organization, the property should be divided between them in proportion to their numbers at the time of the separation.

8. Members who secede thereby forfeit all right to any part of the property rights or privileges of a church or society.

9. Deists, theists, free religionists and other infidels, though they may be Unitarians in some sense, are not Unitarian Christians.

The case, which is too long for even a full abstract here, will be reported in 53 N. H.

NATIONAL BANK—LIEN ON STOCK.—In *Re Morrison*, the United States District Court, East. District of Missouri, TREAT, J., held that a by-law of a bank restraining the transfer of stock by a stockholder who is indebted in any way to the bank, creates a valid lien in favor of the bank, and is not prohibited by 35th sec. of Bankrupt Act.

SUNDAY.—LEGAL PROCEEDINGS.—In *Langaber* v. *Fairbury, &c., R. R. Co.*, the Supreme Court of Illinois held, that in certain cases a bill in chancery may be filed, and an injunction issued and served on Sunday.

That anciently courts of justice did sit on Sunday; that the early Christians of the sixth century and before used all days alike for the hearing of cases, not sparing Sunday itself; but in the year 517 a canon was promulgated exempting Sundays, and other canons were afterwards adopted exempting other days, which were all adopted by the Saxon Kings, and all confirmed by William the Conqueror and Henry the Second, and in that way became a part of the common law of England; that by these canons other days were declared unjudicial, as the Day of the Purification of the Blessed Virgin Mary, the Feast of the Ascension, the Feast of St. John the Baptist, and All Saints and All Souls days. These were as much unjudicial days as Sunday, yet the most devoted admirer of the common law would not hesitate to say that the proceedings of a court of justice in this state on either of those days would be valid. See the opinion of the court in full in 6 Chicago Legal News, No. 24.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF WISCONSIN.[2]

ACTION.

Debtor and Creditor—Pledge of Collaterals—Collection of more than his Debt by the Creditor.—The complaint avers, in substance, that plaintiff transferred to defendant notes and mortgages to secure a debt due the latter, and defendant agreed to use due diligence in the collection thereof, to retain out of the proceeds the amount of such debt, with costs and expenses of collection, and to pay the surplus to plaintiff; that defendant made such collections; and that, after deducting the amount of such debt, costs and expenses, he has a certain surplus in his hands, for

[1] From J. W. Wallace, Esq., Reporter; to appear in vol. 19 of his Reports.

[2] From Hon. O. M. Conover, Reporter; to appear in 34 Wisconsin Reports.

which judgment is demanded. *Held*, that a cause of action at law is stated, and not one in equity for an accounting: *Dickson* v. *Cole*, 34 Wis.

If defendant took from the mortgagor a conveyance of the premises described in one of such mortgages, and released the mortgage-debt without any agreement with the plaintiff in regard thereto, he is liable to account to plaintiff for the amount of such debt: *Id.*

ADMIRALTY.

Practice—Appeal from District Court.—An appeal in admiralty from the District to the Circuit Court in effect vacates the decree of the District Court, and a new trial in all respects, and a new decree, are to be had in the Circuit Court. The latter must execute its own decree, and the District Court has nothing more to do with the case: *The Lucille*, 19 Wall.

An order of the Circuit Court merely affirming the decree of the District Court, and nothing more, is not such a decree as the Circuit Court should render, and is not a final decree from which an appeal lies to this court: *Id.*

BAILMENT.

Banker's Lien—Deposit of Box containing Securities.—Boxes containing securities were deposited with a banking firm for safe-keeping; they were gratuitous bailees. *Held*, that they had no lien on the securities for a balance due to them on their accounts with the owner of the securities. The defendants relied on the general doctrine of the banker's lien upon all securities coming into their possession as bankers; and urged that the boxes came into their possession as bankers because it is the custom for London banks to receive boxes in that way for safe-keeping; but they failed to prove that in such cases a lien had been asserted: *Leese* v. *Martin*, 29 L. T. N. S. 742.

BANK. See *Bailment; Insolvent.*

Prohibition to hold Real Estate—Taking Land through a Trustee as Security for a Debt.—Although a bank by statute, or the trustees, on the expiration thereof, who liquidate its affairs, may be deprived of power to take or hold real estate, this does not prevent either's making an arrangement through the medium of a trustee, by which, without ever having a legal title, control or ownership of such estate, they yet secure a debt for which they had a lien on such estate, and have the estate sold so as to pay the debt: *Zantzingers* v. *Gunton*, 19 Wall.

BILLS AND NOTES.

