

RECENT CASES.

Negligence—Question of Law or of Fact.—In the recent case of *Farrell v. Waterbury Horse Railway Co.*, 60 Conn. 239, 21 Atlantic Rep. 675, the question of negligence as one of law or of fact has been thoroughly discussed and set for that great length. In the course of the decision the Court says: "There is involved, in the legal conception of negligence, the existence of a test or standard of conduct, with which the given conduct is to be compared, and by which it is to be judged. The question whether the given conduct comes up to the standard is frequently called the question of negligence. The result of comparing the conduct with the standard is generally spoken of as 'negligence,' or 'the finding of negligence.' Negligence, in this last sense, is always a conclusion or inference, and never a 'fact,' in the ordinary sense of that word. When the question of negligence, in the above sense, can be answered by the court, it is called a question of law, and the answer is called an inference or conclusion of law; when it is and must be answered by a jury or other trier, it is generally called a question of fact, and the answer is called an inference or conclusion of fact. Where the law itself prescribes and defines beforehand the precise specific conduct required, under given circumstances, the standard by which such conduct is to be judged is found in the law. When, in such a case, the conduct has been ascertained, the law, through the court, determines whether the conduct comes up to the standard. * * *

In cases involving the question of negligence, where the general rule of conduct is alone applicable, where the facts found are of such a nature that the trier must, as it were, put himself in the place of the parties, and must exercise a sound discretion, based upon his experience, not only upon the question what did the parties do or omit, under the circumstances? but upon the further question, what would a prudent, reasonable man have done under those circumstances? and especially where the facts and circumstances are of such a nature that honest, fair-minded, capable men might come to different conclusions upon the latter question,—the inference or conclusion of negligence is one to be drawn by the trier, and not by the court as matter of law. Such an inference or conclusion will, speaking generally, be treated by this court as one of fact, which will not be reviewed where the facts

have been properly found, unless the court can see from the record that in drawing such inference the trier imposed some duty upon the parties which the law did not impose, or absolved them from some duty which the law required of them under the circumstances, or in some other respect violated some rule or principle of law."

Liquidated Damages—Penalty.—Condon v. Kemper, 27 Pacific Reporter 829. The much vexed question of liquidated damages and penalty has recently received an exhaustive treatment at the hands of the Supreme Court of Kansas in the above entitled case. Plaintiff and defendant entered into a written contract whereby Condon agreed to build a wall or else, at his election, to remove a certain house a short distance and put it in as good condition as it was before, and further stipulated as follows: "It is mutually agreed between said parties that a failure on the part of said Condon to perform these obligations shall entitle said Kemper to recover from him the sum of \$500 as *liquidated and ascertained damages* for the breach of this contract." Condon failed either to build the wall or move the house, but the cost of moving it and putting it in as good condition as before would not have exceeded \$100. The question before the court was the following: Are the words of the parties to govern and the \$500 to be considered as *liquidated damages*, or must they look further into the actual nature of the transaction with the primal idea of compensation in view? After an elaborate citation of cases and text-books the court held that when the parties made the contract and stipulated for damages in case of breach, by use of the words *liquidated and ascertained damages*, fixing the amount at \$500, they could not have had in contemplation *actual damages*, and hence the sum mentioned in the contract must be treated as a *penalty* and not as liquidated damages. Said Valentine, J., in the course of the opinion, "the tendency and preference of the law is to regard a stated sum as a *penalty*, instead of *liquidated damages*, because *actual damages* can then be recovered, and the recovery be limited to such damages." And quoting from 1 Sedgwick on Damages (8th Ed.) he says further, "whenever the damages were evidently the subject for calculation and adjustment between the parties, and a certain sum was agreed upon and intended as compensation, and is in fact reasonable in amount, it will be allowed by the court as *liquidated damages*." And again from the same work, "where the stipulated sum is wholly collateral to the object of the contract, being evidently inserted merely as security for performance, it will *not* be

allowed as liquidated damages." And finally to close up the whole discussion the learned judge cites *Myer v. Hart*, 40 Mich. 517, holding as follows, "Just compensation for the injury sustained is the principle at which the law aims, and the parties will not be permitted by express stipulation, to set this principle aside."

