

altogether. But the notice is not for the benefit of the grantor in the sense of notice to him. It is only for his benefit by granting notoriety and publicity of the time, terms and place of sale, and of the property to be sold, that bidders may be invited, competition encouraged and a fair price obtained for the property. As to the grantor, he is presumed to know that he is in default and his property liable to sale at any time, and no notice to him is required. \* \* \* We are of the opinion that the sale of the trustee in the case under consideration was a lawful and valid sale, and that complainants' bill should have been dismissed."

This argument, it seems to me, is unanswerable, and is so remarkably clear and satisfactory that nothing remains to be added. The judgment is reversed and the petition dismissed.

NAPTON and ADAMS, JJ., dissented.

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#### ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.<sup>1</sup>

COURT OF CHANCERY OF NEW JERSEY.<sup>2</sup>

ASSUMPSIT. See *Vendor and Purchaser*.

*Waiver of Fraud and Action on Implied Contract*.—Where a person has unlawfully procured and sold securities belonging to another, the principal and interest of which is capable of being ascertained by computation, the owner from whom they have been taken, may waive the fraud in the conversion of the bonds, and claim as on an implied contract: *Allen v. United States*, 17 Wall.

#### CIVIL RIGHTS.

*Colored Persons in Railroad Cars*.—An Act of Congress passed in 1863, which gave certain privileges which it asked to a railroad corporation, enacted also that "no person shall be excluded from the cars on account of color." *Held*, that this meant that persons of color should travel in the same cars that white ones did, and along with them in such cars: *Railroad Company v. Brown*, 17 Wall.

COLORED PEOPLE. See *Civil Rights*.

#### COMMON CARRIER.

*Negligence*.—Cannot stipulate for exemption from responsibility for the negligence of himself or his servants: *Railroad Co. v. Lockwood*, 17 Wall.

The rule applies to the case of a drover, travelling on a stock train to look after his cattle, and having a free pass for that purpose: *Id.*

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<sup>1</sup> From J. W. Wallace, Esq., Reporter; to appear in vol. 17 of his Reports.

<sup>2</sup> From C. E. Green, Esq., Reporter; to appear in vol. 9 of his Reports.

CONFEDERATE STATES. See *Rebellion*.

CONFLICT OF LAWS. See *Interest*.

CONSTITUTIONAL LAW. See *Municipal Corporation*.

CONTRACT.

*Offer*—May be rescinded before Acceptance unless there is Agreement to contrary.—An offer to sell at a fixed price, whether accompanied with an agency to sell to others or not, may be revoked at any time prior to the acceptance of the offer, unless there is an express agreement on good consideration to accept within a limited time, or when other acts are done which the person making the offer consents to be bound by: *Stitt v. Huilekopers*, 17 Wall.

An offer to take \$10,000 in cash is not accepted so as to bind the party by a contract which leaves the buyer at liberty to withdraw by forfeiting a deposit of \$10,000 or pay the remainder within sixty days: *Id.*

*Interpretation of*—Not to be governed by what either party to the contract understood or believed, unless such understanding or belief was induced by the conduct or declarations of the other party: *Bank v. Kennedy*, and *Bailey v. Railroad Company*, 17 Wall.

CORPORATION. See *Debtor and Creditor*; *Highway*.

CURTESY. See *Equitable Conversion*.

DEBTOR AND CREDITOR. See *Frauds, Statute of*.

*Stock and Unpaid Subscriptions*—Creditors have right to require Payment of—Set off.—Capital stock or shares of a corporation—especially the unpaid subscriptions to such stock or shares—constitute a trust fund for the benefit of the general creditors of the corporation, and this trust cannot be defeated by a simulated payment of the stock subscription, nor by any device short of an actual payment in good faith: *Sawyer v. Hoag, Assignee*, 17 Wall.

A stockholder indebted to an insolvent corporation for unpaid shares, cannot set-off against this trust fund for creditors a debt due him by the corporation. The fund arising from such unpaid shares must be equally divided among all the creditors: *Id.*

*Equity will not aid Creditor to reach Debtor's Property without special Grounds for its Interposition*.—Equity will not exercise its jurisdiction to reach the property of a debtor applicable to the payment of his debts, unless the debt be clear and undisputed, and there exist some special circumstances requiring the interposition of the court to obtain possession of, and apply the property: *Board of Public Works v. Columbia College*, 17 Wall.

*Evidence of Fraud*.—Evidence of it not required to be more direct and positive than facts and circumstances tending to the inference of it: *Rea v. Missouri*, 17 Wall.

