the judgment been in favor of any one other than the state, it is conceded the property would not have been liable to be sold. But it is contended that the state is not bound by the statutory exemptions concerning homesteads.

The general rule in the construction of statutes is to interpret them so as not to embrace the sovereign power of the state, or affect her rights, unless she be specially named, or it be clear by necessary implication that she was intended to be included.

The legislature, in the provision of the law respecting homesteads, uses the broadest language and exempts from attachment and execution the homestead in all cases, except as therein provided: Wag. St. 691, § 1. The exceptions extend to certain specified cases, but no reservation is anywhere made in favor of the state.

As illustrative of the intention of the law-making powers, light may be thrown on the subject by reference to analogous legislation. In the chapter on executions (1 Wag. St. 603, § 9), it is declared that certain enumerated personal property shall be exempt from attachment and execution, but the state is not named in the act as being bound by the exemption. Still the legislature considered the state as being included the same as an individual, for we find that in section 15 it is declared that nothing contained in the chapter shall be construed so as to exempt any property from seizure and sale for the payment of taxes due the state, or any city or county thereof, showing clearly that it was the intention to include the state, and that the property may be seized by the state only in the specified instance provided for in the 15th section. The language employed in making the exemption is the same in both the execution and homestead acts.

The acts are in kindred subjects—*in pari materia*—and may be construed together. They have a common object in view. In the one case it is to allow the family for their comfort and support to keep certain necessary articles of which they cannot be deprived; in the other, to have a secure and permanent home, free from the attacks of all creditors. From the language used in the enactment, and the history of our legislation on the subject, I think the state is included by implication, and that she does not stand in an attitude different from any other creditor.

The judgment must therefore be affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ILLINOIS.[1]

SUPREME COURT OF MARYLAND.[2]

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.

SUPREME COURT OF NEW YORK.[4]

ATTORNEY. See *Infant.*

BILLS AND NOTES. See *Partnership.*

Consideration—Illegality and Failure of.—The plaintiff sold to A. and

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[1] From Hon. N. L. Freeman, Reporter; to appear in 57 Ills. Rep.

[2] From J. S. Stockett, Esq., Reporter; to appear in 36 Md. Rep.

[3] From the Judges; to appear in 51 N. H. Rep.

[4] From Hon. O. L. Barbour; to appear in Vol. 63 of his Reports.

B. his stock of goods, consisting in part of spirituous liquors, and took the note of A. for the price. A. afterwards sold his interest in the stock to B., and the plaintiff thereupon gave up A.'s note and took the note of B for the amount. This note was afterwards surrendered. and the note in suit, signed by B., with a surety, taken in its place. *Held*, that the surrender of A.'s note furnished no sufficient consideration for the note of B.; and that the note sued must fail for want of consideration; also, that the plaintiff could not apply money paid generally upon the notes to extinguish that part resting upon an illegal consideration so as to leave the balance good: *Gammon* v. *Plaisted*, 51 N. H.

CONSTITUTIONAL LAW. See *Statutes*.

CORPORATION.

Equity Pleading—Multifariousness—Right of Stockholders in a Manufacturing Company to invoke the aid of a Court of Equity to compel the Payment of unpaid Subscriptions.—The objection of multifariousness to a bill in equity, must be confined to cases where the demand against each particular defendant is entirely distinct and separate in the subject-matter from that in which other defendants are interested, and does not apply where there is a common liability in the defendants, and a common, although not a co-extensive, interest in the complainants: *Fiery* v. *Emmert*, 36 Md.

A bill was filed in equity by shareholders in a manufacturing company, incorporated under the general incorporation law, against other shareholders, for the purpose of ascertaining the amount of capital subscribed, by whom subscribed, the amounts paid thereon, by whom paid, and to enforce the payment of the same; to ascertain the debts of the company, for the payment of which the stockholders were liable, under the act of incorporation, to the amount of capital stock subscribed by them respectively, and on account of which suits had already been instituted against the complainants, and to compel a ratable contribution by all the stockholders towards the payment of the same. On a general demurrer to the bill, it was *held:* 1st. That in regard to the several matters charged in the bill, the complainants and defendants had a common interest and a common liability, to the extent of their individual subscriptions, and the bill therefore was not multifarious; 2d. That the bill having alleged that the entire amount of the capital stock of the company was not subscribed, it ought to have charged that the several stockholders, defendants, had, by their participation in the organization of the company, or by other acts, waived their right to rely upon such partial subscription of the capital stock as a defence to their liability, and the failure to so charge was a fatal defect in the bill; 3d. That the corporation ought also to have been made a party to the suit: *Id.*

DEBTOR AND CREDITOR. See *Homestead*.

