

or screw may be dropped. To guard against damage by such accident the law requires suitable railings and barriers, a proper width of road, and whatever may be reasonably required for the safety of the traveller. The wisdom of these remarks forcibly commends them to our approval.

We are of opinion that the petition contained a sufficient statement of the cause of action, and that the demurrer should have been overruled.

Reversed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF KANSAS.¹

SUPREME COURT OF MAINE.²

COURT OF APPEALS OF MARYLAND.³

SUPREME COURT OF MICHIGAN.⁴

SUPREME COURT OF NEW YORK.⁵

SUPREME COURT OF PENNSYLVANIA.⁶

ACTION. See *Partnership*.

Case—Damages.—Where, in an action under R. S., c. 51, § 31, to recover damages for property injured by fire, communicated by a locomotive engine, the plaintiff has an absolute title to the whole property destroyed, he may recover for the whole injury although he held the title as security for a debt, and had agreed that, upon payment of the debt, he would reconvey: *Bean v. Atlantic & St. Lawrence Railroad Co.*, 58 Me.

And where the plaintiff had a policy of insurance upon a building thus destroyed, and upon payment of the amount of the debt for which he held the property as security by the insurers, he assigned to them the statute claim with a stipulation on their part, that any excess recovered by the insurers, beyond the amount paid to him by them, should belong to him,—the insurers may recover, in the name of the plaintiff, for the whole injury: *Id.*

AGENT.

Personal liability of Agent—Evidence.—A contract in writing stated that the parties whose names were thereto signed, had, as agents, bought

¹ From W. C. Webb, Esq., Reporter; to appear in 6 or 7 Kansas Rep.

² From W. W. Virgin, Esq., Reporter; to appear in 58 Maine Rep.

³ From J. S. Stockett, Esq., Reporter; to appear in 33 Md. Rep.

⁴ From H. K. Clarke, Esq., Reporter; to appear in 20 Mich. Rep.

⁵ From Hon. O. L. Barbour, Reporter; to appear in vol. 59 of his reports.

⁶ From P. F. Smith, Esq., Reporter; to appear in 65 Penna. Rep.

and agreed to receive a certain quantity of quercitron bark at a stipulated price, to be delivered to them, or to their principal, within a time specified. The name of their principal was disclosed in the contract, and they therein acknowledged the receipt of one dollar, on account of the contract, to bind their principal: *Held*: 1. That upon a refusal to receive the bark when tendered, the agents were not personally liable to the vendor. 2. And that parol evidence was inadmissible for the purpose of showing that the vendor had given credit to the agents exclusively, and that he looked solely to them as the purchasers: *McClerman v. Hall*, 33 Md.

Fraud by—Liability of Principal.—The defendants delivered to the plaintiffs (a bank) coin to be transmitted to defendants' agent, sold and the proceeds to be passed to the plaintiffs' credit in a city bank. The agent wrote to the plaintiffs that he had sold the coin and deposited the proceeds in the city bank to the credit of the plaintiffs, who thereupon credited the defendants and sent them the agent's letter on which they charged the plaintiffs. After some days it was discovered that the agent had not made the deposit and had failed. *Held*, that the plaintiffs were not bound by the entry of the credit and that the loss fell on the defendants: *Dimes Savings Institution v. Allentown Bank*, 65 Pa.

The agent some days after he said he had made the deposit, deposited his check to the plaintiffs' credit in the city bank, which gave notice to the plaintiffs of a deposit of so much money. The check was not good. *Held*, neither the plaintiffs nor the city bank were bound by the credit: *Id.*

The check was not money and the agent had no right to substitute his check for money: *Id.*

Nothing but an actual and *bonâ fide* deposit of money to the plaintiffs' credit could charge them: *Id.*

The defendants were responsible for the acts of their agent, as if they had deposited the worthless check: *Id.*

AMENDMENT. See *Pleading*.

BILLS AND NOTES.

Consideration—Indian Land.—A note given by one citizen of the United States, to another, for the sale and delivery of possession of a tract of land to which the Indian title has not been extinguished, is void: *Vickroy v. Pratt*, 6 or 7 Kans.

