In this view, upon the finding of the trial judge, that the loss occurred before reaching Omaha, the defendant became liable to the plaintiff for the value of the property taken from the trunks of the plaintiff. It is equally clear that the Union and Central Pacific Railroad Companies, whose roads lay beyond Omaha, were not liable to the plaintiffs for the loss, nor in any way in default. Not being co-wrongdoers with the defendant, no payment made by them to the plaintiff, and no release, in consideration of such payment, made by the plaintiff to them, could operate as a release of the liability of the defendant. And the transaction can only be treated as the compromise of a possible litigation, or as a mere gratuity. It would meet the abstract equity of the case to give the defendant the benefit of a credit for the value of deduction on the return tickets over the roads of those companies, but no principle has been suggested by counsel, or occurred to us, upon which the allowance can be made.

There is no error in the judgment, and it must be affirmed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF GEORGIA.[2]

SUPREME COURT OF IOWA.[3]

SUPREME COURT OF MAINE.[4]

SUPREME COURT OF NEW JERSEY.[5]

SUPREME COURT OF WISCONSIN.[6]

ACTS OF CONGRESS. See *Errors and Appeals; Removal of Causes; Criminal Law.*

ADMIRALTY.

Evidence—Part Owners—Admissibility of Statement of one to bind the others.—Part owners are merely tenants in common, not partners;

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1882. The cases will probably occur in 16 Otto.

[2] From J. H. Lumpkin, Esq., Reporter. These cases will probably appear in 65 or 66 Georgia Reports.

[3] From B. W. Hight, Esq., Reporter; to appear in 58 Iowa Reports.

[4] From J. W. Spaulding, Esq., Reporter; to appear in 74 Maine Reports.

[5] From G. D. W. Vroom, Esq., Reporter; to appear in Vol. 15 of his Reports.

[6] From Hon. O. M. Conover, Reporter; to appear in 55 Wisconsin Reports.

and the statement of one of them made in another suit as to the amount of damage suffered in a collision is not evidence against his co-owners: *Clark* v. *Weeks*, S. C. U. S., Oct. Term 1882.

Collision—Two offending Vessels—Measure of Liability—Decree.—Where the injury of the libellant has arisen from the fault of two vessels the damages are apportioned equally between them: *The Ship Sterling* v. *Peterson et al.*, S. C. U. S., Oct. Term 1882.

In such a case the decree should be against each offending vessel for one-half of the entire amount, any balance of such half which the libellant shall not be able to enforce against either vessel to be paid by the other vessel or her stipulators: *Id.*

Collision—Duty of Ocean Steamship starting from a crowded Slip.—An ocean steamer started from a crowded slip, and the motion of her propeller caused a canal-boat to break her fastenings and swing around against the propeller whereby she was sunk: *Held*, that the steamer was in fault for not having a look-out at her stern, by whom the peril of the canal-boat could have been seen in time to stop the propeller and prevent the collision: *Steamship Nevada* v. *Quick et al.*, S. C. U. S., Oct. Term. 1882.

If towage is necessary to extricate a large steamer from a crowded slip or harbor without injury to other vessels it should be employed: *Id.*

Steamers and locomotives should be so operated as to do the least possible injury consistent with their substantial usefulness: *Id.*

AGENT.

Authority to buy on Credit.—In the absence of express authority or a custom of the trade to buy upon credit, an agent who is furnished with funds to make purchases cannot bind his principal by a purchase upon credit: *Kamarouski* v. *Krumdick*, 55 Wis.

If goods are sold to such agent on credit and are by him delivered to the principal, the latter will not be liable to the vendor unless he received the goods knowing them to have been bought on credit, or had no funds in the hands of the agent, at the time sufficient to pay for the goods: *Id.*

Authority to receive Payment for Goods.—An agent who merely solicits orders for goods, sending them to his principal to be filled, has no implied authority to receive payment for the goods sent by the principal to fill such orders: *McKindly* v. *Dunham*, 55 Wis.

