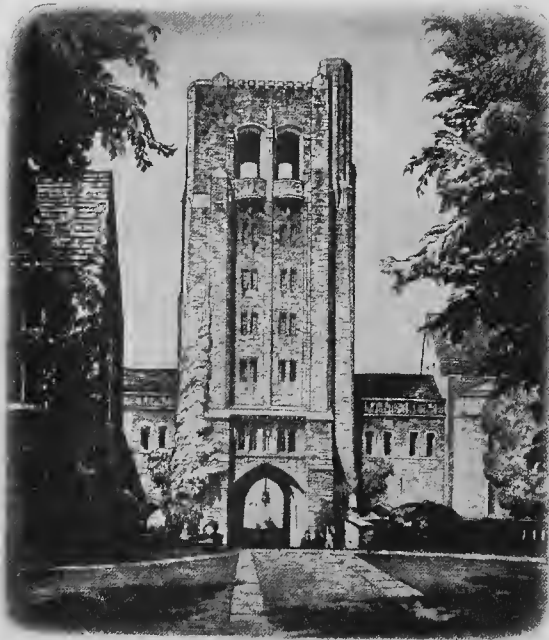


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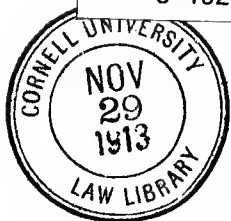
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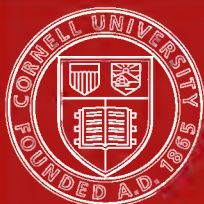
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INTRODUCTION.

To Students:

The authenticity of these questions is not guaranteed, because the Examining Board has never made an official publication; but they are offered to you in the belief, founded on what was deemed credible information, that they are the same questions that have been propounded at the New York bar examinations in the past five years.

It is believed that you will derive greater benefit from the study of them than can be had from publications of "test questions" devised by the authors and designed for general use, because:

1. They acquaint you with the nature of the task before you.

2. They give you a review of the law of New York.

In studying them, however, keep in mind the following injunctions:

Do not expect to find any of them at your examination. Notice how few repetitions there are. It is a poor board of examiners that cannot think of new questions. As the law continually progresses and the

courts are daily fitting legal principles to new combinations of facts, so you will find that your examiners, keeping in touch with the progress of the former and the decisions of the latter, will place before applicants for admission at each time those questions that will call forth ability to apply legal knowledge to the facts of the day.

Do not be content merely to find the answers. Hunt for the legal principle. Study the cases carefully and dig out from the opinion the point of law decided. This will give you the power of analysis necessary to determine the all important question, either in an examination or in actual practice, to wit: WHAT IS THE POINT OF LAW INVOLVED IN THESE FACTS? Having ascertained that, you will be able to apply your knowledge of legal principles in the form of a good argument in support of your judgment in the matter. And whether or no your decision accords with that which may have been given by a court, you will have shown your perception of the real point in the question, and your ability as an advocate of your opinion. What does it avail to cite authorities if they are not to the point?

It was to call out this method of study that the following plan was adopted:

1. Some of the questions are analyzed and the point of law involved stated fully. This was done to illustrate the kind of work desired and the sort of answers that will be expected of you.

2. Others are answered briefly, the authority given

so clearly stating the point involved as to render elaboration unnecessary.

3. In the greater number of cases, however, nothing has been given but the authority, so that *you* will be obliged to ferret out the point of the decision.

Here are about one thousand questions, with decisions touching every branch of law and practice, many of them involving the finest distinctions. It may confidently be asserted therefore that anyone who studies them in the manner above suggested and acquires an intelligent understanding of them is bound to have such a thorough knowledge of the law that he need have no fear of his ability to face any examination that may confront him.

It was deemed best not to include blank forms for application. Those papers are practically the only evidence of your ability in drawing papers that the Board will have, and it has the right to take them into consideration in judging of your merits. It would be unfair, therefore, to place the stupid, slovenly fellow on a level with the bright, painstaking one, by giving access to the blank forms, which, when filled out, would really not be papers prepared by the applicants. The following suggestions about the preparation of these papers, however, may not be amiss: This is your first case. You are making an *ex-parte* application to the court on behalf of your client—yourself. Form and substance, therefore, should be such as will create the most favorable impression. Use good, heavy paper. Typewrite in black ink. Folio. Keep the papers clean, and have no erasures or interlineations. En-

title and back them properly. Be careful of spelling, punctuation, capitalization and phraseology. Be sure that all necessary facts are included; that they are arranged in logical sequence; that they are clearly and concisely stated, with careful avoidance of redundancy and circumlocution.

While speaking without authority it is submitted that a careful observance of these rules will have weight.

New York, May, 1901.

W. B. B.

BAR EXAMINATION QUESTIONS

OF THE

STATE OF NEW YORK.

[WITH

ANSWERS, REFERENCES AND NOTES,

SINCE JANUARY, 1896.

1. What is the purpose and object of an affidavit of merits? Write one.

A. It is made in an ex-parte application by defendant or his attorney asking extension of time, or other favor of the court. It must allege a meritorious defense.

(Caption and title of case.)

(Venue.)

