of duress is involved in a transaction during the war: *Smith* v. *Cottrell*, 1 Heiskell.

Or to show the *animus* of defendant in making certain declarations: *Smith* v. *Carr*, 1 Heiskell.

If the political status of a party is to be proved, it must be done by acts and declarations, not by hearsay or reputation: *Hart* v. *Reynolds*, 1 Heiskell.

Facts to prove Title by Capture.—Proof that a horse was captured during the civil war, by a few Federal soldiers, from two to three persons dressed as rebel soldiers, said to belong to Morgan's command; turned over to a county provost-marshal; and that afterward, it came into the defendant's possession, he claiming to have obtained it by military order, is not sufficient evidence to defeat the right of the owner, from whom it had been taken by theft or unlawful force: *Chesney* v. *Rodgers*, 1 Heiskell.

Forcible Entry and Detainer.

In an action of forcible entry and detainer the title as between the parties is not a matter in issue. It is sufficient for the plaintiff to show that he was in peaceable possession of the premises, and that the defendant forcibly entered upon and detains the possession of the premises sued for: *Van Eaman et al.* v. *Walker et al.*, 46 or 47 Mo

Grant.

Manure—Whether it passes by Conveyance.—By the conveyance of a house and stable with a small piece of land used as a back-yard but not cultivated, manure in the stable-cellar, made by the horses of the grantor, who was a teamster, does not pass: *Proctor* v. *Gilson*, 49 N. H.

Proof that at the time of the conveyance it was agreed by parol that the manure should pass with the land, is not admissible: *Id.*

Restrictions upon Grantee.—A restriction upon absolute ownership in a grant of land having on it a quarry, where the grantees agree to deliver to the grantor, his heirs, &c., so long as they might want a certain number of feet per annum of marble of certain kinds for a partnership purpose (the grantor reserving a right of re-entry and of taking

the stone himself if the grantees do not fulfil their agreements), is not to be raised by implication. Hence it is not to be inferred, in the case of such a grant, where there is no obvious restriction upon the quantity of stone which the grantees may take out, that the grantees were meant to be limited to taking out no more stone: *Marble Co.* v. *Ripley*, 10 Wall.

Such a grant and reservation as that described *supra*, limited however in the extent to which the grantees were bound to furnish marble, does not leave in the grantor a corporeal interest in the marble *in situ;* and hence his interest is not exclusive of the right of the grantees to take marble on their own account *ad libitum: Id.*

Husband and Wife. See *Debtor and Creditor.*

International Law. See *Confederate Notes; Evidence.*

Capture.—The legality of a capture of private property in time of war, is not to be presumed, but must be proved: *Branner* v. *Felkner*, 1 Heiskell.

A private soldier, without orders, can not make a capture of property in the hands of a citizen, in time of war: *Id.*

Evidence that parties, dressed as soldiers, and claiming to be such, took out of the possession of a citizen, a horse, which had previously been used in the Confederate service, will not protect from the claim of the owner, a person afterward found in possession of the horse, claiming to have received him from the soldiers: *Id.*

Judgment.

Against a Dead Man.—A judgment in favor of or against a dead man is not a nullity: *Carr* v. *Townsend's Ex'rs*, 63 Penna.

In a scire facias on a judgment, the defendant cannot go behind the original judgment: *Id.*

A judgment was entered in favor of C., he at the time being dead: the record imported that he was living, and to allow the contrary to be shown would have impugned the record: *Id.*

Justices of the Peace.

Judicial Action.—The granting of an appeal by a justice of the peace is a judicial act, and he is not liable to an action for erroneously refusing to grant it: *Jordan* v. *Hanson*, 49 N. H.

Limitations, Statute of.

Power to divest Right under.—A right to a defence complete under a statute of limitations, can not be taken away by a statute, ordinance of a Constitutional Convention, or amendment of the Constitution: *Girdner* v. *Stephens*, 1 Heiskell.

Death from Wrongful Act or Omission.—A suit to recover, under section 784 of the Code, for the death of one, caused by the wrongful act or omission of another, must be commenced within two years from such death: *Hanna* v. *Jeffersonville Railroad Co.*, 32 Ind.

This limitation, which is descriptive of the right of action, and to

which there is no exception, need not be set up in answer; the question is properly raised by demurrer to the complaint: *Id.*

Agreement not to take advantage of the Statute—How pleaded in Equity—Upon replication filed to a plea that there was no promise within six years, an agreement not to take advantage of the Statute of Limitations cannot be given in evidence, it is not within the issue. The only question is whether there was any promise within six years: *Cowart* v. *Perrine*, 6 C. E. Green.