Where a creditor of B. levied on certain goods as B.'s, for which C. interposed a claim of ownership, *Held*, That an intimate personal and business relation between B. and C. having been shown, it was

error to instruct the jury that it was immaterial as to the ownership of the goods how C. acquired his means, or whether his exhibit of them was correct or not : *Id.*

#### EQUITABLE CONVERSION.

*Naked Power of Sale in Executors—Until Actual Sale Land remains Realty with Title in the Heirs, and Husband of one of them is entitled to curtesy.*—Where a naked power of sale is vested in executors with no absolute direction to convert, but wholly discretionary not only as to the time of sale but as to whether the sale shall ever be made, the land remains land until the sale actually takes place : *Romaine v. Hendrickson's Executors*, 9 C. E. Green.

Until the sale, where the land is not devised to the executors, the title is in the heirs, and the husband of a daughter of the testator, dying after her father and before the sale is entitled to curtesy in her share of the land : *Id.*

Such tenant by curtesy and the son of such deceased daughter to whom her said share of the land descended subject to the curtesy, are proper parties to a bill against the executors to set aside a sale of testator's lands on the ground of fraud, and for a discovery and account : *Id.*

Under a naked power of sale where the land is not devised to the executors, but till the sale the title is in the heirs, a sale to a pretended purchaser but really to themselves is not a conversion of the lands, and does not affect the rights of the heirs : *Id.*

#### EQUITY. See Debtor and Creditor ; Fraud ; Trust.

*Damages for taking of lands—If a change in the amount of damage done to lands takes place after report of Commissioners equity will relieve.*—Under an award by commissioners appointed to appraise and estimate the value of lands about to be taken for a railroad, and assess the damages the presumption of law is that damages were awarded to the owner for all injuries that might result to him. For injuries not considered by the commissioners, no adequate remedy can be had at law : *Carpenter v. Easton & Amboy Railroad Co.*, 9 C. E. Green.

Where, at the time of making an award for damages for land taken by a railroad company, the representatives of the company stated to the commissioners that they would cross certain low land by an iron bridge resting upon posts, and would protect and keep clear a lane, the only convenient means of communication between different parts of a farm, but subsequently the company determined to construct a high embankment, and have commenced it, and intend to fill in and cut off the lane entirely,—it clearly appearing that the commissioners did not consider the embankment in the estimate of damages,—equity will restrain the company from filling up the lane, until compensation is made to the owner of the lands : *Id.*

The Court of Chancery has power to determine in such case, the amount of compensation : *Id.*

The original commissioners were appointed to estimate and report a proper compensation : *Id.*

#### ESTOPPEL. See Municipal Corporation.

#### FIXTURES.

*Tests as to what constitutes.*—Whether property ordinarily treated as

personal goes with the realty as fixtures or otherwise, is not determined by its capability or incapability of being detached and removed from the premises without injury to the freehold, but depends upon the particular circumstances of the case: *Quimby v. Manhattan Cloth and Paper Company*, 9 C. E. Green.

As between mortgagor and mortgagee, when the fixture appertains to the real estate, is necessary for its enjoyment, and is permanently attached to the freehold, it will be treated as realty: *Id.*

The permanency of the fixture depends upon the motives and intentions of the party attaching it. If attached for temporary use with the intention of removing, the mortgagor may remove it; *Aliter*, if attached for the permanent improvement of the freehold: *Id.*

That fixtures were called personal property in the deed to the mortgagor for the premises, and a bill of sale therefor accompanied the deed, cannot affect their character as between mortgagee and mortgagor: *Id.*

The three requisites for determining the character of a fixture as realty or otherwise are 1. Actual annexation to the realty or something appurtenant thereto. 2. Application to the use or purpose to which that part of the realty with which it is connected is appropriated. 3. The intention of the party making the annexation, to make a permanent accession to the freehold: *Id.*

#### FORMER ACTION. See *Judgment*.

*Effect when not strictly Res Adjudicata.*—Although a former suit about the same subject-matter as a later one may not operate strictly as *res judicata*, yet it may well be referred to when it was heard on the scene of the transaction complained of, and when it relates to a transaction forty years old, as an element by which a conclusion at a later day in accordance with its result may be assisted: *Hume v. Beale's Executrix*, 17 Wall.