Bill of Lading—Acceptance—Misrepresentation.—The Union Bank of London presented a bill of exchange to Baxter & Co., the drawees, for their acceptance, accompanied by a ticket representing that the bank held bills of lading to cover it. Baxter & Co. thereupon accepted the bill in reliance upon this statement. Both parties believed the bills of lading to be genuine, but in reality they had been forged by the drawer of the bill of exchange. *Held*, that Baxter & Co. were not entitled to demand from the bank genuine bills of lading before paying the amount of the bill of exchange. The V.-C. said that unless there was a representation by the Union Bank that they held good bills of lading the plaintiff's case must fail. (V.-C. BACON): *Baxter* v. *Chapman*, 29 L. T. N. S. 642.

CHURCH PROPERTY. See *Equity.*

CONTRACT.

Delivery of Goods sold after the Stipulated Time—Acceptance—Waiver.—The Act of June 1862, requiring contracts for military supplies to be in writing, is not infringed by the proper officer having charge of such matter accepting delivery of such supplies after the day stipulated, nor is a verbal agreement to extend the time of performance invalid: *Salomon* v. *United States*, 19 Wall.

When, under a written contract, made by a person to deliver such supplies as, *ex. gr.*, corn at one time fixed, the quartermaster in charge receives part of the corn from such person for the government, and then at a later date, no objection being made to the delay, receives the rest, and gives a receipt and voucher for the amount and the price, and the government uses such part of it as it wants, and suffers the remainder to decay by exposure and neglect, there is an implied contract to pay the value of such corn, which value may, in the absence of other testimony, be presumed to be the price fixed in the voucher by the quartermaster: *Id.*

CONSTITUTIONAL LAW. See *Insolvent.*

DAMAGES.

Loss of Profits—Extra Expenses.—A. contracted with the government to transport a large quantity of army supplies, the government agreeing that in order that he should be in readiness to meet its demands for transportation due notice should be given to him of the quantity to be transported at any one time. The government gave him notice that transportation would be required at a time named for a certain large amount of supplies specified, and inquired if he would get ready. He replied affirmatively, and did get ready. The government at the time named furnished a small part of the supplies of which they had given notice to the contractor, but not needing transportation for the much larger residue did not furnish that. On suit by the contractor against the government for profits which he would have made had the supplies been furnished as he received notice that they would be, *Held*, that the notice did not amount to an agreement to furnish the amount of supplies specified, and therefore that the contractor could not recover the profits which he would have made had the freights withheld been furnished to him: *Bulkley* v. *United States*, 19 Wall.

Held, further, that the government having thrown upon him needless expense by requiring him to make ready for the transportation of freights under the contract, which they did not in the end require to be transported, he was entitled to recover for the expense to which he was thus subjected: *Id.*

DEBTOR AND CREDITOR. See *Insolvent.*

DEED.

Voluntary Settlement—Words of Limitation in Grant—Life Estate.—Robert Middleton settled freeholds, in 1838, in trust for himself for life, and after his death in trust for his reputed son William, when and in case he attained twenty-one, with a trust for maintenance in case W. should be under twenty-one at the settlor's death. And in case W. should die under twenty-one, or should die in the settlor's lifetime with-

out issue, then over. There were no words of limitation in the trust for W. There was a power of sale in the settlement, but no power to convert the proceeds into land. The settlor died in 1849, having made his will in 1843, which recited the settlement and confirmed it. W. attained twenty-one, and died in 1872. *Held*, that W. took a life estate only in the freehold under the settlement, and that there was a resulting trust for the settlor. It was urged for the defendant that the intention of the settlor was clear; that if the power of sale had been exercised the proceeds would have been held as money, and have gone to the defendant: that the will confirmed the settlement, and the words of the settlement, if used in a will, would have passed a fee: but the V.-C. said he should be striving against the strength of the law if he decided against the plaintiff. The intention of the settlor had been disappointed by the means which he took to effect it. The will did not advance the defendant's case: it confirmed but did not alter the settlement: *Middleton* v. *Barker*, 29 L. T. N. S. 643.

EQUITY.

Church Property—Interference with—Injunction.—In an action brought in the name of a religious society incorporated under the statute, the complaint avers (in substance) that defendants have secretly and fraudulently obtained possession of the church edifice, have put new locks and keys on the door thereof, and, refusing to admit the plaintiff by its regularly elected and qualified trustees and officers and members, have kept forcible possession of such edifice; that they have secretly possessed themselves of a portion of the church records, and kept the plaintiff, its trustees, officers and members, from access thereto and possession thereof; and that they threaten to take unlawful possession of the remaining records, and of all the temporalities of the plaintiff, including the parsonage. *Held*, that the complaint states a good cause of action for an injunction: *Lutheran Ev. Church* v. *Gristgau and others*, 34 Wis.