— —, being duly sworn, says that he is the defendant herein, and has fully and fairly stated the case to — —, his counsel, who resides at No. — — Street, in the city of — —, and

that he has a good and substantial defense on the merits to the action, as he is advised by said counsel after said statement, and verily believes to be true.

(Jurat.)

(Signature.)

*Rumsey's Practice, Vol. 1, pp. 196, 197,
(1st ed.)*

Sec. 980 Code Civil Procedure.

Supreme Court Rule 23.

2. Distinguish an easement from a license and give an example of each.

A. The difference is one of estate in the land. An easement is an incorporeal hereditament created by writing or prescription. It is an estate in the land and so irrevocable.

A license creates no interest or estate in the land, but is a revocable permit to do something on or about the land, and may be granted by parole. E. g., A may give B permission to cross the former's premises. This is a license. If B crosses A's premises for 25 years, under claim of right to do so, or if A grants to B and his heirs by deed the right to cross said premises B has an easement.

Hazelton v. Webster, 20 App. Div. 177.

3. In what cause of action can you procure an order of arrest?

Sec. 549, Code of Civil Procedure.

4. If A and B hold an estate as tenants in common, and B conveys his interest to C, wife of A, and C dies,

leaving husband A and a child surviving, what are their rights in the estate?

A. A owns one undivided half in fee simple and curtesy in the other undivided half. The child holds the remainder of the undivided one-half in fee simple.

Smith on Elementary Law, p. 181.

5. If A, the husband, had died, what would have been the respective rights of wife and child in the estate?

A. Wife would hold her undivided half in fee simple and one-third of A's undivided half for life as dower. The child would have two-thirds of A's undivided half in fee simple and the remainder in fee in the other third.

6. If an estate in lands is conveyed to John Jones and Mary, his wife, how do they hold it?

Stelz v. Shreck, 128 N. Y. 263.

7. What are their respective rights therein after a divorce *a vinculo*?

A. They hold as tenants by the entirety.

The survivor takes all.

A divorce a vinculo makes them tenants in common.

Stelz v. Shreck, 128 N. Y. 263.

8. If a man by will leaves land in trust to apply rents and profits to the use of two people in being, and then to convey to Union College, is the trust valid?

A. Yes. L. 1896, Ch. 547, Art. II, Sec. 32.

9. If A, a creditor of B, has a lien upon two funds, and C, surety of B, has a lien upon one of these funds, what rights has C?

A. C can compel A to satisfy his claim out of the fund on which C has no lien to whatever extent it is sufficient therefor.

Ingalls v. Morgan, 10 N. Y. 178.

10. If a firm of butchers has three partners, A, B and C, and C leaves poisoned meat where dogs could reasonably be expected to get at it, and D's dog is killed by eating it, what rights of action had D, if any, and against whom?

A. C's act being committed, not for the benefit of the firm but clearly for personal reasons only, D has right of action in tort against C only.

17 Am. & Eng. Enc. of Law, 1065 (1 ed.).

Matter of Blackford, 35 App. Div. 330.

11. If A has a farm which he offers to sell B for \$3,000 mortgage, which B holds on another place, and represents to him that his, A's, farm is worth \$3,500, and B, who lives two miles distant, relying on A's representations, makes the deal, and afterwards discovers A's farm is only worth \$2,500, and tries to get out of his bargain, can he do it?

A. No. There has been no false warranty of value, A's representation being an opinion only. B is also guilty of laches in not investigating the value of lands so near him. The answer might be different if B lived

at a distance and could prove that A knew that he was exaggerating the farm's value.

12. A sells a horse to B which he has bought in good faith. It afterwards turns out that the horse was stolen and the owner takes him away from B. Has he a right of action against anybody, and if so, why?

A. A impliedly warrants his title in the horse. B therefore has right of action against A for breach of warranty of title.

*10 Am & Eng. Enc. of Law, p. 117 (1 ed.)
Newton v. Porter, 69 N. Y. 133.*

13. A corporation by its by-laws provides that its manager shall not contract any debt for more than \$5,000 without vote of the board of directors. The manager contracts a debt of \$10,000 without such vote. Corporation refuses to pay. Is it liable? Give reason.

A. Yes. The principal is liable if his agent, with the apparent scope of his authority. Strangers do not know of the restriction of the manager's power.

N. Y. decisions seem incomplete.

See 52 Barb. 399; 32 Hun, 543; 2 Cook on Stock and Stockholders, etc., Sec. 725 (3 ed.).

14. Corporation fails to take certain statutory steps necessary to create a corporation. After contracts a debt, and on being sued, sets up its lack of corporate existence. Plaintiff demurs. Judgment for whom?

A. Demurrer sustained. Defendant is estopped from denying its incorporation. The State alone can question it.

1 *Cook's Stock and Stockholders, etc., Sec. 637 (3 ed.).*

15. A buys from an agent by sample 100 barrels of flour. Discovers that it does not correspond with the sample. What right has he?

A. A (1) can return the flour; (2) accept it and sue for breach of warranty; or (3) can plead it in an action to recover the price to diminish the amount of recovery.

Warber v. Talbot, 43 App. Div. 180.