*Judgment without Personal Service not Evidence outside of State authorizing it.*—A personal judgment, rendered in one state against several parties jointly, upon service of process on some of them, or their voluntary appearance, and upon publication against the others, is not evidence outside of the state where rendered of any personal liability to the plaintiff of the parties proceeded against by publication: *Board of Public Works v. Columbia College*, 17 Wall.

#### FRAUD. See *Debtor and Creditor*.

*Setting aside Judicial Proceedings for—Laches.*—Where a bill is filed by a third party, to set aside, as fraudulent, completed judicial proceedings, regular on their face—the bill being filed five years after the judicial proceedings which it is sought to set aside have been completed—the cause of so considerable a delay should be specifically set out. And if ignorance of the fraud is relied on to excuse the delay, it should be shown specifically when knowledge of the fraud was first obtained: *Harwood v. Railroad Co.*, 17 Wall.

#### FRAUDS, STATUTE OF.

*Fraudulent Conveyance.*—Under the Statute of Frauds of Missouri, a sale of household furniture in a house occupied jointly by vendor and

vendee, both using the furniture alike, and there being no other change of possession than that, the vendor after going around with the vendee, and looking at the furniture and agreeing on the price, turned it over to the vendee, and executed a bill of sale before a notary, both parties then, after the sale, occupied the house and used the the furniture exactly as before, is void as against the vendor's creditors: *Allen v. Massey*, 17 Wall.

#### HIGHWAY.

*Interference by Railroad company—Right of Township authorities to invoke aid from Courts.*—Township authorities have a special interest in the highways, beyond that of the public at large, and may properly file a bill, in their corporate name, to restrain a threatened destruction of a highway within its limits: *Township of Greenwich v. The Easton & Amboy R. R. Co.*, 9 C. E. Green.

A grant of power, in laying out and constructing a railroad, to change the location of any public road, if the company shall find it necessary, and to occupy such portions of the road as they may deem necessary or expedient;—the company in such case, to cause the changed portion of such public road, to be reconstructed at their own expense, in as perfect a manner as the original road, does not authorize the diversion of an ancient highway, because the company find it to their pecuniary advantage or convenience to make such diversion. The diversion must be necessary: *Id.*

A grant of new and extraordinary power to a private corporation in contravention of the established rights of the public must be construed with a reasonable strictness: *Id.*

HUSBAND AND WIFE. See *Equitable Conversion*.

INFANT. See *Master and Servant*.

*Contributory Fault no Bar.*—Need not himself have been free from fault to entitle him to recover damages resulting from the fault of another: *Railroad Co. v. Stout*, 17 Wall.

#### INTEREST.

*Lex fori.*—Where allowed, not under contract, but by way of damages, the rate must be according to the *lex fori*: *Goddard v. Foster*, 17 Wall.

JUDGMENT. See *Former Action*.

*Is Merger of Cause of Action.*—Judgment on a note or contract operates as a merger of it, and when the judgment is binding personally, it can be introduced in evidence and relied on as a bar to a second suit on the note: *Eldred v. Bank*, 17 Wall.

LACHES. See *Fraud; Trust*.

#### MANDAMUS.

*To Public Officers—Not valid against Successor in Office.*—Against an officer of the government, in the absence of statutory provision to the contrary, abates on his death or retirement from office. His successor in office cannot be brought in by way of amendment of the proceeding, or on an order for the substitution of parties: *United States v. Boutwell*, 17 Wall.

## MASTER AND SERVANT.

*Fellow Servant—Infant of tender years not within the Ordinary rule.*—The rule that the master is not liable to one of his servants for injuries resulting from the carelessness of another, when both are engaged in a common service, although the injured person was under the control and direction of the servant who caused the injury—whether a true rule or not—has no application when one of the persons employed and injured is a boy of tender years, employed as a helper under the superintendence of a full-grown man of mature years, and required by the master to obey his orders: *Railroad Co. v. Fort*, 17 Wall.

MERGER. See *Judgment*.

## MORTGAGE.

*Mortgagee assigning mortgage with guarantee—Bill in equity to foreclose—Remedy at law or assignor's guarantee.*—A mortgagee who assigns the mortgage, and guarantees the debt, is a proper party in a suit to foreclose the mortgage, and a personal decree may be made against him for any deficiency: *Jarman v. Wisevall*, 9 C. E. Green.