Recitals in Municipal Bonds—Estoppel.—Post v. Pulaski Co., 47 Fed. Rep. 282. A county had issued bonds in payment of stock in a railroad. The charter granting the power to issue bonds and levy taxes for their payment further provided: "That no such subscription shall be made, no such bonds shall be issued, and no such taxes shall be levied unless a majority of the legal voters of said county shall vote for the same at an election to be held under order of the county court." No notice of the election was prescribed. The bonds recited on their face compliance with the law. But there was no evidence to show that notice had been given in all the voting precincts. The court held that reasonable notice was a legal incident of every election. The silence of the charter was no excuse. Upon the question of estoppel it said: "It may be conceded, as a doctrine now well established, that municipal officers are bound by recitals in their bonds as to all matters affecting the regularity of proceedings which they have passed upon, but it would certainly be a dangerous doctrine to maintain that they are estopped from denying their legal power or authority to make the same. These officials are the financial agents of the people, clothed with a limited power of executing or performing some trust or duty. If no power has been granted or voted them in any contingency to do acts or execute instruments creating or evidencing grievous indebtedness upon the city, town, or county, will their recitals on the face of the instrument, that they are executed in pursuance of law or sufficient authority, make binding obligations of such instruments as without the recitals would be utterly void? This cannot be the law. Such a rule affords no safety or security to the tax-payer. The plaintiff in this case may be regarded as a *bona fide* or innocent holder of the bonds or coupons, and may possibly suffer to the extent of the money he paid for the same. And yet it is far better he should do so than to recognize the doctrine that municipal officers without authority may, by placing on the face of their bonds untrue statements, thereby bind the people to pay them. The plaintiff should not have relied on the recitals in the instruments, but it was his duty to examine into the question of power on the part of

the Pulaski county commissioners to make the bonds. He was bound to take notice of the want of power. This is an old, a safe, and a familiar doctrine."

Municipal Bonds—Estoppel by Recital.—Sutliff v. Lake County, 47 Fed. Rep. 106. A county had issued bonds in excess of its constitutional limit of indebtedness. The enabling act under which the bonds were issued reiterated the same limitation. But the bonds recited that they were "issued in compliance with a majority vote of the qualified electors of said county under and by virtue of the above-mentioned act of the legislature, and that all the provisions of said act had been complied with." The Court held, however, that the county were not estopped; that there was a wide distinction between a recital that incidental regulations had been complied with where the power to issue was clearly given, and a recital that the power itself existed; and said, "there is nothing in the act authorizing the county commissioners to ascertain the amount of the indebtedness, and determine the fact whether the bonds were or were not in excess of the constitutional limit. If there had been in the act such a provision as that by which the county commissioners would be authorized to determine the amount of the indebtedness existing at the time of issuing the bonds, and whether the bonds were within or beyond the constitutional limit, there would be something in many decisions of the supreme court to support the position of the plaintiff; because it has been many times decided by the supreme court that, whenever a matter of fact is submitted to the county authorities for their decision and determination, such as the holding of an election, the form in which the bonds shall be issued, and the like, and the county authorities proceed under the act to determine the fact, the county shall be bound by that decision and determination; there shall be no other inquiry concerning it. But the question in this case lies back of that, and relates to the power of the county to create the indebtedness. It is believed that, whenever such a question has come before the supreme court, it has been uniformly held that the county authorities cannot determine for themselves or otherwise the question of their authority in the premises.
* * * The principle is that, when power is not given to the county to issue the bonds, no recital whatever binds the county. There must be power to act in the first place; when the power exists, recitals that it is exercised in conformity to the law are conclusive. In this instance there was no power. The power not existing, of course the bonds issued are void."