16. A takes 50 bushels of wheat to a miller to be made into flour. Miller sells the wheat to B. What rights has A in the matter?

Van Leeuneen v. Fish, 28 Misc. 443.

A. Can replevy the wheat from B, or sue either B or the miller for conversion.

17. A bargains with a carriage manufacturer to repair four wagons for \$25 each. He repairs three and A takes them away. When A goes for the fourth the carriage manufacturer refuses to let it go unless A pays him \$100 earned. A tenders him \$25. What are the rights of the parties?

A. The wagon maker has a lien on the wagon for a hundred dollars.

Wiles Laundrying Co. R. Hahlo, 105 N. Y. 234.

18. A does certain work for B without any agreement as to the price to be paid. B sends a check for \$100, with a notice that he sends it in payment in full. A accepts and uses the money. Afterwards he sues for \$200, which he claims as value for services. Can he maintain an action?

A. No. *Fuller v. Kemp*, 138 N. Y. 231.

19. A witness is called to prove payment to him of a certain sum. He does not remember its payment, but upon being shown an entry made by him at the time of payment, testifies that his memory is refreshed, and he now swears positively to payment. Is entry admissible in evidence or not?

A. Yes. *Witness has refreshed his memory from an original memorandum.*

20. Same facts as in last question, but witness' memory is not refreshed by the entry, but he swears he knows it was correctly made; offers to put entry in evidence. Is it admissible?

A. Yes. *Guy v. Mead* 22 N. Y. 462.

21. State generally what may be proved under an answer of general denial.

A. *Any fact tending to counteract what plaintiff must prove in the first instance to establish a prima facie case.*

Wilkins v. Richter, 25 Misc. 735.

22. On being sued for an account, A put in an answer of general denial; on the trial offered to prove payment. Admissible or not?

A. No. Payment is an affirmative defense. Abbott's Trial Brief, p. 751.

Kapp v. Roche, 94 N. Y. 333.

23. On an action of ejectment when defendant had put in an answer of general denial he offered to prove that the title was in third party. Admissible or not?

A. Yes. Because plaintiff must prove title to establish his cause of action.

See Fiero on Special Actions, p. 34.

24. A gives a negotiable note to B for \$35. Subsequently a demand arises in favor of A against B for \$30. B transfers note before maturity to C for value without notice. C sues A on note. A sets up a counter-claim against B. C demurs. Judgment for whom?

A. Demurrer sustained. B is a bona fide holder for value and the counter-claim, which would have been a defense to B, does not bind C.

25. If one member of a firm give the firm note for \$1,000, uses the money himself, and the firm gets no benefit therefrom, is the firm liable on the note?

A. Yes, if the payee did not know that the money was borrowed for the personal use of the borrower, if it

was a trading partnership the money was apparently borrowed in the usual course of business.

1 *Lindley on Partnership*,* p. 131 (ed. 5).

26. A sends B an order for 100 barrels of flour to be sold on credit of 20 days, although he owes B and B never sells on longer credit than 10 days. B sends 99 barrels on credit of 10 days. The flour is destroyed in transportation. On whom does the loss fall?

A. Loss falls on B. He does not fill A's order, hence there is no meeting of minds and no contract of sale.

27. A takes out a policy of life insurance. Policy provides it shall be void if insured shall die by his own hand. A commits suicide while insane. Can his beneficiaries recover on the policy?

A. Yes. If A was under the influence of some irresistible, insane impulse or so insane as not to know that the act would be fatal.

Van Zandt v. M. B. L. I. Co. 55 N. Y. 169.

28. A takes out a policy of fire insurance. It provides that policy shall be void if any mechanics, carpenters, etc., shall be employed in the repairing houses for longer than 15 days without notice to the company. A employed carpenters on the house 30 days without notice being given. Afterwards, when carpenters have left, and through cause in no way connected with their work, A's house burns. Can A recover?

A. No. *A had broken a condition of the policy.*

Williams v. P. F. I. Co. 57 N. Y. 274,
285.

29. A makes a contract with B to buy of him certain goods. B sends goods, which A refuses to receive. What would you advise B to do?

A. *B should take back the goods and sue for breach of contract.*

30. A and B make a land contract Jan. 1, 1897, whereby B agreed to buy of A certain premises, title to be given and purchase price paid Dec. 1, 1897. September 1, 1897, barn on premises, which is not worth much, burns. December 1st A tenders deed, but B refuses to pay. What are the rights of the parties?

A. *B can refuse to take the land.*

Goldman v. Rosenberg, 116 N. Y. 78.

31. Wife indicted jointly with her husband for robbery committed in presence of each other. What is the liability of each?

A. *Husband's presence is no defence to wife actively participating.*

The law presumes that husband coerced wife, but this may be rebutted. Penal Code, Sec. 24.

People v. Byland, 97 N. Y. 126.

Seiler v. People, 77 N. Y. 411.

32. A aids and abets B in misappropriation of \$10 bill given B to purchase something for his employer. Of what crime is A guilty?

A. *Petit larceny. Penal Code, Sec. 31.*

Sec. 527, Code Criminal Procedure.

33. Wife in husband's presence grossly slanders a person who afterwards sues both husband and wife for damages. What are the rights and liabilities of the husband?

