December and reported to the defendant, and ended his voyage. This argument is specious; but it assumes that the vessel had arrived at the dock or wharf, when, in truth, she had only very nearly arrived. It has been held in two English cases concerning cargoes of coals shipped under contracts almost identical with this, that delays within the port for a considerable time, owing to a want of sufficient water at the place of delivery, would not require the freighter to receive the coals at another place, or cause the lay days to begin, though the contract had the clause that the ship was to go only so near to the place as she could safely get. It was held that although she could not safely go up while the tides were neap, yet that was one of the accidents of navigation which a vessel contracting to go to a tidal harbor ran the risk of. The distance at which the ship is kept from her berth by the low water is immaterial, if it be so far that the delivery of the cargo is prevented."

We do not advise a new trial.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ERRORS OF CONNECTICUT.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME COURT OF KANSAS.[4]
COURT OF CHANCERY OF NEW JERSEY.[5]

ATTORNEY-GENERAL. See *Corporation; Statute.*

BILLS AND NOTES. See *Evidence.*

Endorser—Waiver of Demand.—While a negotiable note payable on demand, is by statute dishonored at the end of four months if not paid, yet where such a note is on annual or semi-annual interest, it will be presumed, in the absence of evidence to the contrary, that the endorser made his endorsement with no expectation that demand of payment would be made at the end of four months, and therefore with a waiver of such demand: *Hayes* v. *Werner*, 45 Conn.

The taking of security by the endorser at the time of the endorsement, is not in itself a waiver of demand and notice, but it is evidence

[1] Prepared expressly for the American Law Register, from the original opinions filed during October Term 1878. The cases will probably be reported in 7 or 8 Otto.

[2] From John Hooker, Esq., Reporter; to appear in 45 Connecticut Reports.

[3] From Hon. N. L. Freeman, Reporter; to appear in 87 Illinois Reports.

[4] From Hon. W. C. Webb, Reporter; to appear in 21 Kansas Reports.

[5] From John H. Stewart, Esq., Reporter; to appear in 30 N. J. Eq. Reports.

of it, and goes to fortify the presumption arising on the face of the note: *Id.*

CONFLICT OF LAWS.

Receiptor—Goods brought into another State—Remedy.—A receiptor of goods attached, who by his receipt has bound himself to return the property to the officer upon request or pay damages, is not a mere naked bailee of the goods, but has a special property in them, and can maintain replevin against a person unlawfully detaining them from him: *Peters* v. *Stewart*, 45 Conn.

Where goods were attached in the state of Massachusetts, and there delivered by the officer to a receiptor, who left them in the hands of the debtor, by whom they were brought to Connecticut and sold, it was *held*:—

1. That the law of Connecticut governed upon the question whether the receiptor could maintain replevin for the goods.

2. That the receiptor was clearly entitled to the immediate possession of the goods as against the debtor, and that this alone would have been enough, under the statute in force when the suit was brought, to sustain the action of replevin.

3. That the purchaser of the goods, if he bought them in good faith of the debtor, could hold them against the receiptor.

4. That the burden of proof was on the purchaser to show that he bought them in good faith: *Id.*

CONSTITUTIONAL LAW.

State Existence—Rebellion—Impairing Contracts.—The political society which in 1796 was organized and admitted as a state into the Union, by the name of Tennessee, has remained the same body politic to this time. Its attempt to separate itself from that Union did not destroy its identity as a state, nor free it from the binding force of the Federal constitution: *Keith* v. *Clark*, S. C. U. S., Oct. Term 1875.

Being the same political organization during the rebellion and since that it was before, an organization essential to the existence of society, all its acts, legislative and otherwise, during the period of the rebellion, are valid and obligatory on the state now, except where they were done in aid of that rebellion, or are in conflict with the constitution and laws of the United States, or were intended to impeach its authority: *Id.*

The state of Tennessee having organized in 1838 the Bank of Tennessee, agreed by a clause in the charter to receive all its issues of circulating notes in payment of taxes, but by a constitutional amendment adopted in 1865, it declared the issues of the bank during the insurrectionary period void, and forbade their receipt for taxes. *Held*, that this was impairing the obligation of the contract: *Id.*

CORPORATION.