Order to pay to third Person.—A written order by a creditor upon his debtor, requesting him to pay to a third person, is an equitable assignment of a chose in action, which a court of law (the debtor having received notice of the assignment), will recognise and enforce: *Conway* v. *Cutting*, 51 N. H.

No particular form of words is essential to the validity of such an as-

signment; neither is the express assent of the debtor thereto required in order to establish his liability to pay the debt to the assignee: *Id.*

EQUITY. See *Corporation; Homestead; Vendor and Purchaser.*

ESTOPPEL.

Title—Equity.—When a party assists another in the sale of property the legal title to which is in the seller, and recommends the title as being good in the vendor, such party thus assisting the sale will not be permitted to set up a secret equitable title in himself against such purchaser thus induced to buy and pay for the property: *Winchell* v. *Edwards*, 57 Ills.

EVIDENCE.

Destruction of by Parties.—Where a party is proved to have suppressed any species of evidence, or to have destroyed or defaced any written instrument, a presumption arises that had the truth appeared it would have been against his interest, and the fabrication of evidence raises a presumption against the party doing so, no less than when evidence has been suppressed or withheld: *Winchell* v. *Edwards*, 57 Ills.

Experts.—In an action for loss claimed to be covered by a policy of insurance the opinion of a witness not an expert, as to the value of a stock of goods in a store, is not admissible; and whether he is an expert or not is a question of fact for the judge who tries the cause, and not subject to revision: *Taylor* v. *Ins. Co.*, 51 N. H.

Written Instruments—Attesting Witnesses.—Where one who has signed his name as an attesting witness to the execution of an instrument did so without the knowledge or consent of the parties, the instrument may be proved as if there were no subscribing witness: *Sherwood* v. *Pratt*, 63 Barb.

The signature of a subscribing witness is not conclusive upon the parties to the instrument. It is only *primâ facie* evidence that the witness was called in by them; and the presumption arising from it may be contradicted: *Id.*

And for that purpose, parol testimony may be received; the object of the proof not being to contradict or vary the written agreement, but merely to show that its execution was not attested in a particular way: *Id.*

FRAUDS, STATUTE OF. See *Sale.*

HIGHWAY.

Responsibility of County Commissioners for Injuries arising from the Condition of the Public Roads.—Where, in consequence of the condition of the public roads of a county, a wagon and carriage are injured, the owner thereof is entitled to recover from the county commissioners damages for such injury, provided he used due care and caution whilst travelling over the roads: *County Commissioners* v. *Gibson*, 36 Md.

The right of action against the county commissioners for injuries resulting from the condition of the public roads, is not taken away by the 8th section of the Act of 1868, ch. 299, which permits the bond of a road supervisor, given for the faithful performance of his duties, to be put in suit for the benefit of any person who may suffer by the neglect of such supervisor to keep the roads in his district in proper order: *Id.*

HOMESTEAD.

Definition—Head of a Family.—The family homestead is the residence or dwelling-place of a family: *Barney* v. *Leeds*, 51 N. H.

A widower, having a minor child residing with him and supported by him, at his own dwelling-place, is the "head of a family," within the meaning of the Homestead Act of 1851, and as such is secured by the law of 1851 in the possession, enjoyment of, and entitled to a homestead right to the extent of five hundred dollars in value, exempt from attachment and levy or sale on execution: *Id.*

This right thus acquired is not lost or destroyed by the arrival of his only child at years of majority, and the removal of the child from the homestead, the father still continuing to occupy the premises as his own dwelling-place and home: *Id.*

A debtor's right of homestead is not lost nor waived by the debtor's neglect to make application to an officer levying an execution upon his lands, to have such homestead set off to him, as provided by § 3 of the Homestead Act [of 1851]: *Id.*

An execution may properly be extended upon real estate in which a right of homestead exists, subject to such right of the debtor, in case the debtor (or his wife, if the debtor has a family) does not make application to the officer executing the writ to have a homestead set off to him in severalty: *Id.*

A creditor, causing the real estate of a debtor to be set off on execution, subject to a family homestead, is estopped to deny the validity of the debtor's then existing homestead right: *Id.*