The old practice would have allowed a rejoinder that the defendants had agreed not to plead the statute. Now a rejoinder is not allowed, but the promise should be alleged in the bill, and if omitted by inadvertence, complainant would be allowed to amend:

A promise not to take advantage of the statute made pending a negotiation for allowing further time to arbitrators to report, will not be construed to be an agreement never to take advantage of the statute, but to be an agreement that the statute should not run while the arbitration was pending. After that was revoked and at an end the statute would begin to run: *Id.*

The ruling in this case, in 3 C. E. Green 454, that a submission to arbitration does not prevent the running of the Statute of Limitations is not affected by the fact that pending the submission the right to run was suspended: *Id.*

Lis Pendens.

When it takes Effect—Purchaser of Land during Suit takes subject to Plaintiff's Rights.—Lis pendens only takes effect from the service of the subpœna. The statute provides that the suit shall not be notice until the filing of the notice required by the statute, but gives no effect to the notice. It only restrains its effect: *Haughwout* v. *Murphy*, 6 C. E. Green.

A person who has contracted for the purchase of land may compel any one who after such contract and with notice of it, takes the legal title from the vendor, to perform the contract. The subsequent purchaser to hold the title against such contract of sale, must be a *bonâ fide* purchaser without notice, and must have paid the purchase-money: *Id.*

If part of the purchase-money remains unpaid after the sale, as to such part such second purchaser is not protected, but it may be claimed by the prior purchaser. But in such case the purchaser will hold the legal title conveyed to him free from any claim under the prior contract, except as to the purchase-money not paid until after notice of the contract: *Id.*

That a mortgage was given as security for the payment of the unpaid purchase-money is not sufficient to protect such subsequent purchaser. He is only protected as to money actually paid before notice: *Id.*

A delay of two years and a half not accounted for in bringing suit to compel specific performance is fatal to relief: *Id.*

Malicious Prosecution.

Civil Indebtedness—Attempt to compel Payment by Criminal Action.—W., an attorney, was employed by S. to collect a note; he obtained judgment and issued execution. S. being absent, W. compromised with

the debtor, and received a less sum than was due on the judgment. W. retained his fee for services in this case and in others, and deposited the balance with another attorney to be paid to S., and so informed S. The other attorney did not pay the balance when demanded. S. had W. arrested for embezzlement. *Held*, in an action for malicious prosecution, the judge below could not be required to give his opinion as to whether W. was civilly liable to S. on account of the compromise: *Schmidt* v. *Weidman*, 63 Penna.

Civil liability of W., if it existed, was not probable cause for instituting criminal proceedings, nor could it bear on the question of malice: *Id.*

If one commences a criminal prosecution merely for the purpose of compelling his debtor to pay a just debt, it is *primâ facie* evidence, both of want of probable cause and of malice, and shifts the *onus* on the defendant: *Id.*

MORTGAGE.

For Future Advances.—An instrument under seal is good, though no consideration was given for it. Courts will not allow the consideration to be inquired into for the sake of declaring the instrument void for want of consideration, but they will for the purpose of ascertaining what is due upon it: *Farnum* v. *Burnett*, 6 C. E. Green.

A mortgage given by the legal owners of the fee of the mortgaged premises to one of several persons having a beneficial interest therein, with the consent of all the others, for the avowed purpose of enabling him to raise money on it, is a perfectly valid security, and in the hands of any one who has advanced money or become security for money raised, is upon a sufficient consideration to sustain it as against all subsequent encumbrancers or purchasers: *Id.*

A mortgage made for future advances is good as against a subsequent purchaser or mortgagee: *Id.*

Entry of Satisfaction.—A mortgagee who has received satisfaction of the debt upon a suit for redemption, is liable to the penalty imposed by the statute, if he refuse upon demand to enter satisfaction upon the margin of the record of the deed: *Verges* v. *Giboney*, 46 or 47 Mo.

NEGLIGENCE.

Railroad—Street Crossing—City Ordinance.—Where the common council of a city, having exclusive control of the streets of the city, specifies by ordinance the general character and extent of work to be done by railroad companies where the streets are crossed by the tracks of their roads, in order that such railroad tracks may be crossed with more safety and convenience by the public, such work and the repairs thereof to be done and maintained to the satisfaction of a specified agent of the city, without, however, furnishing detailed specifications as to the particular manner in which the work shall be executed or requiring it to be done under the supervision, control, and direction of an authorized agent of the city; the fact that such work is done and maintained by a railroad company to the satisfaction of such specified agent, does not relieve the company from liability for an injury to a horse driven without fault or negligence over such crossing, such injury

being occasioned by the work having been done or maintained in an unskilful and improper manner, rendering the crossing unsafe and dangerous: *Delzell* v. *Ind. and Cin. Railroad Co.*, 32 Ind.