That the liability of such guarantor cannot take effect until the remedy against the mortgagor shall have been exhausted is no objection to the jurisdiction of this court. The decree in such case would be made to conform to the liability: *Id.*

That the guarantor is liable at law by direct and express covenant for the payment of the deficiency and his liability therefore a mere legal one, will not deter the court under the statute from exercising jurisdiction: *Id.*

Motion to amend a final decree to make it personal against a guarantor of a mortgage debt, for a deficiency refused, under the circumstances of the case, where the complainant's remedy at law was adequate: *Id.*

## MUNICIPAL CORPORATION.

*Municipal Authorities have authority to bind Property-Owners for improvements—But having made a Contract for such Improvements they are in some sense trustees for such owners, and Equity will prevent a Sacrifice of the latter's Interests—Standing by without objection is evidence of assent by the property-holders—Control of courts over Municipal action—Contracts ultra vires.*—Municipal authorities in the making of street improvements authorized by law to be made at the expense of the owners of lands to be benefited thereby, are to a certain extent the agents of such owner. Contracts lawfully made at the discretion of the authorities are binding upon the landowners, though injudiciously made; but the owners are entitled to have such contracts performed substantially in all things according to their terms, and the authorities have no power to dispense with such performance to the gain of the contractor and the loss of the property-owners: *Schumm v. Seymour*, 9 C. E. Green.

If official authorities are about to accept and pay under a contract, for what in substantial and important respects, is not according to the contract, so that the difference enures to the benefit of the contractor at the expense of the owners, the authorities in so doing are guilty of a breach of trust which amounts to a fraud. The proper and only remedy in such case is in equity: *Id.*

If the landowners stand by and see the officials pay the contractor they can have no relief against the assessment. But a court of equity will enjoin such wrongful payments, and in so doing does not interfere with the exercise by municipal corporations of the legislative or discretionary powers conferred by their charters: *Id.*

In the exercise by municipal corporations of their legislative or discretionary powers they are beyond the control of the courts; but after such powers have been exercised, and the authorities are about to pay the contract price for street improvements with the money of the landowners, they are not acting in a legislative capacity, but in the capacity of agents amenable to the courts: *Id.*

Where a contract made by street commissioners under charter authority, requires that paving shall be done in accordance with specifications, but the work is not so done, and the departure from the contracts results in a large saving to the contractor, the payment of the stipulated price will be restrained, even though the substituted work be equally good with what the contract required: *Id.*

The affairs of a corporate body can be transacted only at a corporate meeting. Its legislative and discretionary powers can be exercised only by the coming together of the members who compose it, and its purposes or will can be expressed only by a vote embodied in some distinct and definite form. Their only existence is as a board, and they can do no valid act except as a board, and such act must be by ordinance or resolution, or something equivalent thereto: *Id.*

Under a charter investing commissioners with powers over street improvements, and expressly enacting that no work or materials for the improvement of streets shall be contracted for, unless specifications therefor and proposals for doing such specified work, or furnishing such specified materials, have been fully advertised, a property-owner cannot be assessed for any part of the cost of work and materials furnished upon the order of individual commissioners, and without any bargain as to price or other particulars between the commissioners in their lawful capacity and the contractor, and without advertisements or competitive bids: *Id.*

Public policy requires such restrictive enactments to be rigidly enforced, and the consequences resulting from the void character of the contracts they prohibit must be the same in equity as at law: *Id.*

It is a general and fundamental principle of law that all persons contracting with a municipal corporation must, at their peril, inquire into the power of the corporation or its officers to make the contract. And a contract beyond the scope of the corporate powers is void: *Id.*

When municipal officers, in the making of street improvements exercise powers not conferred by charter, they are in no sense agents or representatives of property-owners, and no liability attaches to the latter from mere inaction or silence, for improvements so made. The doctrine of equitable estoppel has no place in a case where usurped powers have been exercised by municipal officers, who in so doing were contravening public policy, as well-known as positive law: *Id.*

Where officials are acting within the terms of their delegated powers, though they may be acting carelessly, negligently, or in culpable betrayal of their trust, they are the agents of those whose property is liable to be charged, and if the latter acquiesce in or fail to interpose when

the negligent or culpable conduct of their agents is open to their view, they will not afterwards be allowed to set it up when the effect of so doing will be to subject innocent parties to the burden that would otherwise fall upon themselves: *Id.*

*Control of Streets by Legislature—Grant of Franchise to lay Railroad Tracks in Street—Consent of Property-holders—Constitutional Law—Es-toppel by knowledge and failure to object while work being done.*—The legislature has full power to authorize the laying of railways in the streets of a city. And a company having such chartered authority, and having complied with all the conditions of their charter, are entitled to operate their railway without other impediment or restriction on the part of the city than such as they may have voluntarily submitted themselves to, or as may arise from reasonable municipal regulations: *Paterson & Passaic Horse Railroad Co. v. Mayor of Paterson and Others*, 9 C. E. Green.