The right of homestead, before the same has been set off and assigned, is not such an estate or interest in the land wherein it exists as will bar a writ of entry therefor by a creditor who has levied an execution thereon, subject to the debtor's homestead right: *Id.*

Where a creditor causes the estate of his debtor, of greater value than the homestead right of the latter therein, to be set off on execution, subject to such homestead right, the creditor and the debtor, after the levy of the creditor's execution, and before any proceedings by either for a separation and assignment of their respective interests, are tenants in common of the estate: *Id.*

A creditor levied an execution on the estate of his debtor, and caused the same to be set off to him in part satisfaction of his execution, subject to a family homestead. He subsequently brought a writ of entry to recover the premises thus set off, and had judgment thereon for a writ of possession, subject to the defendant's homestead of $500. Upon petition by the creditor for partition, *held*, that the committee appointed to make such partition should assign to the debtor, by metes and bounds, so much of the estate as they might find to have been of the value of $500 on the date of the completion of the levy thereon, not at the time when partition is made: *Id.*

Title—Lease.—The benefits of the homestead law are not confined to an ownership in fee, but attach to the house and lot in which the debtor has such a term as may be sold on execution. The object of the statute is to protect the owner and his family in a home, free from sale under judgment or decree; and a tenant for years is as clearly within the reason of the statute, as the owner of a larger estate. The statute was designed to protect estates liable to sale on execution or decree, and a term for

years is such an estate. The owner of a term for years, is an owner to that extent: *Conklin* v. *Foster*, 57 Ills.

The owner of a homestead, although a judgment-debtor, may sell and convey his homestead, and the purchaser will take the title free from any lien of the judgment, as property thus situated is not liable to levy and sale, and no lien of a judgment attaches to it: *Id.*

A house erected upon ground held under a lease, is annexed to and forms a part of the leasehold estate. The house is not, of itself, a separate chattel, but it, with the lease on the ground, forms a chattel real; and not being naturally divisible, it is not regular for the officer to sever the house from the term to which it is annexed: *Id.*

A sheriff has no power to levy on and sell houses, timber or ornamental trees, and sever them from the fee: *Id.*

Although a sale of the house, situated on leased ground, owned and occupied as a homestead, under an execution, confers no title, still it being a cloud on the title, equity will take jurisdiction to remove the cloud, especially when the purchaser under the execution is in possession, and threatens to remove the house, and thus commit waste: *Id.*

The court, having acquired jurisdiction for other purposes, will proceed to do complete justice, and, in such case, give rents against the purchaser under the execution, for the time the property was occupied by him: *Id.*

INFANT.

When the Act of the Attorney of a Prochein Ami is binding on the Infant.—An action was brought for and in the name of an infant, who sued by *prochein ami*, and judgment having been recovered by the plaintiff, the amount thereof was paid by the defendant to the attorney of record, who was regularly employed by the *prochein ami* to conduct the action; and by order of the attorney the judgment was entered, "satisfied;" at the time of the payment to the attorney there was no regularly constituted guardian of the beneficial plaintiff to receive and receipt for the money recovered. *Held*, that the payment by the defendant to the attorney of record was a good discharge of the judgment; and his act in receiving the money and directing satisfaction of the judgment to be entered, was binding upon the infant plaintiff: *B. and O. R. R. Co.* v. *Fitzpatrick*, 36 Md.

A *prochein ami* is no party to the suit in the technical sense of the term, although he is responsible for costs. He is considered as an officer of the court specially appointed to look after the interest of the infant in whose behalf he acts; he may employ an attorney, and carry on the suit to judgment, and in the absence of a regularly constituted guardian for the infant, may receive the money recovered of the defendant, give a sufficient acquittance therefor, and enter satisfaction on the roll: *Id.*

The right of a *prochein ami*, or of the attorney employed by him, to receive and receipt for money recovered by an infant, is subordinate to that of the regularly constituted guardian of the infant, and where such guardian exists, only he, or some person deriving authority from him, can legally receive and receipt for money due the ward: *Id.*

Section 14 of Article 18 of the Code of Public General Laws, authorizing the clerk of any court to enter any judgment or decree satisfied, upon the order in writing of the plaintiff, or his attorney, was not designed to conclude or in any manner affect the question of the

attorney's authority to give such order; it was intended simply to direct and empower the clerk, upon the proper order of the plaintiff or his attorney. to enter judgments and decrees satisfied, without an order of court: *Id.*

INSURANCE.