The council of Indianapolis by ordinance made it the duty of any railroad company whose track might cross or intersect any street of said city, to make the grade of the track conform to the established grade of the street, and to pave the street with boulder stones, or to lay down planks between the rails and for two feet on either side of such track, in such manner that the planks or boulder stones should extend the entire width of such street, or as far as such track might extend, such bouldering or planking or repairs thereof to be done and maintained to the satisfaction of the civil engineer of the city; the object of the requirement, as declared by the ordinance, being, "that such railroad track may be crossed with more safety and convenience by the public." Suit for damages against a railroad company, whose track extended across a public street, by the owner of a horse injured while being driven without fault or negligence across said railroad on said street, such injury being occasioned by the unskilful and improper manner of constructing and maintaining the crossing. Answer, that the defendant had complied with said ordinance, by laying down securely at said crossing strong and substantial planks between the rails and for two feet on either side of the track, extending the entire width of the crossing, doing said planking and maintaining it in repair to the satisfaction of the civil engineer of said city. *Held*, that the answer was bad on demurrer: *Id.*

Partnership.

Injunction against Partner at suit of the other.—Equity will enjoin one partner from violating the rights of his copartner in partnership matters, although no dissolution of the partnership be contemplated: *Marble Company* v. *Ripley*, 10 Wall.

Admissions.—In an action on account for goods sold by the plaintiff to the defendants, A. and B., where the question at issue before the jury was, whether A. and B. were partners at the date of such sale: *Held*, that the declaration of A. made to persons not parties, some months previous to the alleged sale, to the effect that such a partnership existed then, concealed from the public, in the business for the continuance of which the purchase in question was made, were admissible. *Held*, also, that evidence showing that, about the date of the sale in question, other persons than the plaintiff dealt with A. and B. as partners in such business, and showing the accompanying acts and declarations of A. to the effect that there was then such a partnership, was admissible: *Bennett* v. *Holmes*, 32 Ind.

Pleading.

Non-joinder of Parties.—In actions *ex delicto* the non-joinder of a party who ought to have been made plaintiff, can be taken advantage of only by plea in abatement, or by way of apportionment of damages: *Cooper* v. *Grand Trunk Railway*, 49 N. H.

Rebellion. See *Confederate States.*

REPLEVIN.

Verdict.—In an action of replevin, the property involved in the suit was specifically described in the complaint, and was referred to in the verdict as "said property." *Held*, that a more specific description of the property in the verdict was unnecessary: *Anderson* v. *Lane*, 32 Ind.

SALE.

What is.—In an action for the price of a boat laden with coal, it appeared that there had been no actual delivery or possession taken by the alleged vendee and there was no specification of price. *Held*, that there was no sale: *Bigley* v. *Risher*, 63 Penna.

Sale means a contract to pass rights of property for money, which the buyer pays or promises to pay to the seller for the thing bought: *Id.*

SEALED INSTRUMENT. See *Mortgage*

Validity—Inquiry into consideration—Undue Influence.—To a bill for injunction to restrain proceedings at law upon a note and sealed bill alleged to have been given when the maker was incompetent, and also through undue influence, and also alleging that there was a pretended consideration of the conveyance or release of some lands, and asking a discovery of the consideration, and of the value thereof. Defendants answer that the consideration of the note was the release of their interest in some lands, but decline to state the value of the lands, on the ground that the release of the lands, and not the value was the consideration, and as to the bill, that, it being under seal needs no consideration. Motion to dissolve denied. Defendants must answer fully as to the value of the lands: *Shortwell's Administratrix* v. *Struble and Wife*, 6 C. E. Green.

The complainant is entitled to a discovery of the consideration of the sealed bill, not on the ground that it would be void without consideration, but on the ground that the want of consideration, together with the imbecility of the testator and some undue influence used by the defendant in securing its execution, might at law render the bill invalid, when the same imbecility or influence would not affect its validity if given for a plain and acknowledged debt justly due from the intestate: *Id.*

If the sealed bill was obtained legally and without fraud, though without consideration, the defendants will be entitled to recover upon it, but in such case it was an advancement by the intestate, and must be brought into hotchpot before distribution of the personal estate and the consideration must be disclosed: *Id.*

STAMPS.

Fraudulent Omission.—Under the Act of July 13th 1866, 14 Stat. at Large 142, which requires promissory notes to be stamped, making them void only when the stamp is omitted with intent to defraud the government of the stamp duty, such fraudulent omission cannot be taken advantage of on demurrer: *Campbells* v. *Wilcox*, 10 Wall.

An averment in a declaration that the defendants had made and delivered to the plaintiffs their promissory notes, implies that the instruments were at the time in the form and condition required by law: *Id.*

Deed valid without.—United States revenue stamps are not essential to the validity of a deed, nor to its admissibility as evidence in a state court: *Sporrer* v. *Eifler*, 1 Heiskell.

