RECENT CASES.

GARNISHMENT.

Garnishment Proceedings—Waiver of Contempt.—Holbrook v. *Ford*, 39 N. E. Rep. 1091 (Ill.). Where a receiver has voluntarily made himself a defendant in a garnishment suit by which a creditor attempts to reach assets claimed by the receiver, his right to assert that the creditor, in instituting the garnishment proceedings, is guilty of contempt of court, is thereby waived.

Garnishable Property—Percentage on Condition of Faithful Performance of Contract.—American Forcite Powder Mfg. Co. v. *Locust Mountain Coal & Iron Co. et al.*, 31 Atl. Rep. 90 (Pa.). Where contract provides for the setting aside of a certain percentage of contractor's pay for each month as a security for the faithful performance of the contract, the amounts retained are not subject to garnishment by the contractor's creditors unless the contract has been faithfully performed.

Garnishment—Liability of Counties.—Slenner v. *Board of Commissioners*, 38 Pac. Rep. 839 (Col.). The facts in this case are unimportant, and the only point discerned by the court was the liability of a county to garnishment. Under the code "Municipal Corporations" are subject to the garnishee process, but nothing is said as to quasi-corporations. It was argued that county is a municipal corporation and so should be held liable to garnishment. But the court, after a review of prior legislation upon this point, finally concluded that a county was not a municipal corporation, but a quasi-corporation, and therefore could not be held.

Garnishment—Jurisdiction—Exemption.—Atchison, T. & S. F. R. Co. v. *Maggard*, 39 Pac. Rep. 985 (Col.). In a garnishment process against a Kansas corporation operating a continuation of its line in Colorado, a citizen of the latter State obtained process by the proceeding *in rem.* The company moved to have the court dismiss them as garnishee on the ground that their employee whose wages were thus sought to be reached was a resident of Kansas; that his wages were earned outside the State of Colorado,

and therefore without the jurisdiction of this court. And further, his wages were exempt to him by virtue of the laws of the State in which he lived. The court held that exemption laws have no extraterritorial force, but that as the indebtedness of the garnishee to the employee does not follow the domicile of the creditor, the Colorado court could have no jurisdiction.

Garnishment—Priority of Jurisdiction of Different Courts—Liability of Defendant.—Mack v. *Winslow*, 16 U. S. App. 602. D instituted a suit for the recovery of a debt against B. & Sons in a Kentucky court, and the defendant removed said suit to a circuit court of the United States, where judgment was rendered for the plaintiff. During the pendency of this suit and before judgment had been rendered, M began suit for the recovery of a debt against D in an Ohio State court, and on the ground of D's non-residence, garnisheed the debt owing D from B. & Sons. The Ohio court rendering judgment for D ordered B. & Sons, the garnishees, to pay the amount of the judgment to D, whereupon B. & Sons filed a bill of interpleader in the United States Circuit Court for the District of Kentucky, Ricks, District Judge, delivering the opinion of that court: "The prior pendency of a suit involving the same subject-matter is the test of priority in jurisdiction. * * * The defendants in the suit in the United States Circuit Court, under the authority of *Wallace* v. *McConnell*, 13 Pet. 136, were not therefore amenable to the garnishee process under the attachment proceedings in the Ohio court * * * but were first bound to answer fully the orders and judgments of the United States Circuit Court, and having done so were protected thereby.

LIENS.

Notice.—Alexandria Building Co. v. *McHugh*, 40 N. E. Rep. 80 (Ind.). "After the contract has been once completed and the statutory limitation begins to run, can a party revive an expired right of lien which he has lost in consequence of laches, by performing some work in the house, such as merely patching the plastering, after work has been substantially completed?" Ross, C. J., held that if the appellee fails to file notice of his intention to hold a lien within the time designated by the statute, his right thereto is lost.

Mechanics' Liens—Certificate—Consent of Owner—Labor.—Border, et al. v. *Mercer*, 39 N. E. Rep. 413. A claimant of a mechanics'

lien will not be denied if his certificate sets out a true account of the amount due him with all just credits given, although he fails to set out the contract price, there being no intention to mislead and no one being actually misled. Advances made to intervening contractors by the owner of the building will imply the latter's consent. The contractor may charge the profit on labor above the market price if it can be shown what such labor was worth.

Mortgage—Priority of Mechanics' Lien—Foreign Corporations.—Chapman v. *Brewer, et al.*, 62 N. W. Rep. 320 (Neb.). This was an action of foreclosure upon a real estate mortgage. Besides the Brewers a manufacturing company was made a defendant. A cross-bill was filed by this company, setting up a mechanic's lien prior in point of time to the mortgage of Chapman, and the court held that the lien of a mechanic was superior to a real estate mortgage, provided the latter was not recorded before any materials were furnished or actual work commenced; and that mortgages taken while a building is being erected are subject to the liens of mechanics.

Mechanic's Lien—Liability of Testator's Estate—Devisee's Exemption.—Tubridy v. *Wright, et al.*, 39 N. E. 640 (N. Y.). Action brought against executors of deceased to foreclose a mechanic's lien. Plaintiff had contracted with deceased to do certain work on the latter's real property, but the deceased died before contract was completed. The executors, to whom deceased had devised his property in trust, ordered plaintiff to complete the contract, which he did. Thereafter, within the time prescribed by statute, a lien was filed against the property for the entire sum then remaining unpaid upon the contract. Held, that plaintiff could only recover for that work done under direct orders of the executors.