Proofs of Loss—Waiver of Objections to.—Where the insured, within the time limited, furnished the agent of the insured with the preliminary proofs of the loss, and they were received without objection to their sufficiency, and objections to the payment of the loss were afterwards put upon other grounds,—*held*, that the defects in the proofs must be regarded as waived: *Taylor* v. *The Roger Williams Insurance Co.*, 51 N. H.

Held, also, that the waiver would extend to the case where, instead of the certificate of the nearest magistrate, as the rules required, a certificate of a reputable citizen, not a magistrate, was received and assented to by the agent of the insurer as sufficient: *Id.*

The instructions to the jury, that if the assent to this certificate was procured by the false representations of the insured there would be no waiver, were correct: *Id.*

LANDLORD AND TENANT. See *Homestead; Payment.*

Presumption of Extinguishment of Rent.—Where the relation of landlord and tenant has once been established, under a sealed lease, the mere circumstance that the landlord has not demanded the rent cannot justify the presumption that he has extinguished the right to it, by a conveyance: *Lyon* v. *Adde*, 63 Barb.

Where premises were conveyed to the defendant by C., subject to the rents then due and to become due to S. V. R. and his heirs and assigns; *Held*, that by receiving his title subject to these rents, the defendant was estopped from denying that they were then subsisting liens upon the premises. and that the covenants to pay them were then in force: *Id.*

But that if that were not so, there was at least an explicit admission, in writing. by C., his grantor, of the subsistence of the covenant; and that, by all the authorities, was sufficient to rebut the presumption of extinguishment, even as against a presumption of law: *Id.*

LICENSE.

Effect of—Revocability.—A license to do certain acts upon land does not convey any interest in the land; it amounts to nothing more than an excuse for acts which would otherwise be trespasses: *Blaisdell* v. *G. F. and C. R. R.*, 51 N. H.

Any license pertaining to land may be revoked, so far as it is not executed; otherwise, a mere license might operate to convey an interest in land: *Id.*

A license to build a railroad upon one's land would excuse any acts properly done under the license while the same was in force, but such license might be revoked at pleasure, as to everything in the future: *Id.*

Possession held under a license cannot be adverse: *Id.*

The decease of either party to such a license, or the conveyance by either of the rights affected by the license, operates as a revocation: *Id*

MECHANIC'S LIEN. See *Mortgage.*

MORTGAGE.

Mortgage for future Advances—Article 64, *section* 2 *of the Code—When a Mortgage has Priority over a Mechanics' Lien—What constitutes the Commencement of a Building under the Mechanics' Lien Law.*—Where the amount intended to be secured is expressed in the mortgage, as required by the Code (art. 64, sec. 2), it is valid, though designed to secure future advances to that extent: *Brooks* v. *Lester*, 36 Md.

A mortgage to secure the payment of a specified sum of money for building materials to that amount in value, to be furnished from time to time, as required by the mortgagor, is valid. The fact that the advances are to be made in *materials* in lieu of money, does not affect the validity of the instrument: *Id.*

In order to give a mortgage to secure advances priority over a mechanics' lien, the mortgage must be recorded before the building is commenced: *Id.*

The commencement of a building under the mechanics' lien law is the first labor done on the ground which is made the foundation of the building, and is to form part of the work suitable and necessary for its construction: *Id.*

NEGLIGENCE.

Action for Damages—Ordinary Care and Prudence—Proximate Cause—Want of due Care and Caution.—Where a person walking on a railroad-track is run over and killed by an engine belonging to the railroad company, the company is responsible in damages for such killing, though the deceased was guilty of a want of ordinary care and prudence in so walking on the track, provided it appear that the accident would not have occurred if the agents of the railroad company had used in running the engine which occasioned the killing, ordinary prudence and care in giving reasonable and usual signals of its approach, and in keeping a reasonable look-out: *B. & O. Railroad* v. *State, Use of Dougherty*, 36 Md.