An order solicited by and given to such agent does not constitute a sale, either absolute or conditional, of the goods ordered, but is a mere proposal, to be accepted or not, as the principal may see fit: *Id.*

The words "agents not authorized to collect," stamped in large legible print upon the face of a bill sent to the purchaser of goods, will be presumed to have been observed by such purchaser, and, whether he saw them or not, were notice to him not to pay to an agent: *Id.*

ASSUMPSIT.

Contract to Build—Acceptance of Building.—When a contract for building on land has not been so performed as to justify a recovery

thereon, a recovery in assumpsit on the common counts, for the work and materials used in the erection, will only be permitted when the owner has actually accepted the building: *Bozarth* v. *Dudley*, 15 Vroom.

Such acceptance may be express or implied from circumstances; mere occupation of the building does not necessarily imply such acceptance: *Id.*

Attachment.

Lien—Interest of Co-tenant.—The lien acquired by the attachment of personal property which is easily removable, is lost by neglect to retain possession of the property: *Thompson* v. *Baker*, 74 Me.

Where the attachment is only of the interest of one co-tenant in an article of personal property, the sale of the whole is unlawful: *Id.*

Bills and Notes.

When sealed Instruments.—That the printed blank on which a promissory note was drawn concluded with the words "witness our hand and seal," did not alone make the note a sealed instrument. These words called attention to the attestation to be made, but did not supply the place of a seal or representation thereof after the signature: *Brooks* v. *Kisers*, 65 or 66 Ga.

The attaching of a seal or scroll after the signature to an instrument without some recital in the body thereof, will not make such instrument a writing under seal: and semble, a recital alone without the attaching of a seal or scroll will not make a sealed instrument: *Id.*

Negotiability.—A promissory note made in the following terms: "Sixty days after date I promise to pay C. Toler or order, one hundred and fifty dollars, at either bank in the city of Augusta, Ga., for one end spring top buggy, harness, whip and mat, this day delivered to me, upon the distinct understanding that the title was not to pass me until paid for in full," and he is authorized to take possession of same at any time until fully paid for," was negotiable by indorsement in blank, and one taking under such indorsement could bring suit on the note in his own name: *Howard* v. *Simpkins*, 65 or 66 Ga.

When not Payment of Debt.—A bill of exchange, acceptance, or promissory note, either of a debtor or third person, is not an extinguishment of original liability unless it is expressly agreed to accept it as payment: *Weaver* v. *Mixon*, 65 or 66 Ga.

So, where a bill of exchange is sent by a debtor to his creditor to be credited on an account, and though the creditor uses due diligence the bill of exchange is not paid, the demand on the account is not extinguished, although the account be mailed to the debtor and received by him, marked "Paid April 8th 1881," and signed by the creditor, the mailing and receipt being before the protest of the bill of exchange: *Id.*

Common Carrier.

Failure to Deliver—Stipulation to pay specified Sum.—A contract providing that in case of loss the carrier shall be liable to pay, as damages, a specified sum, will not, without an express stipulation to that effect, relieve the carrier from liability to the full amount of the value

of goods lost through its negligence: *Black* v. *Goodrich Trans. Co.*, 55 Wis.

The non-delivery of goods intrusted to a carrier, and its admission that the same are lost, so that it cannot make delivery, are presumptive evidence of negligence on its part: *Id.*

Conflict of Laws.

Foreign Decree of Divorce.—Although marriage is a status, and every state has the right to fix, regulate and control the same as to every person within its jurisdiction, even though one of the parties may at the time actually reside in another state, yet a judgment of divorce granted in another state, under statutes making jurisdiction dependent entirely upon the residence there of the party applying for a divorce, at the suit of a husband against a wife who resided in this state, and who was not personally served with notice and did not appear in the action, but was ignorant of its pendency until after the judgment was rendered, is not a bar to a subsequent action by such wife in this state for a divorce, alimony, allowance and a division of the property of such husband situated within this state, especially where such foreign judgment was based upon an alleged cause of action which was false in fact: *Cook* v. *Cook*, 55 Wis.