Interference by Attorney-General.—Interference by the attorney-general with corporations on the ground of a trust in the government, is limited to two classes of cases: 1. Religious, charitable, municipal or other corporations whose functions are solely public, and whose managers have destroyed the fund, or are putting it to improper uses, or otherwise abusing their functions. 2. Other corporations which are

exercising powers beyond those to which they are limited by the law of their organization: *United States* v. *Union Pacific Railroad Co.*, S. C. U. S., Oct. Term 1878.

EQUITY. See *Fraud; Limitations.*

Control over Contracts made by an Insolvent.—By virtue of an agreement with the owner of certain lands, a railroad company, before paying the sum stipulated, entered upon the land, built their road thereon, and included it in a general mortgage of their lands, &c. After their insolvency, and the appointment of a receiver by this court, the owner applied for the payment of the amount. It appearing that the sum agreed upon was grossly exorbitant, the court refused to order its payment, but directed that the compensation justly due the owner be ascertained and paid: *Coe* v. *Midland Railway Co.*, 30 N. J. Eq.

EVIDENCE.

Parol to vary Writing.—The defendant had given the plaintiff his note for certain real estate conveyed to him by an absolute deed by the plaintiff. *Held*, In a suit on the note, that parol evidence is admissible on the part of the defendant, to show that the conveyance was not intended as a sale, but was made by the plaintiff for a certain purpose of his own, and upon an understanding with the defendant, that the land was afterwards to be conveyed back, and that the note was given at the time under an agreement that it was not to be paid: *Schindler* v. *Muhlheiser*, 45 Conn.

EXECUTOR.

Investments by.—A direction to invest a share "in productive funds upon good securities," means only those that are designated by law; and a disregard of such requirement renders the executor personally liable, in case of loss or depreciation: *Ward* v. *Kitchen*, 30 N. J. Eq.

A specific legacy may remain invested in the stocks set apart and designated by the testator for the purpose in his will.

An executor, apprehending a depreciation in the stocks in which a specific legacy is invested, should protect the estate by converting them.

FRAUD.

Representations amounting to more than commendation.—Where representations were made by the holder of a mortgage for $7000, that he had sold the mortgaged premises to the mortgagor for about $50,000; that it was first-rate property; that the land was good and the timber thereon valuable; that the land would be more valuable after it was cleared; that the mortgage was a good mortgage; and that the interest thereon had been paid regularly—all of which were false and fraudulent. *Held*, that they could not be regarded as *simplex commendatio;* and a conveyance of lands obtained thereby was set aside: *Perkins* v. *Partridge*, 30 N. J. Eq.

Delay in Rescinding—Homestead—Wife's Rights.—The mere delay of the party who finds himself defrauded in rescinding a fraudulent contract and returning the property he has received under the contract, does not take away the right, if, in the interval, whilst he is deliberating, no innocent third party has acquired any interest in the property, and

the wrongdoer in consequence of the delay, is no way affected injuriously in his position. *Wicks* v. *Smith*, 21 Kans.

Where there is a verbal contract for the sale of a homestead made by the husband and wife to another party, with part performance and possession by the purchaser of such homestead, and upon investigation soon after, it is discovered by husband and wife that they have been greatly defrauded by the fraudulent representations of the purchaser and on account of such fraud have the right to avoid the contract. *Held*, as the homestead cannot be alienated without the joint consent of both husband and wife, either or both have the right, upon the return of the property received under the contract, to rescind the contract and any act of the husband in affirmance or recognition of such fraudulent contract, after the discovery of the fraud committed, without the consent or knowledge of the wife, is not binding on her. *Id.*

GOVERNMENT. See *Corporation; Statute.*

HOMESTEAD. See *Fraud.*

Tenants in Common—Rights of Wife—Partition.—Where a person owns an undivided half of three hundred and twenty acres of farming land and resides upon and occupies it with his family, consisting of his wife and children, and an action of partition is brought by the other tenants in common with him to divide the real estate and have certain claims of lien-holders adjudged liens against the homestead interest of such person; *Held*, that the wife is a necessary party in the action. *Wheat* v. *Burgess*, 21 Kans.

A judgment in such an action decreeing that the one hundred and sixty acres set off to the husband is subject to certain liens which, if not paid within a short time, shall be satisfied from the proceeds arising from a sale of said homestead, is void as against the wife in the absence of jurisdiction of her person by the court rendering the judgment. *Id.*

HUSBAND AND WIFE. See *Fraud; Homestead; Specific Performance.*

LIMITATIONS, STATUTE OF.