Carriers of Passengers—Physical Examination—Damages—Presumption of Negligence.—Several interesting questions were considered in the case of *Alabama G. S. R. Co. v. Hill*, 9 South. Rep. 722 (Ala.). The plaintiff was injured on the defendant's railroad on account of the derailment of the car in which she rode. *Held*, that where a physical examination of the plaintiff's person is allowed, the selection of experts to make the examination is "entirely within the discretion of the trial judge. Neither party has any right, by suggestion, motion, or otherwise, to control his discretion in any degree. * * * And when a competent and impartial commission is named, it is a matter of no consequence whatever that the parties, or either of them, preferred and demanded the appointment of other persons." It is permissible to show in evidence that, prior to the accident, the plaintiff's health was good, that her physical organs discharged their functions naturally, etc., and that, since the accident, she could not sleep without taking medicine, could not walk any great distance, and that her injuries would render child-bearing perilous to life. As to the possibility of her never marrying or having children, the court says, "these considerations can exert no influence on the question. It is to be assumed that every physical endowment, function, and capacity is of importance in the life of every man and woman, and that occasion will arise for the exercise of each and all of them; and to that extent to which any function is destroyed, or its discharge rendered painful or perilous by the wrongful infliction of personal injury, is the party complaining entitled to damages." The law requires "strict diligence" on the part of common carriers of passengers; and where the plaintiff has shown injury from an accident, the presumption that the carrier was negligent arises. Punitive damages may be given if "the condition of the rails and cross-ties, and the fact of old rails being used constantly to repair that old track, was sufficient to authorize an inference on the part of the jury that the defendants knew of this condition of things, and to impute to them such recklessness or wantonness as is the equivalent of conscious wrong-doing, in continuing to run trains over a track in such dangerous condition."

Contractor's Bonds—Rights of Sureties.—*Kiessig v. Allspaugh et al.*, 27 Pacific Reporter 655. One of the defendants in this case, Lundeen, was surety for his co-defendants, Allspaugh and Hall, upon a bond executed to plaintiff to indemnify and save him harmless against any claims or liens for material or labor used or employed in the construction of a building, which the principals in

the bond had contracted to erect. The bond had incorporated in it the contract between the plaintiff and Allspaugh and Hall, whereby the plaintiff was authorized to retain one-fourth of the contract price until final settlement between the parties thereto. When the building was completed the plaintiff paid the contractors the full amount of the contract price, but there was no evidence of the surety's assent to such payment. At the time of such payment there were valid unpaid liens, known to the plaintiff, for labor and material used in the erection of the building, which plaintiff was obliged subsequently to pay and which of course belonged to the contractors to remove. Plaintiff thereupon sued the obligors and surety on the bond to the amount of the liens paid. The Supreme Court of California held that the surety was not liable, since the sum which the contract authorized plaintiff to retain, and referred to in the bond, was charged with a trust in favor of the surety as security against the liens, and without his consent it could not be paid to his principals. The whole law on this subject is clearly expressed in a brief sentence of the opinion quoted from *Law v. East India Co.*, 4 Ves. 829. "It cannot be contended, upon any principle that prevails with regard to principal and surety, that when the principal has left a sufficient sum in the hands of the obligee, and he thinks fit, instead of retaining it in his hands, to pay it back to the principal, the surety can be called upon."