Constitutional Law. See *Criminal Law.*

Municipal Corporation—Power to Tax—Repeal of.—When a municipal corporation, having a general power to levy taxes to pay its debts, enters into a contract, the legislature cannot take away or substantially impair such taxing power, so far as relates to such contract: *Assessors of Taxes* v. *State*, 15 Vroom.

In such case, if the corporation refuses to exert taxing power in favor of such contractor, a mandamus to compel such action is a right which cannot be taken away or impaired by subsequent legislation: *Id.*

Contract. See *Pilotage.*

Consideration.—A release from a contract to marry is a good consideration for a promise by the party accepting such release to pay money therefor: *Snell et al.* v. *Bray*, 55 Wis.

Offer of Reward—Performance of Service—Public Officer.—Where a reward is offered for the doing of a certain act, with no restrictions or limitation to the offer and no additional requirement upon the claimant of the offered bounty, one who performs the act with a view of obtaining the reward need not give notice of that fact to the person making the offer, as a condition precedent to the recovery of the reward: *Reif* v. *Page*, 55 Wis.

Where a fireman could not rescue a person from a burning building without imminent peril of losing his own life, and it was not his duty, as such fireman, to do so, such rescue cannot be said to have been in the line of his duty, so as to preclude him from claiming a reward offered therefor: *Id.*

Conditional Agreement—Failure to Accept.—If an agreement was made to extend the time for payment of a draft, if interest should be paid in advance and security be given for the debt, without such payment of interest and giving of security, no extension of time could be

claimed, and in the absence of any tender or offer thereof, a mere letter in response to a notice to pay, stating that the debtor was relying on the agreement for an extension of time and was ready to comply with its terms, was not sufficient: *Williams* v. *Wright*, 65 or 66 Ga.

CORPORATION. See *Master and Servant.*

Corporation de facto—Creditor dealing with it as Corporation—Partnership.—Where a creditor contracted with a company as a corporation, both parties believing the corporation to exist *de jure* as well as *de facto*, and with no intention at the time of giving credit to or binding the members individually or as partners, an action cannot be maintained against them on that contract as partners: *Planters' and Miners' Bank* v. *Padgett*, 65 or 66 Ga.

When record of Judgment against a Foreign Corporation admissible in Evidence—Effect of Admission.—A Michigan statute provided that in suits commenced by attachment against a foreign corporation, a personal service of a copy of such attachment and of the inventory of property attached on "any officer, member, clerk or agent of such corporation," within the state, should authorize the same proceedings as service of a writ of summons. A judgment of the state court in such an action, where the return was that copies of the writ and inventory had been served "by delivering the same to —— agent" of the corporation, "personally, in said county," and there had been no appearance of the company, being offered in evidence to show that the amount rendered was an existing obligation against the company: *Held*, that the record was inadmissible because it nowhere appeared therein that the corporation was engaged in business in the state: *St. Clair* v. *Cox*, S. C. U. S., Oct. Term 1882.

Semble, that if such fact had appeared and the record been admitted evidence could be introduced to show that the agent served occupied no representative capacity with respect to the business of the corporation in the state and the judgment be thereby deprived of its probative force: *Id.*

COSTS. See *Judgment.*

COURT. See *Judgment.*

COVENANT.

Acceptance of Deed—Covenant to pay Mortgage—Damages.—The grantee in a deed, by accepting the same, becomes liable on the covenants therein purporting to be made by him, just as if he had signed and sealed the instrument: *Sparkman* v. *Gove*, 15 Vroom.

A covenant by the grantee in a deed to assume a mortgage, for payment of which the grantor is personally liable, binds the grantee to pay the mortgage debt: *Id.*

In an action for breach of the defendant's covenant to pay a debt which the plaintiff owes, the damages recoverable are the full amount of the debt, although the plaintiff may not yet have paid the same: *Id.*

CRIMINAL LAW.