A. *Husband is not liable unless wife's tort is committed by his actual coercion or instigation, and this is not presumed but must be proved.*

L. 1896, Chap. 272, Art. III, Sec. 27.

Kujek v. Goldman, 9 Misc. 34.

34. A makes a will leaving all of his estate to his brother. He afterwards marries, has a child and dies. What are the respective rights of wife, brother and child in his estate?

A. *2 R. S. 64, Sec. 43, or III Budsey's Stat. (2 ed.), p. 3511. Marriage and birth of issue revoked the will, and A dies intestate. Widow has dower, and the child inherits rest of the property.*

Sec. 1868 Code of Civil Procedure.

35. A buys on contract a piece of land from B. Afterwards he brings action for reformation of contract, claiming that when he bought property he supposed there were deposits of coal on land, and would

not have bought it if he had not supposed this. What are the rights of the parties?

A. There was no mutual mistake, so A can neither reform or rescind the contract. If A refuses to accept title B can maintain action either for the purchase price or for specific performance.

Curtis v. Giles, 7 Misc. 590.

36. One who has been indicted for murder in the first degree offers no evidence except that he was drunk when he committed the deed. If admissible, to what extent is it so?

(a) Is voluntary drunkenness a defense of crime?

A. Drunkenness is no defense to crime, but is admissible in evidence to enable the jury to determine intent.

Penal Code, Sec 22.

37. A municipal corporation, in grading its streets, as it had a right to do, so undermines a man's premises that his house and a part of his lot fell in. Has he a right of action against the city?

A. Yes. Because the property was undermined, otherwise no, unless the city is guilty of misconduct, negligence or unskillfulness.

Atwater v. Trustees, 124 N. Y. 602.

38. A city for making local improvements which benefit property around, makes an assessment without

giving notice. What are the rights of one assessed, and what constitutional provision is involved?

A. He can have the assessment set aside. A statute authorizing such an assessment would be unconstitutional as taking property without due process of law.

Stuart v. Palmer, 74 N. Y. 184.

39. A puts a mortgage on a farm for \$5,000, and mortgage provides for usurious rate of interest. A applies to court to have mortgage set aside. Will the court do this, and if so, upon what condition, and what equitable maxim applies?

A. Yes. But he must repay amount of loan with legal interest. Equitable maxim: "He who seeks equity must do equity."

Williams v. Fitzhugh, 37 N. Y. 444.

40. The maker of a negotiable note which is usurious is sued for payment by subsequent *bona fide* holder for value. Can he set up a defense of usury?

A. No. Laws of 1897, Art V, Secs. 91 and 96.

41. The administrator of an estate puts \$1,000 in a bank of money belonging to the estate, together with \$1,000 of his own money. Whole was credited to him personally. No question but that he acted in good faith. Bank fails. On whom does the loss of estate's \$1,000 fall?

A. Administrator converted the money.

Matter of Truslow, 140 N. Y. 609, 616.

42. Husband conducts a store. Hires wife to work in store for \$10 per week. Refuses to pay her; she sues him. He defends on ground that contract was void, and even if valid her earnings belonged to him. Can she recover?

A. *Yes. Laws of 1896, Chap. 272, Sec. 21.*

Third Nat. Bank v. Guemther, 123 N. Y. 568.

Sands v. Sparling, 82 Hun, 401.

43. Father in will gives legacy to two children, B and C, on condition that the same shall be void if they contest his will. They both contest, B being of full age, and C a minor by his guardian. Generally how does the law regard such provisions in a will?

A. *Provision is good against an adult, but void against an infant (Bryant v. Thompson, 59 Hun, 549). Such provisions are valid. But if a legacy there should be a gift over in breach.*

Jarman on Wills, Chap. 27, Sec. IV.

See also 5 N. Y. Supp. 32.

44. Father with \$1,000 belonging to his infant son buys real estate and takes title in his own name; sells same to third party, who is a *bona fide* purchaser. Son on coming of age consults you. What would you advise?

A. *Sue the father. If he is the child's guardian, his bondsmen are liable. It is a breach of trust.*

Newton v. Porter, 69 N. Y. 133.

45. A man was run over by an electric car. Sued for damages; claimed that company was negligent in that brakes were out of order and motorman was careless, and offered to prove that motorman said at the time of the accident that he could not stop the car in time. Admissible or not? If admissible, what does it tend to prove?

A. Admissible, if spoken immediately after the accident, as part of the res gesta. It tends to prove the bad condition of the mechanism.

46. A received a plurality of votes cast for county offices, but board of county canvassers issued certificates of election of his opponent. What right has he, and what should he do? By whom should proceedings be taken, and in whose name?

A. Action by the attorney general in the name of the people, if the usurper is already in office. (Code C. Proc. Sec. 1948.) Error of board of canvassers may be corrected by alternative mandamus (L. 1896, Chap. 909, Sec. 133). Writ of certiorari will issue before usurper takes office (Code, 2120 et seq).

See election law.

Sec. 2120, Code Civil Procedure.

47. A man is induced to deal with another to his damage by means of false representations. Brings suit for damages *ex contractu*;—afterwards discontinues this and sues in tort. Defendant alleges plaintiff is

estopped by reason of having with knowledge of fraud brought action on contract. How about it?