Lex loci contractus.—When no place of payment is named in a promissory note, it must be construed according to the law of the place where it is made: *Stickney v. Jordan*, 58 Me.

Compound interest is recoverable in Maine, in an action on a promissory note given in New Hampshire, to a payee, resident there, and made payable with interest annually: *Id.*

Interest—Special Agreement.—In the absence of any special agreement to that effect, interest cannot be lawfully claimed on partial prepayments made on a promissory note payable on time, without interest: *Parker v. Moody*, 58 Me.

Where the payee of a promissory note, payable on time, without interest, upon being asked by the maker if he would accept partial prepayments, and allow interest on them, replied, "I think it will be all right, there will be no trouble about it," the maker might thereby understand the payee as assenting to the allowance of interest: *Id.*

BOUNDARY.

Disputed Lines.—K. and W. had a dispute as to their line; M. ran the line under their agreement. W. sold to S., who had a dispute with K. as to the line, when by their agreement P. ran a line different from M.'s. In ejectment by S. alleging P.'s line was fraudulent; it was error to instruct the jury that M.'s line was not a consentable line and had been abandoned: *Kellum v. Smith*, 65 Pa.

If P.'s line was fraudulent the parties were thrown back on their former line, and the question would then be on M.'s line and would be for the jury: *Id.*

A line established under a parol compromise will be supported, and is not affected by the Statute of Frauds: *Id.*

COLLISION. See *Shipping*.

CONTRACT.

Effect of Rescission.—A party having, regained possession of property, which he had parted with under a contract he now alleges to be void for fraud, and which he rescinds for that reason, is not estopped, while retaining such possession, to defend his title on the ground of the fraud, —it appearing that he retains nothing except that which was originally his own: *Martin v. Ash*, 20 Mich.

A party defrauded in a contract will not be debarred of his rights, unless his delay to assert them amounts to a waiver, or he consciously does some act which will prevent the other party from being put in as good condition as he was before. A contract right to rescind may be enforced with the same results: *Id.*

DEBTOR AND CREDITOR.

Fraudulent Sale.—Where one sells land by parol and afterwards conveys, no one can gainsay this, although he was not compellable to convey: *Sackett v. Spencer*, 65 Pa.

Spencer having a contract with Overton for land, Forman's wife advanced the purchase-money and the deed was made to him, he agreeing to reconvey to Spencer which he did. Afterwards a judgment was recovered against Forman under which his interest in the land was sold. In ejectment by the purchaser against Spencer, it was not a question of parol trust and against the Act of April 22d 1856, but whether the transaction was fraudulent: *Id.*

If Forman received the title without paying anything, it was not fraud on his creditors for him to perform the agreement on which he received it: *Id.*

Declarations of Forman after his conveyance to Spencer were not admissible: *Id.*

Evidence that about the time of the reconveyance to Spencer, he was endeavoring to borrow money to pay Mrs. Forman was proper: *Id.*

Assignee with notice of prior Conveyance.—Ripka conveyed a ground-rent to Winpenny, of which he informed Ogle but did not record his deed; afterwards Ripka mortgaged the ground-rent to Ogle in trust to pay his creditors who were named. Winpenny received the rent for some years, Ogle died: Clay was substituted and received notice of the deed. He sold the ground-rent under the mortgage and purchased it at the sheriff's sale, the deed being still unrecorded. Clay had no better title after the sheriff's sale than before: *Spackman v. Ott*, 65 Pa.

The trustee and creditors under the mortgage were in the same situation as an assignee and creditors under a voluntary assignment: *Id.*

Such assignee and creditors are not purchasers for value within the Recording Act of March 18th 1775: *Id.*

Such assignee is the representative of the debtor, enjoying his rights only and not representing the creditors: *Id.*

Winpenny being a purchaser for value, his title was not postponed to that under the mortgage: *Id.*

DEED. See *Debtor and Creditor.*

Delivery—Evidence—Presumption.—It is necessary, as a rule, that to constitute a sufficient delivery of a deed, the grantor shall part with all control over the deed, and this rule applies in all cases where there is no evidence that tends to show that the grantor did both deliver the deed and also retain some control over it: *Burton v. Boyd*, 6 or 7 Kans.