Accessory—Indictment.—Persons aiding or abetting in the commission of a crime may be found guilty under an indictment in the ordi-

nary form charging them as principals. The indictment must be the same as though they were principals: *The State* v. *Hessian*, 58 Iowa.

Act of August 15th 1876—Constitutionality of—Political Assessments —Habeas Corpus—Power of Review in Criminal Cases.—The Act of Congress of August 15th 1876, prohibiting, under penalty of dismissal and fine, U. S. employees "from requesting, giving to, or receiving from" each other, anything for political purposes, is constitutional: *Ex parte Curtis*, S. C. U. S., Oct. Term 1882.

The Supreme Court of the United States has no general power to review the judgments of the inferior courts in criminal cases, by the use of the writ of habeas corpus or otherwise: its jurisdiction is limited to the single question of the power of the court to commit the prisoner for the act of which he has been convicted: *Id.*

Debtor and Creditor.

Voluntary Conveyance—Insufficient Consideration—Burden of Proof. —Where the difference between the price paid, and the actual value of the property, is apparent and great, the conveyance will be regarded as voluntary to the extent of that difference: *Strong* v. *Lawrence*, 58 Iowa.

If the debtor is insolvent at the time judgment is rendered, his insolvency will be considered as extending back beyond a voluntary conveyance of his property, made during his indebtedness, unless the contrary be shown; and the burden is upon the party claiming under the conveyance to show that, at the time it was made, his donor had other property amply sufficient to pay all his debts: *Id.*

Domicile.

Residence—Facts establishing.—Where one H., a foreigner, without parents or home, kept her trunks and clothes at the house of her brother in a certain county, and seemed to regard it as a home, going out at various times to work in another county, but when sick or out of employment returning to her brother's house, it was held that such county was the county of her residence: *County of Cerro Gordo* v. *County of Hancock*, 58 Iowa.

Presumption.—Where it is shown that a person was residing at a certain place at a certain time, the ordinary presumption is that such residence was a continuing residence. For what period of time such presumption would last must depend upon all the associated circumstances. *Inhabitants of Greenfield* v. *Inhabitants of Camden*, 74 Me.

Voting.—The fact of voting in a town is not conclusive evidence of the residence of the voter therein at the time. The act and the circumstances under which the vote is given are proper facts for the consideration of the jury: *Inhabitants of East Livermore* v. *Inhabitants of Farmington*, 74 Me.

Equity.

Reformation of Contract—Fraud.—To enable a court of equity to reform a contract on the ground of fraud or mistake, there must be full proof of the fraud or mistake. Relief will not be granted where the

evidence is loose, equivocal or contradictory, or in its texture open to doubt or opposing presumptions. *Fessenden* v. *Ockington*, 74 Me.

ERRORS AND APPEALS. See *Practice.*

United States Revenue Laws—Prosecution for illegal Seizure—Certificate of Probable Cause.—The refusal of the District Court to grant a certificate of probable cause in a prosecution on account of a seizure under the revenue laws where the judgment is for the claimant, is not reviewable. *The United States* v. *Ferrick*, S. C. U. S., Oct. Term, 1882.

EVIDENCE. See *Admiralty.*

Evidence—Deed—Office Copy—To lay the foundation for the introduction of an office copy, instead of the original deed under which he claims, by the heir of the grantee, in a suit for the land, it is incumbent on such heir to prove the execution and genuineness of the deed which he claims is lost, and also to show that he has exhausted his apparent means to produce the original: *Elwell* v. *Cunningham*, 74 Me.

Promissory Note—Joint Makers—Evidence of Execution.—In an action upon a promissory note purporting to be executed by two as joint makers, the execution of which was denied by the defendant, evidence of what the other joint maker said at the time he delivered the note to plaintiff, about the signing of the note by defendant, was inadmissible, it being hearsay, and not a part of the *res gestæ*: *Smith* v. *Wagaman*, 58 Iowa.

Proof of Crime—Civil Action.—In a civil action, where the defence rests upon an alleged crime, the plaintiff's guilt need not be established beyond a reasonable doubt: *Behrens* v. *Germania Ins. Co.*, 58 Iowa.