Master and Servant—Liability for Servant's Torts—Ratification.—The Supreme Court of Massachusetts in the recent case of *Dempsey v. Chambers*, 28 N. E. Rep. 279, has considered the question of ratification under peculiar circumstances. The plaintiff ordered coal of the defendant. A third person, McCulloch, without the knowledge of the defendant, delivered the coal, and in so doing broke a pane of plate glass in the plaintiff's building. Afterwards, with full knowledge of the accident and delivery of the coal by McCulloch, the defendant presented a bill to the plaintiff and demanded payment. Plaintiff sued for the injury to the plate glass and the lower court held he could recover, finding that though McCulloch was not the servant of the defendant at the time of the accident, the defendant ratified his delivery of the coal when he presented the bill to the plaintiff. This the Supreme Court holds was correct: "The delivery was for the plaintiff's benefit, and while the ratification was not directed specifically to the trespass, which was not for the defendant's benefit, if taken by itself, yet it was so connected with McCulloch's employment that

the defendant would have been liable as master if McCulloch had really been his servant when delivering the coal." The court were unable to find anything in the books dealing with the exact case, but were of the opinion that the general course of authority required them to hold that the ratification established the relation of master and servant between the defendant and McCulloch from the beginning, with all its incidents, including the liability for the latter's negligence. The court however doubt the present wisdom of the doctrine of the responsibility of the master for the acts of his servant, especially as regards the doctrine of ratification, and hints that were they drawing up a code on the subject it might not be in accordance with the present decision.

Contract of "Sale or Return."—*Wailes v. Howison*, 9 South. Rep. 594 (Ala.). W. delivered to H., for the sum of \$100, certain mineral rights or options to land, upon consideration that, if H. should pay W. \$10,000 within twenty days, the options should become the property of H.; and H. obligated himself to pay W. \$10,000, or to return the options within thirty days. W. transferred the options by indorsement on the back. H. failed to return them within thirty days, whereupon W. sued for the \$10,000. W. contended that the contract was one of "sale or return"; that when H. failed to return the options within thirty days, the obligation to pay \$10,000 became absolute. But the court held that it was not a contract of "sale or return," but that the payment of \$10,000 was a condition precedent to a sale. The court says: "As between the parties a sale of the mineral rights and options was not intended until payment of the \$10,000, for it is expressly provided that 'then' (upon the payment of \$10,000) the mineral rights shall become the property of Howison. The payment of \$100 was a sufficient consideration to uphold the purchase of the options for twenty days, and during that time Wailes could not revoke or rescind the offer of sale. During the twenty days it was optional with Howison either to purchase the mineral rights by paying the \$10,000 or decline the purchase. He had paid \$100 for this privilege. A mere failure alone to pay within twenty days terminated his optional rights and Wailes then could have compelled him to deliver up the option contract. * * *

Looking at the entire contract we are satisfied that the parties never intended, and the contract is not, an absolute promise to pay \$10,000 as a bargain of 'sale or return,' or as liquidated damages for failing to return the options within thirty days."

Obligations of Telephone Companies—Validity of Contracts Forbidding its Use.—*Postal Telegraph Co. v. Telephone Co.*, 47 Fed. Rep. 633. A writ of mandamus was applied for by the Telegraph Co. to compel the Telephone Co. to furnish it with service. The Telephone Co. defended, alleging a contract with the Western Union Telegraph Co., by which it had transferred all its telephone patents to the licensor of the Telephone Co. on condition that the Western Union Telegraph Co. should have exclusive license to use the telephone in receiving and transmitting telegraph messages for a term of years; and that the terms of its license forbade it to supply any other telegraph company than the Western Union with telephones for telegraphic purposes. The court declared the Telephone Co. a common carrier, and said: "Being a common carrier, the telephone company has not the right to discriminate in granting licenses for the use of the telephone instruments. It has already been noticed that the Western Union Telegraph Co. is not the owner of any of the telephone patents, but only a licensee. Whatever claims that company had in the patents were transferred by it to the National Bell Telephone Co. under the contract of November 10th, which provided that thereafter the telegraph company should have the exclusive use of the telephone for purposes of telegraphy. But the enforcement of this part of the contract would violate the rule that, when the use of a patented device is thrown open to the public, or to classes of the public, all are entitled to use it on the same terms as others in the same class; and, therefore, any contract or agreement which would effectually evade the rule must be declared void as being against public policy, both at common law and by statute."