By an injunction restraining defendants from further interfering with the property and temporalities of the society, the plaintiff, by its trustees, officers and members, may be restored to the peaceful possession of its rights, without any further order of the court, except a special order requiring defendants to restore that portion of the records of the society which they have taken: *Id.*

EVIDENCE. See *False Imprisonment.*

Proof of Handwriting.—The agent for this state of a defendant company testified that he knew the general superintendent of the company, had been in correspondence with him for a year and a half on business of the company, knew nothing about his handwriting except in this way, and thought the signature to a certain letter purporting to be written by said general superintendent to said witness, offered in evidence by plaintiff, was genuine. *Held*, that this was *sufficient proof of the genuineness* of the letter to entitle it *to be received in evidence*: *Smith and others* v. *Amazon Ins. Co.*, 34 Wis.

FALSE IMPRISONMENT.

Evidence—Bad Character of Plaintiff—Pleading.—The female plaintiff was arrested under a warrant, upon a charge of larceny preferred by defendant, and was held in jail until produced before a justice. In an action for damages for such arrest and imprisonment as unlawful, the

answer being a general denial: *Held*, that it was not error to exclude testimony offered by defendant to show that the reputation of the female plaintiff in her neighborhood, in respect to theft, was bad before the arrest was made: *Scheer* v. *Keown*, 34 Wis.

If defendant relied on plaintiff's bad reputation in the particular mentioned as one of the circumstances going to establish a defence by showing that he had reasonable ground to suspect her of the larceny charged, he should have set it up *in his answer*. *B— v. I—*, 22 Wis. 372, and *Wilson* v. *Noonan* (unreported), distinguished: *Id.*

Husband and Wife.

Effect of Subsequent Adultery on Deed of Separation.—Where a husband, by a deed of separation between himself and his wife, covenanted to pay an annuity to trustees for her use during the joint lives of husband and wife, "and during so long time as they shall live separate and apart," a divorce obtained for the subsequent adultery of the wife, is no answer to an action by the trustees for arrears of the annuity, in the absence of an express proviso in the deed; the covenant being absolute and unconditional to pay the annuity so long as the two "should live separate and apart;" Bramwell, B., saying, "We are asked to import a condition into this deed to the effect that in case the marriage between the defendant and his wife should be dissolved, then the defendant is to be freed from further liability on his covenant. * * * There can be no doubt that it was intended by the deed to arrange a separation, once for all, between the man and his wife. * * * The wife gave up certain advantages, at the time she agreed to the separation, and we ought not now to attach any new term or condition to this deed." (Exch.): *Charlesworth* v. *Holt* 29 L. T. N. S. 647; s. c. L. R. 9 Exch. 38.

Marriage Settlement—Covenant to settle Wife's after-acquired Property—Property acquired after Husband's Death excluded.—In a marriage settlement, a covenant by husband and wife to settle after-acquired property of the wife does not extend to property to which the wife becomes entitled after the death of her husband, but only to property acquired during the coverture, although there be no word in the covenant restricting it to property during the coverture. Lord Justice James: "The object of such a settlement as that in question is to bring into the settlement property of the wife to which the husband's marital right would otherwise attach. Property of the wife acquired after the husband's death does not come within the reason of the covenant:" *Re Edwards*, 29 L. T. N. S. 712; s. c. L. R. 9 Ch. App. 97.

Injunction. See *Equity*.

Insolvent.

Application of Assets—State cannot appropriate Assets of a State Bank to injury of other Creditors.—Though the stock of a bank be altogether owned by a state, if the bank is insolvent its assets cannot be appropriated by legislative act or otherwise to pay the debts of the state, as distinguished from the debts of the bank. Those assets are a trust fund first applicable to the payment of the debts of the bank: *Barings* v. *Dabney*, 19 Wall.

An act of the legislature requiring the managers of an insolvent bank

belonging to the state to hold its assets appropriated to the payment of certain specified debts, creates a trust in favor of the creditors holding said debts, and, if assented to by them, amounts to a contract with them to carry out said trust: *Id.*

If such an act, however, has the effect to appropriate the assets of the bank to pay the debts of the state, to the prejudice of billholders and other creditors of the bank, it is repugnant to that clause of the constitution which prohibits a law impairing the obligation of contracts, and is void: *Id.*

JUDGMENT.

Action on Judgment in another State—Defence.—A return to a summons by the sheriff that he has served the defendant personally therewith is sufficient, without stating that the service was made in his county. This will be presumed: *Knowles* v. *The Gaslight and Coke Co.*, 19 Wall.

But, in an action on a judgment rendered in other state, the defendant, notwithstanding the record shows a return of the sheriff that he was personally served with process, may show the contrary, namely, that he was not served, and that the court never acquired jurisdiction of his person. The case of *Thompson* v. *Whitman* (18 Wallace 457), affirmed and applied: *Id.*

LIMITATIONS, STATUTE OF.