If a deed which shows upon its face that it was signed and acknowledged, but does not show upon its face, or elsewhere, that it was ever delivered, be found in the possession of the grantor at the time of his death, the presumption, from such facts, is that the deed was never delivered, and it will devolve upon the party claiming that it was delivered, to prove the same: *Id.*

When it is claimed, and the evidence seems to show, that the grantor, by his deed to the grantee, has attempted to defraud the plaintiff, and where the defendant holds under the grantee, relationship between the grantor and grantee may be shown as a circumstance, along with the other facts in the case tending to prove and explain the nature and character of the transaction between the grantor and grantee: *Id.*

DEVISE.

In case of a devise over, which for any reason is incapable of taking effect, and is therefore ineffective, it seems that such devise leaves the estate in the first taker, the same as if the devise over had not been attempted: *Smiley v. Bailey*, 59 Barb.

ERROR.

Party complaining must show Damage.—A party against whom no judgment has been rendered or final order made, and who, after the trial in the court below, moved for and obtained an order granting him a new trial, has no good reason to complain in this court of the action of the court below: *Burton v. Boyd*, 6 or 7 Kans.

It is not necessary that a special verdict of a jury should contain facts admitted by the pleadings: *Id.*

Although it may be error for the court to give as an instruction to the jury, an abstract proposition of law that has no application to the case under consideration, yet, unless it be made reasonably to appear that the jury were misled by such instruction, the judgment of the court below will not be reversed for such error: *Id.*

New Trial—Evidence—Jury.—Where there is testimony, tending to support every proposition necessary to uphold a verdict and there have been two trials with the same result, this court will not reverse an order of the District Court, refusing to grant another new trial, even though the weight of the evidence may seem to us opposed to the verdict: *Pacific Railroad Co. v. Nash*, 6 or 7 Kans.

Where the charge of the court is omitted from the record, this court will presume the proper instructions were given, and on this presumption will not examine the instructions refused: *Id.*

Where the gist of the action is negligence, it is not error to admit testimony of all surrounding facts that may tend to show the degree of care necessary in the case: *Id.*

It is not error for the court when informed that the jury cannot agree, to urge them to make further efforts to harmonize, and to indicate that they may be kept together until they do agree: *Id.*

Violation of Court Rules.—Although courts are the best exponents of their own rules, yet the Supreme Court will reverse when the court below has plainly disregarded or violated its own rules: *Brennan's Estate*, 65 Pa.

A rule of court required auditors to certify with their report that they had given notice of the time of filing. The court confirmed a report without such certificate. The Supreme Court reversed the decree: *Id.*

ESTATES IN REMAINDER.

Where the ultimate remainder in fee is limited upon two lives in being at the time of the grant, it will not be defeated by the creation and failure of an intermediate trust estate: *King v. Whaley*, 59 Barb.

ESTOPPEL.

Vendor and Vendee—Sale of wrong Lot.—B., being the owner of warrant 4886, at the request of P., a surveyor, employed him to locate it; by mistake P. located it on 4883 adjoining, and laid out farm lots and roads. P. afterwards, in ignorance of his mistake, bought 4883. B., sold farms on the location, which were settled and improved. P. sold 4883, his vendees knowing of the improvements and seeing others made, but not knowing that they were on 4883. *Held*, that the vendees were not estopped to claim 4883. Silence will estop only where it is a fraud; it is different as to positive acts: *Lawrence v. Luhr*, 65 Pa.

Millingar v. Sorg, 5 P. F. Smith 215, s. c. 11 Id. 471, compared and distinguished. *Id.*

EVIDENCE. See *Agent; Deed; Gift; Receipt.*

Title-deeds in replevin for Grain.—In an action of replevin to recover immediate possession of certain shocks of oats, the defendant

had sown and harvested the oats on land of which he had been in possession several years. *Held*, that in such an action the plaintiff could not introduce his title papers to show that he was the owner of the land: *Caldwell v. Custard*, 6 or 7 Kans.