Chattel Mortgages—Priorities—Claims of Creditors.—*Hibbard & Co. et al. v. Cribb et al.*, 49 N. W. Rep. 823 (Wis.). This was an action brought for the purpose of determining the right to certain money on deposit as proceeds of a sale. The facts were these. A, on behalf of a firm, afterwards insolvent, executed a chattel mortgage to B for \$3,500, B taking possession of property, and A subsequently executing another mortgage upon same property to C for \$9,787, C taking possession of same property jointly with B. The defendants, who are creditors of the insolvent firm, instituted garnishee proceedings against B, the first mortgagee, and C, the second, the result being that only \$1,300 of the first mortgage was declared valid, the other \$2,200 being for an individual debt of one of the firm, and void as against creditors, and the mortgage of C being declared valid *in toto*. The property was sold, the

proceeds being placed in custody of B, awaiting this decision; the plaintiffs claiming the \$2,200 as against the defendants, creditors of the firm. By a divided court it was decided that where a chattel mortgage is held valid for a part only of a mortgage debt, the holder of a valid second mortgage on the same property is entitled to the benefit of the amount so deducted from first mortgage debt as against the mortgage creditors, the second mortgagee taking something more than the mere equity of redemption remaining in the mortgagor, after execution of first mortgage. Lyon, J., says: "Both mortgages being valid, the reasonable rule seems to be that the second mortgage takes all the interest in the property remaining after the first mortgage is satisfied and the subsequent attaching or garnishing creditors of the mortgagor must be postponed till both mortgages are satisfied."

Citizenship of Corporations.—Stephens v. R. R. Co., 47 Fed. Rep. 530. The St. Louis and San Francisco R. R. Co. had been originally chartered by the State of Missouri. By an act of the Arkansas legislature it was legalized as a corporation of Arkansas. A citizen of Arkansas brought an action against it in the State Court of Arkansas. The corporation undertook to remove to the Federal Court. As to its power to do so the Court say: "This Court held, in 46 Fed. Rep. 47, that defendant, a corporation of Missouri, had by virtue of the act of the Arkansas legislature of March 13, 1889, become also a corporation of Arkansas. But did this act make it any less a corporation of Missouri, by which State it was first incorporated? The fact that the defendant holds and exercises chartered powers by the common legislature of two States, and exercises a common citizenship of those States, does not destroy its rights as a citizen of Missouri, for it does not take away the fact of its citizenship in such State. * * * The effect of the legislation of Arkansas making the defendant a corporation of the State of Arkansas cannot be so construed as to take away the right of the defendant, created by law a citizen of Missouri, from going into the Federal Court, or hindering a citizen from bringing a suit against it in such court, as to do so would be an exercise of power by the legislature of the State, which, under the Constitution of the U. S. belongs alone to Congress—that of defining the jurisdiction of the Federal Court."

Corporations—Action against Stockholders by Creditors.—Barnes v. Babcock et al., 27 Pacific Reporter 674. In this very recent case the Supreme Court of California passes upon many of the ques-

tions previously decided in the leading case of *Hatch v. Dana*, 101 U. S. 205, and in full accord therewith. In brief it decides that a judgment creditor who has had an execution returned unsatisfied against a street railroad company may maintain an action against its stockholders to recover, for the benefit of all creditors who may desire to be made parties, the amount due upon unpaid subscriptions for stock. The judgment and execution against the corporation returned unsatisfied is conclusive proof that the creditor has exhausted his legal remedy against the corporation, and no evidence is admissible to rebut the presumption. Further, said judgment, in the absence of fraud or collusion between the corporation and the plaintiff, is conclusive against the company and its stockholders as to the indebtedness upon which it was based, and hence evidence that said indebtedness arose upon a contract *ultra vires* is inadmissible. Stockholders' liability is several, and consequently it is unnecessary to make them all defendants; nor is evidence admissible to show that the legal holder of stock on the corporation's books is in fact trustee or pledgee, and not the real equitable owner, and as such legal holder he is alone liable for unpaid subscriptions.