A. Plaintiff is bound by his election.

Conrow v. Little, 115 N. Y. 387.

48. A buys a suit of clothes from a tailor. Afterwards B writes that he will pay for the clothes. Is the promise binding?

A. No consideration.

49. State what must be shown to warrant the issuing of an attachment and in what actions it may be granted.

A. Code Civil Proc. Secs. 635-637.

50. A case is at issue; you learn of material facts which came to light after issue had been joined. State the method by which they may be gotten before the court.

A. Amend the complaint. If within twenty days after issue joined without leave (Code Civil Proc. Sec. 542). If afterwards, by order of court on ground of new discovered material facts (Code, Sec. 723).

51. In a case where you get an order for the service of a summons on a defendant by publication, and thereafter serve him personally out of the State, when does his time expire?

A. The order for service by publication should contain the alternative of personal service outside the State; otherwise personal service outside the State will

be void. Defendant's time to answer expires 62 days after personal service upon him without the State.

Market Nat. Bank v. Pacific Nat. Bank, 89 N. Y. 397.

Sec. 441, Code Civil Procedure.

52. Your client was a member of a society which paid sick and death benefits to its members. He was expelled from it by proceedings which were not in accord with the laws of the society. What remedy would you pursue to reinstate him to the society?

A. Mandamus.

*People ex rel. v. M. P. Union, 118 N. Y. 101.
Sec. 2068, Code Civil Procedure.*

53. In an action brought against B by A, B pleaded by way of set-off a judgment which he had obtained against A in an action for tort. Under a State law the plea of tort can not be put in as a set-off. Has B the right to plead the judgment as a set-off? Why?

A. Yes. A judgment creates a contract liability.

Taylor v. Rooh, 4 Keyes, 335.

54. You have an important witness residing in Ohio, whose evidence you desire on the trial of an action in your county. How would you procure the evidence? State the proceedings.

A. By taking his deposition.

Code Civil Proc. Secs. 887-913.

55. A, the husband of B, inherits a half interest in certain real estate. B, the wife, thereafter purchases the other half. The wife dies intestate, leaving a child and her husband surviving her. The husband claims the land of the wife as survivor. What are his rights?

A. They were tenants in common because they acquired title at different times. Hence the husband has only estate by the curtesy in her share.

56. A leased his house to B by a written lease, which contained no provision in it as to the repairs. Since B entered into possession the roof has begun to leak so badly that the upper story has become uninhabitable. What are the obligations of A and B?

A. Unless stipulated in the lease, neither party is bound to repair defects from natural causes.

Lansing v. Thompson, 8 App. Div. 54.

57. A conveyed to B certain premises bounded as follows: Commencing as follows, etc., It turned out by measuring the 50 chains on the south side specified in the deed that the line did not go to the pine tree mentioned, but fell back 25 chains. A dispute arose between A and B as to the ownership of the 25 chains. To whom does it belong? What principle is applied?

A. Boundaries by fixed objects precede measurements. The 25 chains belonged to B in the absence of other evidence.

58. A was the owner of a lot on which there was a small barn resting on stones at the corners. B owned

land adjoining A's lot and purchased by a warranty deed, without any reservation, a strip of 15 feet next immediately off from A's lot upon which one-half of the barn stood. At the time the deed was executed it was verbally agreed between A and B that the former reserved the barn and that he should be allowed to remove it off from the 15 feet to the remaining portion of his lot, the barn to be A's property. A subsequently removed the barn to his lot, and B, in violation of his agreement, sued A for the value of the portion of the barn standing on the part of the lot purchased from A.

(1) Can B recover, or not? If so, on what theory? If not, why? State the principle involved.

(2) On the trial A offered to prove the verbal agreement with B. It was objected to. Assuming that the court ruled correctly, what was its ruling? Give your reasons?

A. 1. *B cannot recover, for their agreement made the barn personal property.*

2. *Parol evidence was admissible to show the intent of the parties.*

Penioor v. Peck, 39 App. Div. at p. 397.

59. A owed B \$1,000. B agreed to give A a receipt in full if A would pay \$750. A paid that sum and received a receipt. The next day B sued A for \$250. Judgment for whom?

A. *Judgment for B. A only paid what he was legally bound to pay, hence there was no consideration for B's promise. To make an accord and satisfaction the whole debt must be disputed.*

60. A requested B to become his surety on a contract which he was about to sign with C, who would not close the bargain unless B would guarantee the performance of the same by A. B refused unless D would guarantee to indemnify him from the loss as such guarantor. D said he would, and B therefore became the guarantor for A and was thus compelled to pay \$1,000 by reason thereof. B sues to recover the \$1,000, and D answering, pleads the statute of frauds for want of consideration for the promise. B demurs to the answer. Judgment for whom, and why?

A. Judgment for B. This is not a special promise to answer for debt, default or miscarriage of another.

Jones v. Bacon, 145 N. Y. 446.