Claim under Sheriff's Deed—Regularity of Proceedings.—Where the occupant of land entered into possession under *claim of title exclusive of any other right*, founding such claim upon a sheriff's deed upon a sale on execution against the original owner, and had been in continual occupation of the premises *under such claim* for ten years, and had cultivated and improved the land and protected it by a substantial enclosure during the whole of that period: *Held*, that a action, by the original owner, or one claiming under him (in this case a mortgagee), to assert his right to the land, was barred by the statute: *North* v. *Hammer*, 34 Wis.

If, by reason of defects in the proceedings, the title of the judgment debtor was not in fact divested by the sale on execution, this does not affect the application of the statute: *Id.*

NUISANCE.

Navigable River—Obstruction.—In *Rex* v. *Russel*, 6 B. & C. 566 some staiths had been erected on the Tyne, and in a suit against the owner, Mr. Justice BAYLEY charged the jury that if, by means of the staiths, coal was brought to market cheaper and better than it otherwise could have been brought, the public benefit might countervail the injury to individuals. This broad doctrine has been much criticised, and may be considered as finally overturned by the late case of *Attorney-General* v. *Terry;* where the M. R. (Sir GEORGE JESSEL) declared that on two points the charge of Mr. Justice BAYLEY was erroneous. The benefit to the public must be a benefit to the public *frequenting that port;* and it must be a *direct* benefit. This latter adjective he explains by the cases of straightening a tidal harbor, and of bridging a navigable river. *Held* therefore, in the case before him, that the erection being for the purposes of the defendant's trade, it was too remote a benefit to the pub-

lic, and that the injunction must be granted: *Attorney-General v Terry*, 29 L. T. N. S. 716.

Sale.

Bill of Sale—Covenant to pay "immediately on demand"—Reasonable time for Payment.—By a bill of sale dated the 15th April 1873, the plaintiff assigned all his goods to the defendant to secure a sum of 100*l.*, upon the express condition that if the plaintiff did not "immediately upon demand thereof in writing" delivered to the plaintiff or left for him at his home, pay the amount due, it should be lawful for the defendant to seize and sell the goods comprised in the bill of sale. On April 22d the defendant went with bailiffs to the plaintiff's house and there saw plaintiff's wife and son, who told him plaintiff was from home, they knew not where, and that he might be gone to America for aught they knew. The defendant then read and delivered to the wife and son a written demand for payment, which not being complied with, he at once put the bailiffs into possession, and after eight days sold the goods. The plaintiff returned to his home on May 8th and said he had started with the 100*l.* to go to S. on business, but had gone to R., had got drunk, and remained away "on a spree." In an action against defendant for the seizure and sale, *Held*, that the defendant was justified in his action. It was urged for the plaintiff that "immediately upon demand" always implies in law a reasonable notice, which had not in this case been given; and *Toms* v. *Wilson*, 7 L. T. Rep. N. S. 421, and *Massey* v. *Sladen*, L. Rep. 4 Ex. 13, were cited. But the court, admitting that "even when so strong a word as 'immediately,' or 'instantly' or, if it be possible, any stronger word in the language be used, there must still be allowed a reasonable time," thought that the defendant had acted reasonably. Per KELLY, C. B., that such a demand may be satisfied by drawing a check, and time must be allowed for the debtor to cash it; but per BRAMWELL, B., *dubitatur* (Exch.): *Wharlton* v. *Kirkwood*, 29 L. T. N. S. 644.

Waters and Watercourses.

Mines excepted out of Grant of Surface—Right of Owner of Surface to Subterranean Water.—In a case in which mines were altogether excepted out of a demise of the surface, *Held*, that the rights of the owner of the surface and the owner of the mines did not in any way differ from those of the owners of adjacent closes, who are strangers in title; each of whom is entitled to the water found on his land, but neither of whom is entitled to complain of the loss of that water by natural percolation set in motion by his neighbor's excavations; for it makes no difference whether the respective closes are adjacent laterally or vertically, and the grant of the surface cannot carry with it more than the ownership of the entire soil would. Lord PENZANCE: "To hold otherwise might not improbably result in rendering the reservation of mines and minerals wholly useless. Percolation of water into mines to some extent is an almost necessary incident of mining. And if the grant of the surface carries with it a right to be protected from any loss of surface-water by this percolation, the owner of the surface would hold the owner of the mines at his mercy." (Privy Council): *Ballacorkish Mining Co.* v. *Harrison*, 29 L. T. N. S. 658; s. c. L. R. 5 P C. 49.