Demurrer—Equity—Trust.—When it clearly appears on the face of the bill that the complainant's right of action is barred, advantage may be taken of the Statute of Limitations by demurrer. *Partridge* v. *Wells*, 30 N. J. Eq.

The bar of the statute is as perfect an answer in equity as at law, to actions covered by the statute. *Id.*

The statute does not apply to such trusts as are not cognisable at law, and upon which a remedy can only be had in equity. *Id.*

MANDAMUS.

To compel City to pay Judgment.—Where a judgment is recovered against a city, a duty rests upon it to pay the same, which may be enforced by *mandamus* at the suit of an assignee of the judgment: *City of Chicago* v. *Sansom*, 87 Ills.

MUNICIPAL CORPORATION. See *Mandamus; Officer*

Negligence—Unsafe Sidewalk.—Where city authorities suffered a sidewalk upon a frequented street, built some four feet above the ground to become dilapidated and out of repair for a considerable time, and the

stringers upon which the boards were nailed were rotten, so as not to hold the nails, and the boards were loose, making the walk dangerous, and they, after notice of its unsafe condition, did not repair the same, so as to make it safe, and the plaintiff, while passing over the same with her child in her arms, stepped upon a short board which gave way, causing her to fall upon her back, whereby she received an irreparable injury, and no want of prudence being attributable to her, it was *held*, that the right of recovery against the city for the injury was clear: *City of Chicago* v. *Herz*, 87 Ills.

Power to Tax.—A municipal corporation may levy a tax to pay the expense of collection, and to meet deficiencies likely to occur, over and above the sum actually required to pay its debts; and when this is done by the corporate authorities, in the fair and honest exercise of the discretion vested in them, the courts will not interfere: *Village of Hyde Park* v. *Ingalls*, 87 Ills.

NEGLIGENCE. See *Municipal Corporation; Railroad.*

OFFICE AND OFFICER.

Salary—Actual Possession of Office—Policeman.—A person is not entitled to the salary of a public office unless he both obtains and exercises the office: *Farrell* v. *City of Bridgport*, 45 Conn.

A policeman of a city is a public officer, holding his office as a trust from the state, and not as a matter of contract between himself and the city: *Id.*

PARTNERSHIP.

Use of Firm Funds by one Partner—Land so Purchased.—Property purchased by one copartner with the funds of the firm, and title taken in the name of his wife, is partnership assets: *Partridge* v. *Wells*, 30 N. J. Eq.

Assignment.—Where a voluntary assignment is executed by L. & B., who are partners in the grocery business, and signed by their respective wives, who release all right, title and interest in the real estate thereby conveyed, and the assignment purports to assign and transfer all the property of L. & B. of every kind and description, except that exempt by law; and provides that from the proceeds of the property when sold, the assignee shall pay and discharge and pay all debts of L. & B., but if not sufficient therefor to pay rateably in proportion to the amount of the indebtedness, without distinction or preference; *Held*, That said assignment is general and conveys the partnership effects of the partners and their separate property, notwithstanding that where the names of L. & B. appear in the body of the written instruments, they are immediately followed by "co-partners," or "partners:" *Williams* v. *Hadley*, 21 Kans.

POSSESSION.

Unrecorded Deed—Notice—Execution—Equitable Title.—A person in actual possession of real estate under an unrecorded deed is, as against all persons who have actual notice of such deed, the legal and absolute owner of such real estate, and as against all other persons, he is the equitable owner: *Tucker* v. *Vandermark and Kirtland*, 21 Kans

All persons are bound to take notice of all equitable interests any person may have in real estate, of which he is in actual possession: *Id.*

An attachment cannot be made to operate upon a merely legal title, as against the equitable owner of real estate, where the parties claiming under the attachment have (at the time the attachment is levied,), or are bound by law to take notice of the paramount outstanding equitable title. *Id.*

PUBLIC SALE.

Mortgage Sale—Transfer of Bid.—It is often the case, a bidder at a public sale transfers his bid to another, and directs the deed to be made to such person, and if there be no fraud in the transaction, and no loss to the mortgagor thereby, there can be no objection. But if objectionable, it cannot be set up in an action of ejectment against remote purchasers without notice: *Johnson* v. *Watson*, 87 Ills.

RAILROAD.