61. A grandfather agreed with his grandson, who was then 17 years of age, that if he would refrain from drinking liquor, using tobacco, swearing and playing cards until he became of age, that he would give him \$10,000, to which the grandson agreed, and thereafter lived up to the agreement. On the grandson becoming of age, he demanded the money and was refused. There was no dispute as to the facts, and upon the grandson bringing the action the grandfather put in a demurrer on the ground that the contract was void. If void, on what ground? If consideration was good, on what ground should it be upheld? Judgment for whom?

A. It is not void. Consideration was good because the grandson did the things requested. Judgment for grandson.

62. On a voyage of the "Good Hope" from New York to London a violent storm arose which threatened the safety of the ship. The sailors who had shipped for the voyage for \$100 refused to work the ship during the storm unless they were to get \$150 for the trip. The master having the power to bind the owners agreed to do so, and so they brought the ship safely into port. One of the crew sued the owners for the extra \$50. State the rule governing their liabilities.

A. Neither owner nor master liable. No consideration for new promise.

63. Several persons being partners in the building of a mill, instructed one of their number to purchase materials for that purpose, and he in his own name bought materials of the plaintiff, who was ignorant of the copartnership. The plaintiff now sues all partners of the firm for the price of the materials. Is he entitled to maintain the action? Give your reasons.

A. Case of undisclosed principal. Plaintiff can hold either individual or firm.

64. A, B and C own a line of stage coaches from Utica to Rochester. The road was divided into three sections, each taking his own section and furnishing his own carriage and horses, hiring his own drivers and paying the expenses of the route out of his own pocket; but the money received from the fares of passengers, taking therefrom only toll from the turnpike gates, was divided among the three in proportion to the number of

miles run by each. B in the course of one of his trips negligently run his coach against the carriage of D, who was rightfully in the highway without fault, and thereby D was thrown from his carriage and was greatly injured. D brought an action based upon negligence to recover his damage, not only against B, but against A and C, on the ground that all three were partners. The complaint set up all the facts. A and C appeared separately, and each demurred to the complaint. Judgment for whom, and why, and on what ground?

A. Judgment for plaintiff. The sharing of profits was such as to entitle either of them to an accounting and to render them liable to third persons as partners.

2 Cowen, 311.

65. A promissory note of the following form is discounted at the First National Bank:

“Buffalo, N. Y., June 10, 1896.

Three months after date for value received we promise to pay to the order of C \$500 at the First National Bank with use.

(Signed) A, Pres. X Corporation.
B, Treas. X Corporation.”

A and B were authorized to issue notes for the corporation, and it was business paper. The bank had no notice of the transaction, except what was on the face of the paper. The bank sues A and B individually. Are they liable? Give your reasons.

A. Yes. This is not a corporate note, and the terms Pres. and Treas. are merely descriptive.

66. A, doing business in N. Y. City, indorses in that city a promissory note which was dated and discounted there. His indorsement did not give specific directions as to where notice of protest should be sent, and the bank duly mailed proof to the street and number in Albany where A resided. A failed to get the notice in time and thereby lost an opportunity of saving the debt. Is he liable on his indorsement, and why?

A. Yes. *Laws 1897, Chap. 612, Sec. 179.*

67. A negotiable promissory note, not usurious in its inception, but after maturity becomes so, comes into the hands of A, a *bona fide* holder for value, before maturity without notice. He sues the maker, who pleads the usury. State the rule governing the rights and liabilities of the maker and the owner of the note under the circumstances.

A. *Owner can recover from maker.*

L. 1897, Chap. 612, Secs. 91 and 96.

68. A, the holder of a mortgage, employed his son to retain an attorney to foreclose it, and directed B to bid for the property at the foreclosure sale on behalf of A, but not to bid beyond a certain sum. B attended the sale and bid as A directed him to do. Others bid for the property more than the sum to which A had limited B, and thereupon B bid in his own name and bought the property for himself. Assuming that there was no actual fraud on B's part, and A consults you as to his rights, what would you advise?

A. I would advise that B was A's agent, up to the limited amount; above that he could bid for himself.

69. A, a real estate agent, was employed to sell or exchange the house and lot of B for other property and to receive a commission for his services. At the time A was employed to sell the farm of C or to exchange it for other property, and to receive a commission. Neither C nor B knew that A was in the employ of either. The agent effected an exchange between B and C, who, learning that he is in the employ of both, refuse to give him any commission. The action brought separate actions against both B and C. What results, and why?

A. It is well settled in New York, that a broker serving both parties can collect from neither unless they knew of the double employ.

Gracie v. Stevens, 56 App. Div. 203.

70. A became surety to B's bank for the faithful performance of the duties of X as bookkeeper. X was allowed to take the teller's place each day during the dinner hour of the latter, and while acting as teller he stole \$10,000. A is sued on the bond and claims that he is not liable on the bond, as X stole as teller and not in his capacity as bookkeeper, for which he became surety only. State the rule governing his liability.

A. Not liable.

Nat. Mich.-Bnk's Assn. v. Carkling, 90 N. Y. 116.

71. A was surety for B on a contract made with C. C being about to enforce the contract made with B, agreed to extend B's time one year and did so without the knowledge of A. C seeks to enforce A's liability. Is he liable, or not, and why?