Fact for Jury—Instruction.—A cash item of six dollars and sixty-seven cents, is the largest amount that can be proved by a party's book and suppletory oath: *Kelton Administrator v. Hill*, 58 Me.

Where the amount of an item of credit in a plaintiff's account, annexed to the writ, is conceded by both parties to be erroneous, and no specific amount is agreed upon, it is for the jury to fix the amount from the evidence: *Id.*

And it is erroneous in such case to instruct the jury that they may allow the defendant's account in set-off, inasmuch as its amount is less than the plaintiff's item of credit: *Id.*

In an equity action, the court will not reverse the judgment on account of the admission of improper evidence, if from the whole case it appears that such evidence could not have changed the result: *King v. Whaley*, 59 Barb.

Declarations.—Where one of several owners enters into the actual possession of land under a deed which purports to convey the entire interest, his declarations, though perhaps unnecessary, are competent evidence to restrict his claim and show that it is not adverse: *Id.*

Judicial Records.—The enrolled decree and the proceedings in a suit in Chancery, collected and attached together as provided by the statute (Comp. Laws, §§ 3512, 3513), constitute the record of the cause. When any part of it is read in evidence by one party, every other part of it,—being properly on the files of the cause,—is also in evidence, and may be read by the opposite party: *Thayer v. McGee*, 20 Mich.

EXECUTION. See *Judgment*; *Partnership*.

FOREIGN JUDGMENT.

Suit on Judgment of Court of another State—Evidence.—It seems that in a suit on a judgment in another state, the insufficiency of the authentication of the record would not prevent a judgment for want of a sufficient affidavit of defence, though such objection would prevent the record being evidence on a trial: *Wetherill v. Stillman*, 65 Pa.

A judgment of a court of another state properly authenticated has the same conclusiveness in Pennsylvania as at home: *Id.*

Unless it be shown that the court was of special or limited jurisdiction no averment can be made against the conclusiveness of its record: *Id.*

A record of a New York court showed that the parties had been personally summoned; this was conclusive that the court had jurisdiction of all the parties: *Id.*

An affidavit of a defendant in a suit on this record that he had not been served, amounted to nothing against it: *Id.*

Proof of jurisdiction cannot be required when a court has assumed to exercise it legally: *Id.*

The record showed that costs were included in a judgment for a gross sum. *Held*, that the judgment was a unit, and interest was allowable on the whole: *Id.*

FRAUD. See *Contract ; Deed ; Judgment.*

Bill in equity to avoid Conveyance.—A bill alleged, substantially, that the respondent, with intent to defraud the complainant, wilfully and knowingly made to him a series of false and fraudulent representations, specifically set out, as to matters of fact relating to the "McKay Sole Sewing Machine," and the "Foreign Sole Sewing Machine Company;" and, that by means of such representations, he induced the complainant to purchase of him a large number of worthless shares in a mock company, and to give him in exchange therefor, a conveyance of several lots of land situate in this state, praying that the conveyance be decreed void and the respondent ordered to reconvey to the complainant. On demurrer, *Held*, that the bill be sustained: *Clark v. Robinson*, 58 Me.

GIFT.

Evidence.—In the hearing of a bill in equity, brought to compel the administrator of the estate of the plaintiff's husband to endorse a note alleged to have been given to her by her husband, the deposition of the plaintiff, to prove the gift, is inadmissible: *Troubridge v. Holden*, 58 Me.

To establish a gift of the note of a third person, from a husband to his wife, the evidence should be such as to satisfy the court not only that the donor said and did what is necessary to constitute a valid gift, but that it was, in very deed, his intention, at the time, to part with his own property in it, and bestow it upon the donee, for her independent and individual use: *Id.*

HIGHWAY.