Instruments made within Confederate lines.—An instrument made within the Confederate lines is not void for want of a stamp: *Susong* v. *Williams*, 1 Heiskell.

Tax Sales.

Redemption of Lands—Act of Congress of 1862—*Insurrectionary Districts.*—Statutes authorizing redemption from sales for taxes, are to be construed favorably to the owners of the land, and particularly when they provide full indemnity to the purchaser and impose a penalty on the delinquent: *Corbett* v. *Nutt*, 10 Wall.

A person who has been appointed by an order of court, trustee of a testator's lands generally, the testator having died seised of some lands in the state or district, over which the court had jurisdiction, and some in an adjoining state not far from the appointee's residence, but over which it had no jurisdiction, and who pays the redemption-money on lands in the latter state, sold under the Act of June 7th 1862, for the collection of taxes in insurrectionary districts, and with the assistance of the *cestui que trusts* of the land sold (married women) who make affidavits in the case, obtains a certificate of redemption, may properly, where the trustee named in the will has declined to act, be regarded as a person "having charge" of the estate of the owners, within the meaning of the act, which authorizes such persons to redeem: *Id.*

A person so "having charge," is not obliged to take the oath required by the 7th section of the Act of March 3d 1865, amendatory of the Act just named "that he has not taken part with the insurgents in the present rebellion," &c.: *Id.*

Nor obliged, in order to recover, to show that the certificate of redemption was forwarded to the secretary of the treasury, and the defendant repaid his purchase-money by a draft drawn on the treasury of the United States: *Id.*

The voluntary residence of a person within the Confederate lines during the late rebellion, did not incapacitate him, under the Act of July 17th 1862, "to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels and for other purposes"—and which makes null and void all *sales, transfers, and conveyances*, of any estate and property, of persons engaged in armed rebellion against the United States, or aiding and abetting such rebellion, who after sixty days' warning and proclamation duly given and made by the President, did not cease to aid, countenance and abet such rebellion and return to his allegiance to the United States, and which Act prescribes proceedings to condemn such property, and apply the proceeds to the support of the army—from making a last will and testament, further, if at all, than as against the United States: *Id.*

Assuming (what is not decided) that a devise is within the terms "sales, transfers, and conveyances," invalidated by the act, and that a person who during the rebellion left loyal territory and went to and resided in and died in the rebel lines, is within the category of persons for whom the warning and proclamation of the President prescribed by the act was intended, the invalidity declared is to be regarded as lim-

ited and not absolute; and it is only as against the United States that the "sales, transfers, and conveyances," of property liable to seizure, are null and void. They are not void as between private persons, or against any other party than the United States: *Id.*

UNITED STATES.

Title to Property.—The title of the government of the United States to personal property, is subject to be contested by a citizen who has a claim to the property: *Dawson* v. *Susong*, 1 Heiskell.

United States brand on stock, and a sale of it at a public sale, will not preclude the true owner of the stock from the recovery of it. Government brands on stock are evidence that the United States has had the property in possession as a claimant, but do not prove a title: *Id.*

WATERS AND WATERCOURSES.

Navigable River—Riparian Owner.—The owner of land bounded by a navigable river has certain riparian rights, whether his title extend to the middle of the stream or not, and among these, are free access to the navigable part of the stream, and the right to make a landing, wharf, or pier for his own use, or for the use of the public: *Yates* v. *Milwaukee*, 10 Wall.

These rights are valuable and are property, and can be taken for the public good only when due compensation is made: *Id.*

They are to be enjoyed subject to such general rules and laws as the legislature may prescribe for the protection of the public right in the river as a navigable stream: *Id.*

But a statute of a state which confers on a city, the power to establish dock and wharf lines, and to restrain encroachments and prevent obstructions to such a stream, does not authorize it to declare by special ordinance a private wharf to be an obstruction to navigation and a nuisance, and to order its removal, when, in point of fact, it was no obstruction, or hindrance to navigation: *Id.*

The question of nuisance or obstruction must be determined by general and fixed laws, and it is not to be tolerated that the local municipal authorities of a city declare any particular business or structure a nuisance in such a summary mode, and enforce its decision at its own pleasure: *Id.*

WILLS.

Rule in Shelley's Case.—The rule in Shelley's Case must govern in the construction of wills made prior to June 13th 1820, in all cases where it is applicable: *Quick's Executor* v. *Quick*, 6 C. E. Green.

The rule applies even when another estate for life is interposed between the death of the first tenant for life, and the estate to his heirs: *Id.*

A devise upon the decease of a tenant for life to heirs "as the law directs" in case of dying intestate, means as the law was at the time of making the will, and not as it might be at the death of the tenant for life: *Id.*

Such limitation as it gives the estate at the death of the life tenant to persons who may not then be his heirs at law, or in shares different from those prescribed by the law at that time, prevents the application