A. No. Extension of time to principal without surety's consent releases the surety.

72. The X Insurance Company insured the house of A. The policy contained this clause: "This entire policy, if the insured has any other contract of insurance on property covered, is void." At the time the policy was issued A had another policy on the house in the said X's company. A fire having occurred, the company tries to defend on the above-named ground. Judgment for whom, and why?

A. Judgment for plaintiff. Knowledge of the ground of forfeiture at the time of the issuance of this policy is a waiver.

Forward v. Cont. Ins. Co., 142 N. Y. 382.

73. A policy of life insurance contains a provision that it shall become void upon the failure to pay any premiums on the day they accrue. The insured forgot to pay the premium when it fell due, Jan. 1, 1896, and died the following May. After his death his personal representatives tendered the amount of the premiums with interest, and the insurance company refused to pay on the grounds that a forfeiture had occurred.

What are the rights of the parties, and what principle of law is involved?

A. Policy is forfeited.

Holly v. Met. Ins. Co., 105 N. Y. 437, 444.

74. A delivers goods to the B. R. R. Co. under an oral contract, and after the company had begun the transit, but during the same day, the agent of the company handed A a bill of lading that contains provisions which are inconsistent with the oral contract. The goods are lost, and then A sues on the oral contract. The company sets up the receipt and retention of the bill of lading. What are the rights of the parties?

A. A can recover.

Bostwick v. B. & O. R. R. Co., 45 N. Y. 712.

75. A sent 5,000 books to be bound to X, the same to be delivered in lots of 1,000 each after they were bound, for which the binder was to receive 50 cents per volume. The binder delivered 4,000 volumes to A and neither demands or receives the cash therefor on delivery. A tenders him 50 cents per volume for the remaining 1,000 and demands them, but the binder refuses to deliver them unless the man (A) pays him for the other 4,000 volumes already delivered. What principle of law is involved?

A. The contract being entire, X has a lien on the whole property. He has merely released part of his security, and can retain the rest till the whole debt is paid.

Wiles Freund Co. v. Hahle, 105 N. Y. 234.

76. A wrote to B, stating that he understood that B wished to buy a horse; that he had one he would sell for \$400, giving a minute description, and ending with "and I am sure that the horse will suit you." B responded by letter: "I think that I will purchase the horse at the price you mention. How can I get it? I would like it at once if it will do which I think or am quite certain it will. Please reply and oblige." A replied at once by wire: "The horse is yours and my coachman is on his way with him now. Send the pay by him." The horse arrived and B refused to receive it, claiming that he had not bought it. Has A a remedy against B? State fully.

A. A cannot recover. B's request for a reply, taken in connection with his other language, shows that he had not fully decided. Hence no acceptance.

77. Plaintiff and defendant made a contract for the manufacturing of shears according to sample furnished, defendant to furnish the principal parts and the plaintiff to furnish certain minor parts and the labor necessary to the manufacture. The shears were not made according to the sample furnished. The defect was not apparent, and the defendant did not notice it at the delivery of the first lot or until the rest were ready to deliver. He refused to accept any more and refuses to pay for those already delivered to him, but does not offer to return them. Plaintiff sues on the contract for work and labor done. What principles of law are involved in the case, and is the plaintiff entitled to recover?

A. The property still belongs to defendant. He can retain it, refuse to pay for the work done, and recover on a counter-claim for the damage to his property by reason of the defective workmanship.

Mack v. Schnell, 140 N. Y. 193.

78. A was the highest bidder at an auction sale. After he had made his bid the auctioneer with hammer suspended delayed for a time calling for a higher bid and then cried out: "Third and last call." The hammer was just descending, and just before it struck A called out in the hearing of the auctioneer that he withdrew his bid; then the auctioneer struck down his hammer and declared the property was sold to A. A refuses to accept and pay for the article. Upon what ground, if any, is A held? If not, why not?

A. A's offer was withdrawn before acceptance. Hence he is not held.

3 Am. & Eng. Enc. Law, II Ed. p. 501.

79. A complains of B for slander and for damages. B pleads a general denial only, and on the trial he proves against an objection the general bad reputation of A. A has not been a witness. Is the ruling right or wrong? Give your reasons.

A. Such evidence has been admitted in mitigation of damages Anon., 8 How. Pr. 434.

But the better authority seems to be that the bad reputation must be set up in the answer.

Weelover v. Hill, 72 N. Y. p. 38.

80. The question is whether A, the acceptor of a draft, knew that payee was a fictitious person. Evidence is offered to prove that theretofore A had accepted other drafts drawn upon him in favor of the same payee, before they could have been transmitted to him by the payee if the payee had been a real person. Is the evidence relevant, or not? Why?

A. Yes. It tends to show A's knowledge that payee is a fictitious person.

Abb. Tr. Evidence, p. 399.

81. Of three witnesses who testified to a fact on the former trial of the same case, one is dead, one is insane and the third has forgotten the facts. What may the party do who called on them in the former trial?

A. He can use the testimony given on the previous trial.

Stephens, Dig. Ev. Art. 32.

82. In an action against a municipal corporation for damages for personal injuries, caused by tripping on an obstruction on the street, the plaintiff seeks to show that other persons at about the same time that the accident happened, but shortly theretofore, tripped upon the same obstruction, the condition of the street in this case being the same. Is the evidence relevant, or not?