Liability of Townships.—Townships are under no legal obligation to keep in repair bridges and culverts within their limits; and therefore they are not liable under the Act of 1861 (No. 197, p. 407), for damages occasioned by neglect to keep such bridges and culverts in repair. *Martin v. Highway Commissioners of Niles*, 4 Mich. 557, cited and approved: *Township of Leoni v. Taylor*, 20 Mich.

Construction of Statutes.—In the construction of statutes the intention of the legislature is undoubtedly the end to be sought; but such construction should not be repugnant to the clear meaning of the words: *Id.*

Right of Way over a Street not opened by Public Authority, in the Purchasers of Lots bounding thereon—Dedication of Property to Public use.—The owner of certain lands lying between Madison and Druid Hill avenues, in the city of Baltimore, offered at public auction certain portions of them, marked in lots upon a map or plat. Upon this map lots and streets were laid down, and among others there was one designated as Mosher street; it ran from Madison avenue, across McCulloh street, to Druid Hill avenue. The lots advertised for sale and described as being on Mosher street, were all between Madison avenue and McCulloh street. There was no sale at auction; subsequently four of the

lots, calling to bound on Mosher street, were disposed of at private sale. Afterwards, Mosher street, lying between Madison and Druid Hill avenues, was condemned by authority of the city. *Held*: 1st. That the right of way or easement in Mosher street acquired by the purchasers of the lots bounding thereon, extended from Madison avenue only to McCulloh street, their lots lying between these streets; and to that extent only, was there a dedication of Mosher street to public use by their vendor. 2d. That the vendor of the lots was entitled to substantial damages for that part of Mosher street lying between McCulloh street and Druid Hill avenue, there having been no dedication of the same to public use: *Hawley and others v. Mayor and Council of Baltimore*, 33 Md.

The purchaser of a lot calling to bound on a street not yet opened by the public authorities, is entitled to a right of way over it, if it be of the lands of his vendor, to its full extent and dimensions only until it reaches some other street or public way: *Id.*

HUSBAND AND WIFE.

Wife's separate Estate—Presumption as to Husband's use of.—The only rule as to proof to fix liability on a husband for his wife's money received by him, is that it must be sufficient to satisfy the tribunal that it preponderates over all theories to the contrary: *Young's Estate*, 65 Pa.

When the prima facies is that the money was received for the wife's use, the burden is on the husband to show the contrary: *Id.*

An executor in the wife's presence delivered to her husband her distributive share in money and securities, he collected the securities. *Held*, to be constructive evidence that he intended to use the money as his own: *Id.*

The silence of a wife at the time her husband receives her money is not sufficient to raise the presumption of a gift to him: *Id.*

When the husband receives a wife's money, the presumption is that he receives it as hers: *Id.*

INTEREST. See *Bills and Notes; Foreign Judgment.*

JUDGMENT.

Erroneous not Void.—An erroneous judgment or execution is not void; it can be set aside only by direct action by parties having an interest in it and not by collateral attack in any other proceeding: *Wilkinson's Appeal*, 65 Pa.

No one but the defendant in an irregular execution can take advantage of its irregularity: *Id.*

If he does not object he stands as consenting, and as to him the maxim *consensus tollit errorem* controls: *Id.*

An award of arbitrators as soon as filed has the form and substance of a judgment, and continues so till reversed on appeal: *Id.*

An award of arbitrators was filed and execution immediately issued on it; the defendant not objecting. *Held*, that the proceeds of sale were properly awarded to the execution, notwithstanding the objections of subsequent execution creditors: *Id.*

Fraud—Vacation.—Where a party obtains a judgment by his own

wilful perjury, or the use of false testimony which he knows at the time to be false, he practises a fraud for which the judgment may be vacated: *Laithe v. McDonald*, 6 or 7 Kans.

JURY. See *Error*.

LANDLORD AND TENANT.

Lease—Refusal of Wife to join.—Tatham and Waite executed a lease of Waite's land, it was left with Waite for his wife's acknowledgment which she declined. *Held*, that Tatham was not bound to accept nor Waite to deliver it: *Tatham v. Lewis*, 65 Pa.