Taxation—National Bank Stock—Deduction of Indebtedness.—Upon a re-hearing in the case of *Bressler v. Wayne County*, 49 N. W. Rep. 787, the Supreme Court of Nebraska reversed its former decision that the owner of national bank stock, having no other moneyed capital, could deduct in the assessment and taxation of such shares his *bona fide* debts. The court reviewed numerous decisions involving the point in question, rendered by the U. S. Supreme Court, among them being *People v. Weaver*, 100 U. S. 539, *Pelham v. Bank*, 101 U. S. 143, and *Bank v. City of N. Y.*, 121 U. S. 138, the latter being cited at length, they being to the effect that “any method of assessment of taxes which prohibits the owner of national bank shares, who owns no other credits or ‘moneyed capital,’ from deducting his *bona fide* indebtedness from the value of such shares, and permits the deduction of such debts in the assessment of like property, similarly situated, conflicts with the act of Congress.” The court says: “We reach the conclusion that in this State in the assessment of shares of national bank stock, the owners thereof are not entitled to deduct their *bona fide* indebtedness from the value of such shares of stock.”

Mortgage—Subrogation.—*Spaulding v. Harvey*, 28 N. E. Rep. 323 (Ind.). Defendant was the holder of a mortgage against one

Lockwood, who at the time was under guardianship, being of unsound mind. Defendant, however, being unaware of the incapacity of his mortgagor and acting in entire good faith, in order to protect his mortgage had paid off a judgment debt which the sheriff was proceeding to satisfy by sale of the lands. On a suit to foreclose the mortgage it was declared void, but the Supreme Court held that he was not a mere volunteer in regard to the judgment which he paid, and, therefore, was entitled to be subrogated to the rights of the judgment creditor. They say it is not necessary that the judgment debtor should have been insolvent, and the mortgaged land the only property against which the judgment could have been collected, to entitle one to the right of subrogation; the right depends upon the circumstances attending the payment of the debt to which the security is an incident. The validity of the mortgage is not essential, for the right is not founded upon contract, either express or implied, but upon principles of equity and justice intended to afford protection to a meritorious creditor, and prevent the sweeping away of the fund from which in good conscience he ought to be paid.

Surface Waters—Obstruction of Flow.—Schnitzuis v. Bailey, 22 Atl. Rep. 732. A mandatory injunction will issue to compel an adjoining proprietor to remove any obstruction placed on his land to prevent water from flowing thereon, where such water, whether coming from springs, rains or melting snows, has flowed over the land in a well-defined channel for a period of time so long that the memory of man runneth not to the contrary; nor does it matter whether the channel be natural or artificial. According to the authorities it is good policy for courts to encourage the cultivation of the soil for agriculture and trade purposes. If the farmer can improve his land by changing the water-course thereon which passes from his land to and upon lands of lower proprietors, without substantial injury to such lower proprietors, he may do so. To this extent he may increase the volume or velocity thereof by surface or under drainage. The lower proprietors have no right to complain, unless they can show material injury. The same rules apply to additional drains, which have rendered productive, land formerly too wet or spongy to be available.

Conflict of laws—Usury.—Staples v. Nott, 28 N. E. Rep. 515 (N. Y.). Defendant was indorser of a note made in favor of the plaintiff pursuant to an agreement made in Washington, D. C. According to that agreement the note was given to secure an

unpaid balance due on an old note and was to bear interest at 7%. Plaintiff made a draft of a note embodying that agreement and handed it to the maker for execution, who took it back with him to his home in New York where his and the defendant's signatures were affixed as maker and indorser respectively, after which it was mailed to plaintiff in Washington. Being sued on the note the defendant attempted to defend on the ground of usury, 7% being in excess of the legal rate of interest in New York; verdict was ordered for the plaintiff and the Court of Appeals holds there was no error. The transactions which resulted in the agreement to extend the time of the payment of the old debt and to accept a new note took place wholly within the District of Columbia, and whatever was enacted in the matter elsewhere neither added to nor altered the agreement of the parties. The note was but the evidence of that agreement and the fact that both signatures were affixed in New York and that it was payable at a New York bank cannot affect the validity of the original agreement.