Negligence.—Where a plaintiff carelessly walked upon the track of a railroad only a few steps south of an approaching train, without looking north to see if there was danger, and paid so little heed as not to hear the bell or whistle when sounded, or notice the calls of persons warning him of danger, and was run over by the engine, not moving at a high rate of speed, and there was no proof that the servants of the company wantonly or wilfully caused the injury, it was *held*, that the plaintiff's negligence was so gross as to preclude a recovery of damages by him, in a suit against the company; *L. S. & Mich. Southern Railroad Co.* v. *Hart*, 87 Ills.

REBELLION. See *Constitutional Law.*

RECEIPTOR. See *Conflict of Laws.*

RECEIVER. See *Equity.*

SPECIFIC PERFORMANCE.

Against Wife of Vendor.—It is erroneous, in decreeing the specific performance of a contract for the conveyance of land, to require the wife of the vendor to write in the conveyance, and, on her failure, for the master to convey her interest in the land, where she has not signed the agreement with her husband, or otherwise contracted to convey any interest she might have in the premises: *Mathison* v. *Wilson*, 87 Ills.

STATUTE.

Special Act directing Suit to be brought by Attorney-General.—Statutes directing suits for specific objects to be brought by an Attorney-General, and regulating the proceedings in them, are very common, such as *quo warranto*, or bill in equity against corporations to test the right to the exercise of their franchises, or declare them forfeited, or if insolvent to wind up their business and distribute their assets, and their validity has uniformly been recognised: *United States* v. *Union Pacific Railroad Co.*, S. C. U. S., Oct. Term 1878.

TITLE. See *Possession; Vendor.*

TRESPASS.

Assault—Provocation.—In trespass for an assault the provocation given by the plaintiff, though offered in evidence in justification of the assault, may yet, if insufficient for this purpose, be considered by the jury in mitigation of damages: *Burke* v. *Melvin*, 45 Conn.

And it makes no difference that the plea is the general issue, with notice only that the fasts would be proved as a justification: *Id.*

TRUST. See *Limitations, Statute of.*

Trust created by Widow taking Deed of Lands sold her Husband.—Where a purchaser of land died without completing his payments, and afterwards the vendor, without manifesting any desire or intention to declare a forfeiture of the contract, under a clause giving him such right resold one-half of the lot to a third person and the other half to the widow of the original purchaser, for the exact sum then due on the first contract, and the half sold to the widow was worth considerably more than the price paid by her, and she, on the payment, obtained a conveyance: *Held*, there was no forfeiture declared, and that she took the legal title in trust for the heirs at law of her husband: *Musham* v. *Musham*, 87 Ills.

USURY.

What will not Amount to.—When an agent procuring a loan of money for a party, charged and received from the borrower five per cent. of the amount, and $100 for going to Chicago and procuring a release of an incumbrance, the party making the loan having no knowledge of this arrangement and deriving no benefit from it, it was *held*, that usury could not be predicated of the transaction; *Ballinger* v. *Bowland*, 87 Ills.

UNITED STATES. See *Corporation; Statute.*

UNITED STATES COURTS.

Supreme Court—Review of Decisions of State Courts.—Where a case has been decided in an inferior court of a state on a single point which would give this court jurisdiction, it will not be presumed here that the Supreme Court of the state decided it on some other ground not found in the record, or suggested in that court: *Keith* v. *Clark*, S. C. U. S., Oct. Term 1878.

VENDOR AND PURCHASER. See *Fraud.*

Sale of Land without Title—Subsequent Acquisition of Title by Vendor.—A mere trespasser on lands sold certain improvements he had placed thereon and delivered the possession of the land and the improvements to his vendee. Subsequently he bought the title to the land. *Held*, it not appearing that he had given any deed or made any warranty or any false representations, that he was not estopped from recovering possession of the land from a vendee of his vendee. *Sheffield* v. *Griffin*, 21 Kans.

WILL.

Devise of Fund to be divided between Children where there are more than two.—T. gave to the children of D. a part of his residuary estate, to be equally divided *between* them as they should respectively come to the age of twenty-one years. At the time of making the will and of T.'s death, D. had two children, but before the elder came of age, another child was born, and all three are living, and the eldest has attained to majority. *Held*, That each of the three children is entitled to an equal share, and that a contrary intention cannot be inferred from the testator's use of the word "between:" *Ward* v. *Tompkins*, 30 N. J. Eq.