For the purposes of consent required by the charter of a street railroad company to be obtained from property-owners along the proposed route of the railway, before it can be laid, the city corporation is to be regarded as the *owner* of an open public square dedicated to the public use for ever, whether the fee be in the corporation or not, or in whomsoever it may be: *Id.*

A grant of authority to lay and operate a railway in the streets of a city without requiring the consent of owners of property along the route is lawful. It does not conflict with that clause of the constitution requiring compensation to be first made: *Id.*

Under a charter requiring that before a railway should be constructed in the streets of a city, the consent of a majority of the property-owners along the proposed route, and of the city should be first obtained, the consent of a majority of the property-owners is not a condition precedent to the consent of the city. The consents are independent, and it is immaterial which is first obtained: *Id.*

*Held*, That the charge of fraud upon which the city claimed the right to withdraw its consent to laying the railway was not sustained, and that the city having a knowledge of the facts at the time of passing the ordinance giving such consent were not in a position to allege misrepresentation: *Id.*

*Held*, also, that the acquiescence of property-owners whose consent is necessary as a condition precedent to the exercise of the franchise granted the company, in standing by and seeing the company construct and operate the road under a claim of right, will be regarded as evidence of consent: *Id.*

#### NATIONAL BANKS.

*Right of Receiver to sue in his own Name.*—A receiver appointed by the comptroller of the currency under the fiftieth section of the National Banking Act, may sue for demands due the bank in his own name as receiver, or in the name of the bank: *Bank v. Kennedy*, 17 Wall.

In order to sue for an ordinary debt due the bank, he is not obliged to get an order of the comptroller of the currency. It is a part of his official duty to collect the assets: *Id.*

NEGLIGENCE. See *Common Carrier; Husband and Wife; Infant; Master and Servant.*

#### NOTICE.

*Duty of Inquiry.*—Where inquiry is a duty, the party bound to make inquiry is affected with all the knowledge which he would have got had he inquired: *Cordova v. Hood*, 17 Wall.

*President's Proclamation—Publication in Newspapers.*—Through newspapers not necessary to give effect to a proclamation of the President. It takes effect when signed and sealed with the seal of the United States, officially attested: *Lapeyre v. United States*, 17 Wall.

#### PARTNERSHIP.

*Bill in Equity by representatives of Deceased—How Survivors are to be charged with Partnership Assets.*—Where a person sues in chancery as administrator of a deceased partner, to have an account of partnership concerns, alleging in his bill that he is the sole heir of the deceased partner, the fact that he is not so does not make the bill abate for want of necessary parties: *Moore v. Huntington*, 17 Wall.

On a bill by the representatives of a deceased partner against surviving partners for an account, these last should not be charged with the sum which the partnership assets at the exact date of the deceased partner's death were worth, but only with such sum as by the use of reasonable care and diligence they could get for them in closing the partnership business: *Id.*

Nor be charged with the value of real estate of the partnership, the title to which is left by the decree charging them, in the heirs of the deceased partner: *Id.*

POWER. See *Equitable Conversion.*

RAILROAD. See *Common Carrier; Highway.*

#### REBELLION.

*Investment by Trustee in Confederate Bonds—Acts of States during Civil War.*—To a suit by legatees to compel an executor to account for moneys received by him from sales of property belonging to the estate of his testator, and to pay to them their distributive shares, it is no answer for the executor to show that he invested such funds in the bonds of the Confederate government by authority of a law of the state in which he was executor, and that such investment was approved by the decree of the Probate Court having settlement of the estate: *Horn v. Lockhart*, 17 Wall.

The acts of the several states in their individual capacities, and of their different departments of government, executive, judicial and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding: *Id.*

*Judicial proceedings affecting the Rights of Parties on other side of*

*the Army Line during the Civil War.*—Judicial proceedings during the war of the rebellion, within lines of the Federal army, by a private person on a mortgage, ending in a judgment and sale of mortgaged premises, against one who had been expelled by the military authority of the United States into the so-called Confederacy, and who had no power or right to return to his home during the rebellion, held null, and a judgment which refused to vacate them reversed: *Dean v. Nelson*, 10 Wallace 172, affirmed: *Lasere v. Rochereau*, 17 Wall.

SET-OFF. See *Debtor and Creditor*.