When his wife refused, Waite had a right to destroy the lease: *Id.*

Lewis and Tatham had been in negotiation to embark together in the purchase of mining rights; Lewis afterwards bought the land for which Waite had executed the lease to Tatham; the master found that it was not the understanding that Lewis's operations should be for the joint interest of himself and Tatham. *Held*, there being no confidential relation between them, Lewis, by notice of the inoperative lease of Waite, could not be affected with an equity for Tatham: *Id.*

Waite after the sale to Lewis destroyed the lease; that would not have destroyed the term had the lease been valid: *Id.*

Tatham could have compelled Waite to execute another, and if Lewis had been affected with notice of its existence, he could have been compelled to confirm it: *Id.*

Statute of VIII. Anne, Chap. 14, sect. 1—Attachment on Warrant—Sheriff protected by an Order of the Court—Remedy of the Landlord for arrearages of rent.—Under an attachment on warrant and the order of the Court thereon, certain goods and chattels of a tenant were seized and sold by the sheriff, without paying the arrears of rent due the landlord, after notice given under the Statute of VIII. Anne, chap. 14, sect. 1. In an action against the sheriff by the landlord, *Held*: 1. That an attachment on warrant was not an execution within the meaning of the Statute of VIII. Anne, ch. 14, sect. 1. 2. That the order of the court directing the sale of the property seized by the sheriff, fully justified him in making the sale, and he was not liable to any one for so doing. 3. That the landlord having a *quasi* lien on the goods of his tenant subject to distress, for arrearages of rent, was entitled to claim out of the proceeds of the sale made by the sheriff, such an amount of rent in arrear as he could have legally demanded if the goods had been taken on execution; and his claim, if properly established, would have taken precedence of the debt for which the attachment issued: *Thomson v. Baltimore and Susquehanna Steam Co.*, 33 Md.

LEASE. See *Landlord and Tenant*.

LIMITATIONS, STATUTE OF.

Death of Party—Acknowledgment.—The death of a creditor does not suspend the running of the Statute of Limitations against his claim when the statute has once begun to run: *Green, Administrator v. Goble*, 6 or 7 Kans.

The acknowledgment of a debt required to take a claim out of the

Statute of Limitations must be in writing, and signed by the party to be charged therewith: *Id.*

NAVIGABLE WATERS.

Sunken Vessel—Duties of Owner—Removal of Obstructions from Navigable Waters.—An owner is not liable to raise or remove the hulk of a worthless wreck, sunk in navigable waters, nor is he liable for injuries to other navigators: *Winpenny v. Philadelphia*, 65 Pa.

If instead of abandoning a sunken vessel the owner retains such possession and control of it as it is susceptible of, he is bound to exercise a reasonable degree of diligence in removing it: *Id.*

If he attempts to remove the wreck and fails, the inadequacy of the means will not be proof of negligence: *Id.*

A municipal corporation through which a stream passes, is not bound to keep it in a navigable condition: *Id.*

The obligation of removing obstructions, &c., from navigable streams is upon the state or United States, according as they may be confined within state limits or extending beyond and necessary for interstate commerce: *Id.*

Such obligation cannot be enforced against the will of the state: *Id.*

By the 28th section of the Consolidation Act the councils of Philadelphia are required to keep the "navigable waters" within its limits clear: *Id.*

"Navigable waters" intended are those without the wharf lines, and the city is liable for negligence in not removing obstructions from them: *Id.*

NEGLIGENCE. See *Action*.

Action on the Case.—Injuries to Property by Infection.—A party, who being allowed to remain on land, under a mere license, so uses it as to make it the means of communicating an infectious disease to cattle, will be held liable in damages for all the injury thus occasioned to the property of the owner or licensor of the premises: such owner being ignorant of the danger to which his property was exposed: *Eaton v. Winnie*, 20 Mich.