Quality of Goods furnished, how shown.—The quality of goods furnished at a given time by the plaintiff to the defendant being in question, it is competent for the plaintiff to show that the quality of like articles furnished at the same time by him to another party was good, if such be followed by evidence that the goods furnished by him at that time to such other party and the goods furnished by him at that time to the defendant were of the same kind and quality: *Ames* v. *Quinby*, S. C. U. S., Oct. Term 1882.

Variation of Writing by Parol.—The exceptions to the rule that where parties have put their contract in writing, the written contract shall be the only evidence of the contract are (1) where the written contract is incomplete, and on its face does not purport to contain the whole agreement between the parties; (2) where the parties, in negotiating the agreement which is reduced to writing, have also entered into another agreement by parol, which is collateral to the written contract, and is on a subject distinct from that to which the written contract relates: *Naumberg* v. *Young*, 15 Vroom.

To justify the admission of a parol promise by one of the contracting parties, made during the negotiation of a written contract, on the ground that it was collateral, the promise must relate to a subject distinct from that to which the written contract applies. *Morgan* v. *Griffith*, L. R., 6 Exch. 70; and *Erskine* v. *Adeane*, L. R., 8 Ch. App. 756, disapproved: *Id*

FRAUDS, STATUTE OF.

Promise by Contractor to pay orders issued by Sub-Contractors.—Contractors to build a railroad agreed with merchants to pay orders and time-checks issued by a sub-contractor to his employees. Upon the faith of this agreement and giving credit exclusively to the contractors, the merchants accepted and received such orders and time-checks in exchange for goods. *Held*, that the promise of the contractors was not within the Statute of Frauds: *Best* v. *O'Hara*, 55 Wis.

FOREIGN CORPORATION. See *Corporation.*

GUARANTY.

Promissory Note—Liability of Guarantor.—A guaranty, indorsed upon a note, is an absolute contract for the payment of the note at maturity, upon default of the maker; and the guarantor will be liable thereon, although the note was secured by a lien upon personal property, and the guarantee failed to enforce such lien until the security became lost and the maker of the note insolvent: *Adams and French Harvester* v. *Tomlinson*, 58 Iowa.

HUSBAND AND WIFE. See *Conflict of Laws.*

Earnings of—Wife Creditors.—The earnings of the wife, unless acquired incarrying on an independent business of her own, cannot be made the basis of a claim against her husband to the prejudice of his creditors: *Triplett* v. *Graham*, 58 Vroom.

INSOLVENCY.

Discharge—Action by Foreign Creditor.—A discharge in insolvency by an insolvent court of one state to one of its citizens, is no bar to an action brought in its courts by a citizen of another state when such creditor was not a party to the insolvency proceedings: *Hill* v. *Carlton*, 74 Me.

JUDGMENT. See *Corporation.*

Correction at Subsequent Term—Costs.—The court has no power at a subsequent term to correct its judgment in respect to costs, where that subject was considered and the judgment entered by the clerk in accordance with the directions of the court, unless such power was carried forward by a motion made during the term at which the judgment was rendered: *Williams* v. *Williams*, 55 Wis.

Who bound by.—Where a defendant has been served with process issuing from a court of competent jurisdiction, and has had, or could have had, his day in court, he is concluded by the judgment. He can not by affidavit of illegality attack such judgment and set up defences which existed and could have been pleaded before it was rendered: *Harbig* v. *Freund*, 65 or 66 Ga.

LANDLORD AND TENANT.

Lease—Warranty of Fitness.—Upon the demise of a factory and the fixtures and machinery in it, there is no implied warranty that the machinery is in good repair or of sufficient capacity to do the work for which the premises were let: *Naumberg* v. *Young*, 15 Vroom.

LIBEL.

Corporation—Evidence.—An action for libel can be maintained against a corporation: *Evening Journal* v. *McDermott*, 15 Vroom.