In considering the question of ordinary care and prudence on the part of a person killed by being run over on a railroad-track, the jury have a right to take into consideration, together with the other facts of the case, the known and ordinary disposition of men to guard themselves against danger: *Id.*

Where a person walking on a railroad-track is run over by an engine belonging to the railroad company and operated by its agents, and in consequence of the injury thus received, dies shortly afterward, an action for damages for the use of his widow and children, is maintainable against the railroad company, if it appear that there was negligence on the part of its agents, which was the proximate and immediate cause of the injury, notwithstanding the deceased may have been guilty of a want of ordinary care and prudence, tending in a remote degree to cause the injury which resulted in his death: *Id.*

A person walking on a railroad-track, away from any public crossing, was told by his companion, who heard the noise, that an engine was coming, and he replied, "I seen a train running up and down the other track this evening," and was immediately run over by the approaching

engine, and died in consequence of the injury which he received. In an action against the railroad company by the state, in behalf of the widow and children of the deceased, it was *held*, That if the deceased at the time he received the warning from his companion, could have left the railroad-track, and under all the circumstances and surroundings of his situation had sufficient time to do so, and would by doing so have escaped injury, then his remaining upon the track of the railroad after such warning, was such a want of due care and caution on his part as to debar the equitable plaintiffs from recovery, though there was negligence on the part of the defendant's agents: *Id.*

NUISANCE.

Liability for.—The liability for a nuisance is not restricted to persons who occasion the whole of it; but those who are guilty of doing but a part are liable also, if they do it with like intent: *The Chenango Bridge Co.* v. *Lewis et al., Ex'rs, &c.*, 63 Barb.

Thus, where the nuisance is not the structure, but the illegal *use* of it, the liability attaches not only to those who are engaged in the use, but also to those who erected the structure with the knowledge, or the intent, that it should be put to the illegal use. And the liability of the builder is precisely the same as if he had been the employer, instead of the employee: *Id.*

It is the general rule that the creator of a nuisance is liable for its continuance. To this rule there is an exception, where he is not in possession of the premises, which are occupied by other persons claiming them as their own, and not holding as his tenants: *Id.*

PARTNERSHIP.

Voluntary Dissolution—Liability of Partners for Notes executed or endorsed by one of the Partners in the name of the Firm.—B., a member of the firm of B. & T., engaged in the milling business, was in the habit of issuing and negotiating commercial paper in the name of the firm, for the purpose of raising money for the use of the firm, which paper was discounted by the bank of M., in its regular course of business. A voluntary dissolution of the firm took place, of which no notice was published, and of which the bank had no actual knowledge. The bank continued to deal with B. on account of the firm, and after its dissolution discounted two notes drawn or endorsed by B. in the firm-name. B. died, and judgments on the notes were confessed by an attorney in favor of the bank against T., the surviving partner. Executions were issued on the judgments and levied on the property of T. A bill was filed by T. to restrain the further execution of the writs of *fieri facias*, upon the grounds, among others, that the notes upon which the judgments were entered were drawn by B. after the dissolution of the firm, and negotiated by him for his private use and benefit; and further, that the suits on the notes were docketed, and judgments confessed thereon, without his authority or knowledge: *Held*, That the complainant was not entitled to the relief prayed, as no meritorious ground of defence was disclosed by the bill: *Taylor* v. *Hill*, 36 Md.

Notes executed or endorsed by one partner in the name of the firm, after a dissolution of the partnership, of which no notice was published,

are binding on the other partners, in the hands of strangers who received them for value, in the regular course of business, without actual knowledge of the dissolution: *Id.*

PAYMENT. See *Bills and Notes.*

Presumption of.—In the case of an obligation which can be extinguished by an act *in pais*—such as payment—there is an absolute presumption of payment, after the lapse of twenty years. It is a presumption of law, and can be rebutted only by some positive act of unequivocal recognition, like part payment, or a written admission, or at least a clear and well identified verbal promise or admission, intelligently made, within the period of twenty years: *Lyon* v. *Adde*, 63 Barb.

There is also another presumption—a presumption of fact, or more properly, in the nature of evidence which can be drawn by a jury from the circumstances of the case, in *less than twenty years: Id.*

But where the obligation can be extinguished only by deed, the rule is different. In that case, there is no presumption of law at all; but there is the same presumption in the nature of evidence, as in the other cases: *Id.*

It is a presumption to be drawn from all the circumstances of the case; but mere length of time, by itself, will never raise it. That one circumstance, of itself, is insufficient; but it is a circumstance from which, in connection with other circumstances, the satisfaction of the obligation may be found by a jury, or decreed by a court of chancery: *Id.*