Deceit as affecting the question of Negligence.—Where one assumes to have knowledge of a subject of which another may be ignorant, and knowingly makes false statements regarding it, upon which the other relies to his injury, the party who makes such statements will not be heard to say that the person who took his word and relied upon it, was guilty of such negligence, as to be precluded from recovering compensation for injuries which were inflicted on him under cover of the falsehood: *Id.*

In towing Boats.—The owner of a steamer engaged in towing boats on a lake and river is not responsible for an injury to one of the boats, while in tow of the steamer, without proof of actual negligence or want of ordinary care and skill: *Taft v. Carter*, 59 Barb.

Where the navigation was dangerous, and experienced men differed as to the comparative safety of two plans proposed for making up a tow, in order to pass it safely between the piers of a bridge on the river: *Held*, that the owners of the steamer towing it were not to be

deemed guilty of negligence, or want of ordinary care or skill, although the jury should believe, upon the evidence, that the captain omitted to adopt the safest plan : *Id.*

OFFICER.

De facto—Under color of Title.—Salaries of Officers.—A person actually obtaining office, with the legal *indicia* of title, is a legal officer until ousted, so far as to render his official acts as valid as if his title were not disputed: *Board of Auditors of Wayne County v. Benoit*, 20 Mich.

No claim can be enforced against a county for the salary or perquisites of a county officer, except for a period during which the claimant was the actual incumbent: *Id.*

PAYMENT.

Appropriation of.—If enough of the payments made on an account be subsequently applied by the creditor to liquidate the items consisting of liquors sold in violation of law; and a statement of the account, omitting therefrom the liquor items, and their equivalent in credits, be sent to the debtor, who thereupon replies that he will pay the same—the appropriations will be deemed made by mutual assent; and they cannot be revoked without such assent: *Plummer v. Erskine*, 58 Me.

PARTNERSHIP.

Balance between Partners.—Assumpsit will lie for a balance struck between partners: *Knerer v. Hoffman*, 65 Pa.

If a balance be not struck, account render is the remedy unless the partnership be a single transaction: *Id.*

"Debt," in the Act of June 16th 1836, § 35 (Attachment Execution,) will not extend to balance on an unsettled partnership account: *Id.*

Neither the Act of April 4th 1831, § 1, nor the Act of October 13th 1840, § 18 (Account Render), have any application to a proceeding by attachment: *Id.*

The defendant in foreign attachment in account render is not necessarily a party in the scire facias against the garnishee, nor is a non-resident defendant partner in an attachment execution: *Id.*

A creditor of a partner may sell all his interest in the partnership, and the sheriff's vendee can proceed by account render or bill in equity against the other partner: *Id.*

A balance struck between partners may be attached without an express promise to pay it: *Id.*

PLEADING.

Sufficient averments to sustain Action—Amendment.—A petition which states facts sufficient to constitute a cause of action, must be held sufficient on an objection to the introduction of any evidence under it, however informal, indefinite and uncertain it may be in some of its statements of facts: *Fitzpatrick v. Gebhart*, 6 or 7 Kans.

A petition which states that the defendant committed certain injuries to and upon the real estate of the plaintiff, is not insufficient because it does not state that the plaintiff was in the possession of such real estate: *Id.*

Amendments of pleadings may be made in three ways, subject to the discretion of the court: *First*, By interlineation. *Second*, By writing the amendment (and the amendment only) on a separate piece of paper, and referring to the original. *Third*, By rewriting the original pleading and incorporating the amendment in it; and when the amendment is short, and scarcely if at all material, the court does not abuse its discretion by allowing the amendment to be made by interlineation: *Id.*

Sufficiency of Averments of Cause of Action.—After answer filed, an objection to a petition that it does not state facts sufficient to constitute a cause of action is good only when there is a total failure to allege some matter essential to the relief sought, and is not good when the allegations are simply incomplete, indefinite, or statements of conclusions of law: *Laithe v. McDonald*, 6 or 7 Kans.

RECEIPT.

Contradiction of—A receipt is open to contradiction, explanation, or correction, and may be shown to have been given under a mistake either of fact or of law: *Russel v. Church*, 65.