Previous or subsequent publications are admissible in evidence for the purpose of showing the temper of the defendant's mind in the publication complained of, and it makes no difference that such publication is one, by reason of the bar of the Statute of Limitations, upon which no action can be maintained: *Id.*

LIMITATIONS STATUTE OF.

Action founded on Statute.—The statutory limitation of six years for the bringing of a suit is not applicable when the entire cause of action arises out of a statute: *Cowenhoven* v. *Board of Freeholders*, 15 Vroom.

LUNATIC.

Settlement.—A *non compos* or insane person is incapable of acquiring a pauper settlement in his own right: *Inhabitants of Strong* v. *Inhabitants of Farmington*, 74 Me.

Such a person who lived continuously in his father's family until the age of forty-eight years, was then sent to the insane hospital; *Held*, that he followed the residence of his father acquired while the pauper was an inmate of the hospital: *Id.*

MASTER AND SERVANT.

Corporation—Negligence of Manager—Injury to Employee.—A corporation acts only through its agents, and unless responsible for their acts is wholly irresponsible. The agent who represents the corporation as master over other employees for the time, occupies the position of the corporation for such time to such subordinates. The corporation is bound to appoint a skilled and prudent manager to such position, and is negligent if it employs an imprudent or incompetent person; and if from the negligence of this quasi master, unmixed with negligence of his own, another servant or employee is injured, the corporation will be responsible: *Atlanta Cotton Factory* v. *Speer*, 65 or 66 Ga.

Especially is this the case where the injured employee was a child without access to the president or general superintendent, and who received her orders solely from the manager of the branch of the business in which she was engaged, and it makes no difference that such subordinate manager violated the orders of his superior officer in placing the employee in a position of danger: *Id.*

MORTGAGE.

Change of Limits of County—Notice of Foreclosure.—All persons are bound to take notice of the boundaries of counties, and of any change in their limits by legislative action: *Welch* v. *Stearns*, 74 Me.

When a mortgage has been received and recorded in the registry of the county, and the town in which the mortgaged premises lie, becomes by legislative enactment part of another county, the notice of foreclosure should be published in the county in which the land is situated when the notice is given: *Id.*

MUNICIPAL CORPORATION. See *Constitutional Law.*

Board of Supervisors—Compromise of Judgment.—The board of supervisors, if acting in good faith in respect thereto, has the authority to compromise a judgment in favor of the county. BECK, J., dissenting: *Collins* v. *Welch*, 58 Iowa.

Illegal arrest of Taxpayer for Taxes once paid.—When a collector of taxes arrests a taxpayer for non-payment of a tax which had already been once paid, and is thereupon paid a second time to procure a release from the arrest, the town is not liable for the arrest, nor for the money while in the hands of the collector: *Inhabitants of Liberty* v. *Hurd*, 74 Me.

Power to pass Ordinances—Interference with Individual Rights.—The power of a municipal corporation to pass a by-law or an ordinance which establishes a rule interfering with the rights of individuals or the public, must emanate from the creating body, and clear authority must be found for it in the legislative enactment under which the corporation exercises its functions of government: *State* v. *Belvidere*, 15 Vroom.

A provision in the town charter that the common council may pass and enforce ordinances and by-laws for the suppression of gambling-houses, and such other by-laws and ordinances for the peace and good order of the town as they may deem expedient, not repugnant to the constitution or laws of this state or of the United States, does not warrant the passage of an ordinance forbidding the keeping of a billiard table for hire: *Id.*

NEGLIGENCE.

Railroad—Contributory Negligence.—The railroad company is liable, notwithstanding the negligence of the intestate, if ordinary care was not exercised by its employees to prevent the accident, after they knew of the intestate's negligence; and as this rule of law if clearly expressed, the form of the instruction is not important: *Beems* v. *The C., R. I. and P. Railroad Co.*, 58 Iowa.