Where a lease creates the relation of landlord and tenant, and the grantor's interest is an hereditament, descendible and hereditable, any release of the rent must be by deed; and there can be no presumption of payment, arising from lapse of time: *Id.*

Courts can draw no conclusion of *law* from the lapse of *time* during which rent has remained unpaid; but any presumption which they may raise must be drawn from all the facts and circumstances of the case as evidence, in the same manner in which a jury would draw inferences of fact: *Id.*

PLEADING. See *Venue.*

Allegations and Proofs—Where it was averred in the declaration that the defendant agreed to pay plaintiff five per cent. on the amount for which he should sell a mill of defendant, whatever it might amount to, is not sustained by evidence that defendant agreed to pay plaintiff five per cent. if he would sell the mill for five thousand dollars. In this there is a fatal variance between the contract declared upon and that proved: *Menifee* v. *Higgins*, 57 Ills.

Common Counts—Proof under.—Where a common count alleged an indebtedness of five hundred dollars for commissions on the sale of land and mill, such a count is not sustained by evidence of an exchange of the mill and land for other property. Had the special agreement been fully performed, and had nothing remained to be done but to pay the money due on the agreement, then a recovery might have been had under the common count, but plaintiff having failed to perform his part of the agreement, he cannot recover: *Id.*

RAILROAD. See *Negligence.*

SALE. See *Warranty.*

Contract for Goods or for Labor in making them—Distinction between—Statute of Frauds—Where the contract is for an article coming under the general denomination of goods, wares or merchandise, the quantity required and the price being agreed upon, it is a contract of sale within the Statute of Frauds, although the subject-matter, at the time of making the contract, does not exist in goods, but is to be converted into that state subsequently by the maker and vendor; but if what is contemplated by the agreement is the peculiar skill, labor or care of the maker, then the contract is one for work and labor, and not within the statute: *Prescott* v. *Locke*, 51 N. H.

An article sold is at the risk of the buyer as soon as the contract of sale is perfected. If the sale is of things which consist in quantity, and which are sold by number, weight or measure, the sale is not perfect until the thing bargained for is counted, weighed or measured, for until that time it is not apparent which are the goods that make the object of the sale; but the contract relates only to an object which is indeterminate, and which can be determined only by the measuring, weighing or counting, and the risk cannot fall but upon some determinate thing: *Id.*

This rule holds, not only when the sale is of a certain quantity to be taken from a larger bulk, but also when the sale is of the entire quantity, provided it is made at the rate of so much the pound, measure or number; for the price being constituted only for each pound which shall be weighed, or for each number (as each hundred or thousand) which shall be measured, is not determined before the weighing or measuring: *Id.*

Both the delivery and acceptance of the thing sold must be unequivocal, in order to satisfy the requirements of the Statute of Frauds, and place the thing sold at the risk of the buyer: *Id.*

To constitute delivery so that the property bargained for will pass, nothing must remain to be done concerning it by either party: *Id.*

Where the existence of a contract is to be determined by the ascertainment of the mutual understanding of the parties, evidence of the independent understanding of each and every party to the contract is admissible: *Id.*

SLANDER.

Pleading and Evidence.—In an action of slander, for charging the plaintiff with having committed fornication, and the plea of justification averred that plaintiff had been guilty of fornication, without averring any time, it was error in the court to restrict the proof of her having committed fornication to two years before the words were spoken by defendant. The plea not being limited as to time, the proof should not have been. Proof of the truth of the plea without reference to when the act was committed, was pertinent to the issue, and should have been admitted: *Stowell* v. *Beagle*, 57 Ills.

It was improper to admit evidence of the fact that there was a prior personal difficulty between defendant and the father of plaintiff, as it did not tend to prove actual malice against the plaintiff, and was not pertinent to the issue: *Id.*

Where the plea of justification set up the fact that the plaintiff had been guilty of fornication, it was error to instruct the jury that to maintain the plea the defendant must prove the words charged were true, on the grounds that plaintiff, although an unmarried woman, was guilty of fornication, and had been delivered of a child, and it was necessary that such alleged facts, constituting the justification, should be proved by clear and satisfactory evidence, and if not so proved, the defence would fail. Nothing being in the plea in regard to the plaintiff's having been delivered of a child, the instruction was too broad, and should not have been given. Such an instruction was well calculated to mislead the jury: *Id.*

STATUTES.