Pledge—Conversion—Books of Stock Exchange in Evidence.—In *Terry v. Birmingham Nat. Bank*, 9 South. Rep. 299, the Supreme Court of Alabama decided that where a pledgee of stock sells the stock without notice to the pledgeor, himself being the purchaser, and afterwards notifies the pledgeor that he is going to sell, there is no conversion. “To constitute a conversion, there must be a tortious detention of the property from the owner, or its destruction, or the exclusion or defiance of the owner's right, or withholding the possession under a claim of title inconsistent with that of the owner. * * * The notice given of the intended sale of the stock on the Stock Exchange was a recognition of the right of the pledgeor.” It was also decided that the books of the stock exchange were not admissible in evidence when the absence of the secretary, who kept the books, was not explained. “At common law, the admissibility of the books of the corporation depended upon the nature of the acts recorded. If they were obviously of a public character, and the entries made by a proper officer, they will be received in evidence for or against the corporation. Taylor Ev. § 1781. But the author does not extend the rule to acts of a private character, where the corporation is not a party.” Morawetz on Private Corp. §§ 40, 75, 76, is cited.

Arbitration—Refusal of Arbitrators to Receive Evidence.—The Supreme Court of North Carolina, in *Hurdle v. Stallings*, 13 S. E. Rep. 720, have declared that, where two parties leave to arbitra-

tors the settlement of the lines between their lands, and the arbitrators refuse to receive in evidence the plaintiff's deeds, plats, etc., relating to the lands in controversy, the award should be set aside. The court says: "Arbitrators have some power within their discretion to determine how much evidence they will hear, (*Nicholls v. Warren*, 6 Q. B. 615, per Lord DENMAN, C. J.) but it is their general duty to hear all evidence material to the case which is offered. * * * In this case the arbitrators were to settle the lines between the parties and all matters of difference in relation thereto. The evidence, according to the affidavits of the plaintiff, was offered for that purpose, and there was no attempt whatever to show that it was immaterial. * * * We are clearly of the opinion that they [the arbitrators] have no power to arbitrarily decline to receive or examine any testimony whatever."

Partnership—Accounting—Compensation of Partner.—The case of *Morris v. Griffen*, 49 N. W. Rep. 846 (Iowa), was a Bill in Equity to wind up a partnership. At the time the plaintiff and defendant entered into copartnership, the plaintiff was in the employ of O. & Co., and continued in such employment, which was for nine months in each year, during all the time of the firm's existence. Upon trial of the case to the court the decree found that defendant was indebted to the firm for some \$14,000, and this suit is brought to compel payment. The defendant sets off against such amount a bill for services during the existence of the partnership for the management of its business. Upon this point the court held: that it would from the circumstance imply an agreement, upon the absence of an express one to the same effect, between the partners to compensate the defendant for services rendered on behalf of the partnership, and that as the plaintiff left the management of the firm's business to the defendant, he (the defendant) would upon the implied agreement be permitted to offset his indebtedness to the firm by being credited for such services.

Judgment by Confession.—*Teel v. Yost*, 28 N. E. Rep. 353. The New York Court of Appeals has recently decided that an action may be maintained in that State upon a judgment by confession entered in the courts of another State, even though the service and form of the judgment would not have been sufficient in a New York court under the local statutes. Such a judgment, when in conformity with the general practice of such other State, is to be given the same credit as any other judgment.