Damages when Proximate.—In the rule which limits a recovery for a tort to those damages which are its natural and proximate effects, the natural effects are those which might reasonably be foreseen—those which occur in an ordinary state of things—and the proximate effects are those between which and the tort there intervenes no culpable and efficient agency. A mere failure by third parties to extinguish a fire started through the negligence of the defendant, is not such an agency: *Wiley* v. *West Jersey Railroad Co.*, 15 Vroom.

Contributory Negligence—Child.—The mere fact that a boy, between six and seven years old, was upon a railroad track at or near a street-crossing, even though his father had a short time previous seen him going toward the track, is not enough to establish contributory negligence as a matter of law, in an action against the railroad company for the killing of the boy: *Johnson* v. *C. & N. W. Railroad*, 55 Wis.

PARTNERSHIP.

Breach of Contract to Form—Action.—An action at law may be

maintained for the breach of an executory contract to form a future co-partnership: *Hill et al.* v. *Palmer*, 55 Wis.

The wrongful refusal by a party to a contract of co-partnership to permit the other party to *launch* the partnership business is ground for an action at law by the injured partner: *Id.*

If the damages resulting from a breach by one partner of a covenant or stipulation in the partnership agreement belong exclusively to the other partner and can be assessed without taking an account of the partnership business, an action at law may be maintained by the injured partner for such damages: *Id.*

PATENT.

Re-issue—Process—Mechanism.—A patent for a *mechanism* was re-issued so as to cover the *process*. *Held*, that the re-issue was void as being for a different invention from that described in the original patent: *Wing* v. *Anthony*, S. C. U. S., Oct. Term 1882.

PAYMENT. See *Bills and Notes.*

When not Voluntary—Taxes.—In an action to recover back a payment made to prevent an illegal distress of the property for taxes, it is not necessary to show that the distress was actually made; it is sufficient if the circumstances lead to the conclusion that such distress is impending and will certainly be made if the payment is not made: *Howard* v. *City of Augusta*, 74 Me.

PENSION.

Liability to Execution.—Money due for pensions, while it remains in the hands of the disbursing officer or agent for distribution, or while in the course of transmission to the pensioner, is not liable to be seized by creditors under any legal process. After it has come to his hands it is so liable, like any other funds of the debtor: *State* v. *Fairton Sav. Fund and Build. Asso.*, 15 Vroom.

When subject to Judgments.—The exemption under section 4747, Revised Statutes of the United States, applies only while the pension-money is in course of transmission to the pensioner; and after it has come into his possession his creditors may subject it, or the property purchased with it, to the payment of their judgments: *Triplett* v. *Graham*, 58 Iowa.

PILOTAGE.

Commissioners of—Right to limit the Number of Pilots—Contract—Public Policy.—A contract between the commissioners of pilotage of a port and the licensed pilots thereof, whereby the former agreed to limit the number of pilots for that port for the period of three years to ten, that being the number already licensed, was illegal and void. It is the duty of the commissioners of pilotage to supply the port with a sufficient number of pilots and they cannot contract to restrict the number, without regard to what might be necessary for the business of the port: *Wright* v. *Commissioners*, 65 or 66 Ga.

Each licensed pilot has the right to hold his license and receive his fees for services which he may render; but he has no right, either alone

or in company with others, to claim the entire business of the port, and to prevent the issuing of a license to another pilot, in the discretion of the commissioners of pilotage: *Id.*

POLITICAL ASSESSMENTS. See *Criminal Law.*

PRACTICE.

Effect of not filing Affidavit denying Execution of Instrument—Bill of Particulars—Mistake in—Review of former Judgment in same Case.—A rule of court provided that where a defendant insists on a claim by way of set-off, founded on a written instrument, he cannot "be put to the proof of the execution of the instrument or the handwriting" of the opposite party, unless an affidavit is filed "denying the same:" *Held*, that the want of such affidavit does not prevent the plaintiff from showing that such an instrument, dated January 2d, was executed on January 1st. *Held*, also, that the want of such affidavit does not prevent the plaintiff from showing that his duplicate of an instrument executed in duplicate by him and the defendant differed in its contents from the one retained by the defendant. *Ames* v. *Quimby*, S. C. U. S., Oct. Term 1882.