Retrospective—When Valid.—Retrospective statutes are not forbidden by the Constitution, in cases in which they do not impair the obligation of contracts, or partake of the character of *ex post facto* laws; and such statutes may be made, by express language, to have that effect. Yet, unless they are so expressed, by necessary implication they will be interpreted otherwise, and so that they shall not operate to change the existing state of things, or the common law: *The People ex rel. Pitts* v. *The Board of Supervisors of Ulster County*, 63 Barb.

The only exception to this rule is, that the doctrine does not apply to remedial statutes; which may be of a retrospective nature, provided they do not impair contracts or disturb absolute vested rights, and only go to confirm rights already existing, and are in furtherance of the remedy and add to the means of enforcing existing obligations: *Id.*

What Statutes have a Retrospective Effect.—By an act of the legislature, passed in April 1871, the board of supervisors of any county in the state (except New York and Kings) were authorized, by a two-thirds vote, to legalize the irregular acts of any town officer, performed in good faith and within the scope of his authority; provided such legalization should be recommended by the county court; and to correct any manifest clerical or other error in any assessments or returns made by any town officer to such board of supervisors, &c. A county judge, assuming to act under this statute, recommended that the taxes which had been assessed against the relator for the years 1866, 1867 and 1868, be refunded to her, and made an order to that effect. The board of supervisors refused to refund or allow such taxes. *Held*, that the statute in question was to be deemed *prospective* only; and did not have a retroactive effect, so as to include taxes assessed prior to its passage: *Id.*

TOWN. See *Highway*.

VENDOR AND PURCHASER.

Forfeiture of Contract—Delay in Performance—Fraud—Defective Title—Specific Performance.—Although a contract for the sale of land reserves the right to declare it forfeited, and the right to retain the money already paid on the purchase in case the vendee fails to make prompt payment as the several instalments of the purchase-money fall due, still the vendor cannot declare such a forfeiture where the land thus sold is encumbered, and he is unable to perform his part of his contract, by conveying a clear and perfect title according to the agreement: *Wallace* v. *McLaughlin*, 57 Ills.

Where the vendor has the reserved power of declaring a forfeiture, he cannot do so, unless he is in a position, at the time, to compel a specific performance of the agreement: *Id.*

Upon bill filed by purchaser of land, to restrain a vendor from recovering land sold, and to be conveyed free from encumbrance, into the possession of which the purchaser had entered under the agreement, such relief will not be barred by his failure to make payments, by reason of the encumbrance on the land: *Id.*

Where a vendor falsely represents that his title is good and free from encumbrance, and thus induces the purchaser to forego an examination of the title, and the purchaser enters and makes payments and large improvements on the land before he learns of the encumbrances, and then refuses to make further payments on the purchase until the encumbrances are removed, he cannot be held to be in default in making payments: *Id.*

After the vendor has declared a forfeiture, and recovered in ejectment, the vendee may, notwithstanding the encumbrance, tender the balance of the purchase-money, waive his right to insist upon a perfect title, and compel a specific performance of the agreement. It would be inequitable to permit the vendor to retain the money paid, to get the land with the valuable improvements placed thereon by the purchaser, and escape the payment of the taxes while occupied by the purchaser, and give the purchaser nothing but the use of the land. In such a case, it is equitable to decree that the purchaser pay the balance of the price agreed to be paid for the land, less the amount of the encumbrance, and to require the vendor to execute a deed with the covenants stipulated for in the agreement: *Id.*

VENUE.

Where to be laid after Change of.—Where a suit is instituted in one county and removed to another, and the declaration is amended, the *venue* should be laid as of the county in which the suit was instituted: *County Commissioners* v. *Gibson*, 36 Md.

WARRANTY.

Evidence to Prove.—The general rule is, that the representations or affirmations constituting a warranty, or the representations which are charged to be false, must be made during the negotiations for the sale: *Shull* v. *Ostrander*, 63 Barb.

A warranty must be made during the treaty, or at the time of the sale, or at least before the performance of the substantial terms thereof: *Id.*

After an agreement for an exchange of horses had been made between the parties, and consummated by a delivery, the plaintiff returned the horse he had received, and after rescinding the first agreement, a new bargain was made, by which the defendant sold his horse to the plaintiff for $100. *Held*, that the representations and warranties made by the defendant on the first bargain, did not enter into and form a part of the second, so as to constitute a defence to an action for fraud or breach of warranty: *Id.*