*Liquidation of.*—A claim by the United States for the proceeds of bonds unlawfully procured from it by a person insolvent, and sold, consisting of the principal and interest of the bonds, and being thus capable of ascertainment, is sufficiently liquidated, though it have never been judicially determined, to be subject of set-off: *Allen v. United States*, 17 Wall.

#### SHIPPING.

*Necessaries in a Foreign Port.*—Where advances are made to a captain in a foreign port, upon his request, to pay for necessary repairs or supplies to enable his vessel to prosecute her voyage, or to pay harbor dues, or for pilotage, towage, and like services rendered to the vessel, the presumption of law, in the absence of fraud or collusion, is that they are made upon the credit of the vessel as well as upon that of her owners, and the presumption can be repelled only by proof that the master was in possession of funds applicable to the expenses, or of a credit of his own or of the owners of his vessel upon which funds could be raised by the exercise of reasonable diligence, and that the possession of such funds or credit was known to the party making the advances, or could readily have been ascertained by proper inquiry: *The Emily Souder*, 17 Wall.

Liens for such advances have priority over existing mortgages to creditors at home: *Id.*

#### SUPREME COURT OF UNITED STATES.

*Jurisdiction to review Judgments of State Courts.*—The Supreme Court has jurisdiction by writ of error to review the judgment of a state court when the writ is issued to the highest court of the state in which a decision of the case could be had, even if that court be an inferior court of the state: *Miller v. Joseph*, 17 Wall.

*Construction of State Statutes.*—In the construction of the statutes of a state, and especially those affecting titles of real property, where no federal question arises, this court follows the adjudications of the highest court of the state, whatever may be the opinion of this court of its soundness: *Walker v. State Harbor Commissioners*, 17 Wall.

TAKING OF PRIVATE PROPERTY. See *Equity*.

#### TRUST.

*Resulting*—A resulting trust of land does not arise in favor of one of two joint purchasers, unless his part is some definite portion of the

whole, and what money he pays is paid for some aliquot part of the property, as a fourth, third, or a moiety. Nor can it arise in any case for more than the money actually paid; nor be created by advances or funds furnished after the time when the purchase is made: *Olcott v. Bynum*, 17 Wall.

*Trustee's Sale.*—A deed of trust with power of sale (a deed, therefore, in the nature of a mortgage), provided that money should be paid in three equal instalments, and that in default of payment of any one "that may grow due thereon," all the mortgaged premises might be sold and a deed of the premises made to the purchaser, and that it should be lawful for the trustee "out of the money arising from such sale to retain the principal and interest which shall then be due." . . . rendering the overplus to the mortgagor. *Held* (the property being incapable of advantageous sale in parts), that when one instalment fell due, the trustee had a right to sell, and though there was a surplus above what was necessary to pay the instalment due, yet that the trustee might reserve the whole and apply it to the residue of the mortgage debt: *Id.*

A sale of a large and valuable property under a deed of trust in the nature of a mortgage, held under the proofs to have been properly made in a body, and for cash alone, and on the premises themselves, though they were in a remote part of Virginia: *Id.*

*Bill founded on alleged Breach—Laches.*—A bill by *cestui que trust* was dismissed, where all the ground of action had occurred between twenty and thirty years, and the alleged breach of trust had taken place thirty-seven years before the bill was filed, and the trustee was dead. This, although the *cestuis que trust* were women, and the trustee a lawyer, who had married their half-sister: *Hume v. Beale's Executrix*, 17 Wall.

VENDOR AND PURCHASER. See *Frauds, Statute of.*

*Vendee taking Possession under Articles of Sale not liable for Use and Occupation.*—One who enters into possession of land in virtue of an agreement that he is to be a purchaser of it, cannot be held liable for use and occupation, if the purchase be concluded: *Carpenter v. United States*, 17 Wall.

*Vendor's Lien.*—Exists as against a purchaser, having notice of the deed, in those states where such a lien prevails (as in Texas), when the deed shows on its face that the consideration is yet to be paid: *Cordova v. Hood*, 17 Wall.

Taking a note from the vendee with security, though presumptively an abandonment of the lien, not so absolutely. The presumption may be rebutted: *Id.*

The vendor's testimony, if positive, sufficient to do this: *Id.*

Part payment of such a note—the note being for the payment of all and every part of the purchase-money so long as it remains unpaid—and taking a new note payable at the same time and in the same way as the original note, and the destruction of this last, does not displace the lien: *Id.*

WAR. See *Rebellion.*