A charge that while the plaintiff could not recover for any more goods than his bill of particulars sets forth, he was not bound by a mistake in carrying out the rate of price, but could show what he was actually to have, it not appearing by the record what were the contents of the bill of particulars, but it appearing that the plaintiff claimed there was a mistake in it in that respect, *held*, not to have been erroneous: *Id.*

After this court has reversed a judgment and ordered a new trial, and a new trial has been had, with a second judgment, this court cannot, on a writ of error to review the second judgment, review its own judgment on the first writ of error. *Id.*

PUBLIC POLICY. See *Pilotage.*

RAILROAD.

Liability to Landowner for negligent construction of Road—Right to set-off benefits to Land.—If a railroad, under a grant of a right of way, constructs its road with prudence and care, it will not be liable to the grantor for injuries incident to such construction, but if it acts without care and skill, and by reason of failure to build necessary and proper culverts, surface water is turned out of its usual and natural channel and emptied upon the lands of the grantor, it will be liable to him or those holding under him for damages resulting therefrom.: *Gilbert* v. *Sav., G. and N. A. Railroad Co.*, 65 or 66 Ga.

Against such actual damages the railroad cannot set off such incidental benefits to the grantor as might arise from the construction of the road over his land. *Id.*

RECEIVER.

Creditor who has not obtained Judgment—Right to file Bill.—As a general rule creditors who have not reduced their claims to judgment and who have no lien, title or interest attaching to the property of their debtor, have no right to invoke, interference therewith by injunction and the appointment of a receiver. Even after judgment, there must

be some special circumstances to authorize equitable interference in behalf of a creditor seeking to collect his debt: *Dodge* v. *Pyrolusite Man. Co.*, 65 or 66 Ga.

Removal of Causes.

Controversy wholly between Citizens of different States—Contest over a Will—Though Contestants nominally separate, but one issue.—In a will case two of the contestants were citizens of other states and the remaining contestants and the executors citizens of Michigan: separate appeals were taken from the probate court to the circuit court of the state of Michigan by the contestants from other states and those living in Michigan: *Held*, that the contest was joint, that although, in form, separate issues were joined in the appeals, in reality they were but one and were capable of but one trial, and that the appeal by citizens of other states was therefore not removable: *Fraser* v. *Jennison*, S. C. U. S., Oct. Term 1882.

Sheriff.

Taking of Securities—Action against for Loss of—Replevin.—Where property levied on by an officer by virtue of an execution has been taken from his custody by a writ of replevin, the replevin bond is substituted in the place of the levy; and if the officer deprives the plaintiff in the execution of the advantages to be derived from the bond, by surrendering it or cancelling a judgment recovered on it, an action will lie against him for a breach of duty in not making the money under his process: *Harrison* v. *Maxwell*, 15 Vroom.

Securities taken by officers in the execution of process, are regarded as securities held by them in trust for parties whom they represent in an official capacity; and courts of law will extend a liberal protection over the rights of parties equitably interested, against the acts of mere nominal parties: *Id.*

Sheriff's Sale.

Matured Crops—Sheriff's Deed.—The title of a party in possession of real estate sold at foreclosure sale, to the crops standing thereon, is not divested until the execution of the sheriff's deed: and if the crops are fully matured and ripe at that time they will not pass by the conveyance: *Everingham* v. *Braden*, 58 Iowa.

Tax Sale.

Right of Owner to pay Taxes by Agent or Friend.—The commissioners of the United States for the collection of direct taxes having established a rule that they would receive the taxes and charges on property advertised for sale only from the owner *in person*: *Held*, that the rule avoided the sale and that a tender was unnecessary, and this even where the United States was the purchaser: *Kaufman and Strong* v. *Lee*, S. C. U. S., Oct. Term 1882.

Taxes. See *Tax Sale.*

Purchase at Tax Sale by one bound to pay Taxes.—When a mortgagor, by his mortgage, is bound to pay all taxes, accruing on the estate,