RECORD. See *Evidence*.

REMOVAL OF CAUSES.

State and Territorial Courts.—The courts of the state cannot take cognisance of causes that were pending in the courts of the territory, until provision is made by law for their transfer to the state courts: *McCullom v. Pipe*, 6 or 7 Kans.

There is no law for the removal to the state courts of causes cognisable in the district or circuit courts of the United States: *Id.*

SHIPPING.

Responsibility of the Master of a Vessel for necessary Supplies—Interest of the Owners of a Vessel in the Freight.—Supplies were furnished for a schooner which was hired under a contract with the owners, known as a "lay," the terms of which were that the master should victual and man the vessel, and after all port charges were deducted, he should receive one-half of the freights. The existence of the contract was known to the parties who furnished the supplies for the vessel. The account for the supplies was kept against the schooner and owners. An attachment was issued by the parties who furnished the supplies, against the master of the vessel, a non-resident, and laid in the hands of persons who had chartered the vessel from the master in his own name. At the time of laying the attachment there was a net balance in the hands of the garnishees for freight due on the charter-party, more than the claim for supplies; and at the same date the master was indebted to the owners of the vessel on account of freights earned under the contract with them, to an amount greater than that due by the garnishees on the charter-party. Before the laying of the attachment, the owners of the vessel notified the garnishees not to pay the master any more of the freight then due. *Held*: That the master, and not the owners, was responsible for the supplies furnished to the

vessel. That the balance of the freight in the hands of the garnishees, due on the charter-party, was not the rightful property of the master, and therefore not subject to the attachment: *Stirling v. Loud*, 33 Md.

Collision of Vessels—Duties of Steamers and Sailing-Vessels.—Whenever a sailing-vessel and a steamer are proceeding in such directions as to involve risk of collision, it is the duty of the steamer to keep out of the way of the sailing-vessel, and of the sailing-vessel to hold her course: *P. W. & B. R. R. Co. v. Kerr*, 33 Md.

This rule is a general one not depending on the length of route of the steamer, or whether it be up, or down, or across, a navigable stream; and it applies to the case of a steamer transporting a train of cars with passengers, across a river at a railway connection: *Id.*

There may be dangers and difficulties which will excuse the violation of the rule, and then it will be left to the jury to determine if any surrounding circumstances existed to justify a departure from it: *Id.*

If the sailing-vessel conform to the rule and keep her course, she is not guilty of want of ordinary care, or contributory negligence, even when she might possibly have avoided a collision by casting anchor, or turning her course: *Id.*

It is the duty of steam-vessels navigating waters, where sailing-vessels are often met with, to keep a trustworthy and constant lookout besides the helmsman: *Id.*

TENANT IN COMMON.

Possession.—Where one of several owners enters into actual possession of land, under a deed which purports to convey the entire interest, it will not be presumed, without other evidence, that his possession is hostile to the remaining owners: *King v. Whaley*, 59 Barb.

TITLE. See *Action; Evidence.*

TRADE-MARK.

Property in—Injunction—Account.—One tradesman has no right to use the trade-marks or names previously adopted and used by another, so as to induce purchasers to believe contrary to the fact, that they are buying the articles to which the marks were originally applied: *Stonebraker v. Stonebraker*, 33 Md.

Trade-marks are property, and a person using such marks without the sanction and authority of the owner, will be restrained by injunction, even where it does not appear there was any fraudulent intent in their use, and will be required to account for the profits derived from the sale of goods so marked: *Id.*

S. having engaged in the manufacture of various medicines and other preparations, adopted and used thereon certain labels and trade-marks to distinguish his medicines and preparations from all others. These labels and trade-marks were generally known to the trade and consumers, so that by them the preparations were recognised, distinguished and bought. The manufacture and sale of these preparations had become the source of profit and emolument to S. Certain persons thereupon fraudulently engaged in the manufacture of medicines and other preparations, and sold large quantities thereof, with labels and trade-marks corresponding with those used by S., or with only a colorable difference,