LIMITATIONS.

Limitations—Suspension by Non-residence.—Batchelder v. *Barber*, 31 Atl. Rep. 293 (Vt.). In order to claim under the statute of limitations for non-residence of debtor it is necessary to show that such debtor, while residing without the State, did not have known property within the State that could have been attached by the common process of law.

Adverse Possession — Limitation—Running of Statute—Change of Statute.—MacAuliff v. *Parker*, 38 Pac. Rep. 744. The Statute of

Limitations will not begin to run until there is some one to sue or be sued, but when it has once commenced to run it will not cease for any reason not expressly provided in the statute. And when the period of limitations is changed by a subsequent statute to a shorter period, the period of the former no longer obtains, and upon the determination of the shorter period recovery will be barred.

Limitation—Assumption of Note.—Stinson v. *Aultman, Miller & Co.*, 38 Pac. Rep. 788. Defendant, an attorney, assumed, in writing, a note payable to plaintiffs, who, about the time the note became due, sent it to the defendant for collection. Note returned uncollected, and after seven years the plaintiffs learn of defendant's assumption, and sue him upon it. *Held:* That the defendant's assumption of the note was not harmful to the plaintiffs, and did not interfere with their right of action against the maker of the note; also that an action on the written instrument was barred by the Statute of Limitation which began to run, not at discovery of the written assumption, but at the maturity of the note.

Limitations—Residence in Another State.—Webster v. *Davies*, 62 N. W. Rep. 484 (Neb.). Plaintiff brought action against defendant for several promissory notes executed and delivered in the State of Nebraska, while defendant was a resident of that State. Defendant answered that for more than three years prior to the time the action was brought he had been a resident of Wyoming, and that the statute of the latter State (introduced in evidence) provided that, where an indebtedness of this character arose before defendant went to the State, action must be brought thereon within two years. *Held:* That an action was barred in Nebraska when the defendant had resided in another State for the full period of limitations under the laws of that State, even though the cause of action arose in the former State and the defendant resided there when it arose.

Limitation of Actions—Acknowledgment to Third Party.—Miller v. *Teeter*, 31 Atl. Rep. 394 (N. J.). A bill was brought to foreclose a mortgage, and the answer set up the bar of the statute of limitations. The evidence showed that at the request of the defendant a third party wrote a letter to the complainant concerning a mortgage held by said complainant against the farm of the defendant, saying that the defendant had made arrangements to pay it

off, and would like to have the complainant bring said mortgage to him, or send it to some responsible man and let the defendant send the complainant a check for the money. BIRD, V. C., held that, although an acknowledgment of the debt to a stranger would not ordinarily prevent the intervention of the statute, yet when the purpose of the debtor in making the acknowledgment to a stranger was that it should be communicated by the latter to the creditor, the creditor may rely upon it, and it would defeat the statute of limitations.

GENERAL CASES.

Railroad Commissioners—Right to Free Pass.—In re Board of Railroad Commissioners, 32 N. Y. Supp. 1115. Art. 13, § 5, of the Constitution, 1895, New York State, provides that no public officer shall ask or receive "for his own use and benefit" any free pass. This does not prohibit the railroad commissioners in the discharge of their official duties from traveling on passes signed by the Secretary of State, requiring railroad companies to carry them without charge as provided by Laws 1882, c. 353.

Trade—Names—Infringement—Injunction.—Chas. S. Higgins Co. v. *Higgins Soap Co.*, 39 N. E. Rep. 490 (N. Y. App.). An action brought to restrain the use of a corporate name. Defendant obtained judgment in the lower courts, on the ground that the company had a right to use the family name of its organizers, and to apply the name to their products. This was reversed by the court of appeals, which held that any simulation of name which might mislead the public, and divert trade from the original company, was ground for injunction, the defendant company deriving no immunity from the fact that it had chosen the family name of one of its members.

Trustee.—Harrison v. *Union Trust Co. of New York*, 39 N. E. Rep. 353. On the sale of a railroad under foreclosure of a trust mortgage, the trustee received two checks, which it failed to collect. The bondholders refused to affirm the sale; ordered a new sale, and bought the road themselves. A complaint was brought asking for the removal of the trustee, an accounting and an execution of a conveyance to the purchaser at the last foreclosure. The court held that as the complaint does not allege that the railroad was ever possessed by the defendant, it is therefore insufficient to compel an accounting. That, where a decree of foreclosure requires the trustee to convey property, and he refuses to do

so, an action cannot be maintained to compel such trustee to convey, since the decree in such action would be merely a repetition of the decree already made. But where a decree of foreclosure of a trust mortgage requires the trustee to convey, his refusal to do so is cause for removal.

Wife's Separate Property—Liability on Bond—Security for Husband —Want of Consideration.— Williamson v. *Cline*, 20 S. E. Rep. 917 (W. Va.). Where a married woman may make binding contracts as to her sole and separate estate, a plea of coverture will not avail in a suit against her as surety for her husband's debt. An extension of time of payment for one day by the creditor will be a sufficient consideration for her bond, although she herself receives no benefit. A judgment against her will be a lien on the property she possesses in her own name, including that acquired subsequently to the contract.