A. Yes. As evidence that the street was unsafe.

Magee v. Troy, 48 Hun, 383.

83. A and B had a dispute and went together to consult X, an attorney, who arranged the matter between

the parties to their satisfaction. In an action brought by A against B to carry out the terms of settlement, the attorney is called as a witness to prove what was said and done in his office by B and A at the time he settled the controversy. He asserts his privilege. Is the evidence admissible? State the rule.

A. Where the attorney's communication is made in the presence of all parties to the controversy, it is not privileged.

Sec. 835, Code Civil Procedure.

Button v. Lorenz, 45 N. Y. 51.

84. State the rule as to the husband or wife of a person indicted testifying on the trial of such person.

A. Is a competent witness except as to confidential communications between themselves during marriage.

Penal Code, Sec. 715.

85. The defendant burglariously broke into and entered a jewelry store in the County of Albany and feloniously and burglariously stole therefrom a gold watch to the value of \$200 and went the next day to the County of Oneida, and there was arrested for the crime, having the watch upon his person. He was indicted for grand larceny and burglary and put on his trial in Oneida County, the foregoing facts appearing. Counsel for the defendant asked the court to address the jury to acquit, as the law required the accused to be indicted and tried in the county in which the crime was committed, and the courts of Oneida County had

no jurisdiction. How should the courts decide? Give the general rule applicable to such cases.

A. A person can be convicted for burglary in any county into which he carried the goods.

Haskin v. People, 16 N. Y. 344.

Sec. 355, Code Criminal Procedure.

86. An assassin lies in wait for the carriage of B, intending to feloniously shoot and kill B in the carriage. The assassin, thinking that B is in the carriage, fires inside; but it happens that the carriage is empty, B having previously alighted. Is the assassin guilty of an offense or not? If so, what? State the reason.

A. He is guilty of an attempt to commit murder.

Penal Code, Sec. 686.

People v. Moran, 123 N. Y. 254.

87. A lost a diamond brooch with her name, street number and name of the city engraved thereon. B accidentally found the lost article near the house of A, and understanding the engraving thereon, and being acquainted with A, decided not to return it, but to convert it to his own use, which he did; what proceedings, if any, can be instituted against B?

A. He is guilty of larceny.

Secs. 528, 539, Penal Code.

88. What is the doctrine of privileged communications in the law of libel and slander? Give an example.

A. Penal Code, Sec. 253, which definition seems equally applicable to a civil action.

The communication is not privileged, however, if actual malice be shown.

Statements made by counsel in addressing the jury are privileged.

See Townshend Lib. & Sland. Sec. 209.

89. A builder, without authority, placed in a street a large quantity of brick and sand to be used by him in the construction of the building. He neglected to light the same at night, and B, lawfully on the highway without fault on his part, was injured to his damage. You wish to sue the city. What additional facts, if any, would you have to show to make it liable in damages to B?

A. You must also show that city had notice, either actual or constructive.

Pettengill v. Yonkers, 116 N. Y. 558.

90. A is the owner of a building. He makes a contract with B, a builder, by which B agrees to put on a new roof and cornice. The work cannot be done unless B suspends a scaffold from the roof from the front of the house. B suspends it and one of B's workmen negligently drops a hammer which injured C, a stranger, who is passing lawfully along the sidewalk, and who is not guilty of contributory negligence. What are C's rights?

A. C has right of action against B, but not against A.

Devlin v. Smith, 89 N. Y. 470.

Hexamer v. Webb, 101 N. Y. 377.

91. In carrying on his factory A uses soft coal. The operation of the factory shook the dwelling house of B,

so as to injure it and render it uncomfortable, and the smoke and cinders from the factory entered the house of B. All other persons on the same block sustained similar injuries from the same cause. May B sustain an action in tort against A? State fully your reasons for your answer.

A. *Yes.*

Bohan v. P. J. G. L. Co., 122 N. Y. 18.
Sec. 603, Code Civil Procedure.

92. What are nuncupative wills, and by whom and under what circumstances can such wills be made?

A. *It is an oral will afterward committed to writing. Can be made by a soldier in active military service or by a mariner at sea.*

3 *Birdseye's Stat. "Wills,"* p. 7 (2 Ed. p. 3510).

93. A person is about to execute a will. The instrument is ready for execution and you are called to advise the proper formalities. What are they? State what must be said and done.

A. *Testator must subscribe his name at the end of the will, in the presence of each witness, or such signature acknowledged by him to them. At the same time he must declare the instrument to be his last will and testament and request each of them to sign his (witness') name at the end thereof. The witnesses must sign their names, adding their respective places of residence.*

3 *Birdseye's Stat. 2 Ed. p. 3510, II, pp. 8 and 9.*

This has been the law since 1830. The addition of the witnesses' residence is not necessary to the validity of the execution, but there is a penalty for failure to comply. See II, p. 9.

The following attestation clause is usually used, though not necessary: "Signed, published and declared by the said 'A. B.' in our presence and in the presence of each of us who at his request and in his presence and in the presence of each other have hereunto subscribed our names as subscribing witnesses this — — day of ———."

Redfield's Law & Practice of Surrogate's Court, p. 210.

Hubbard v. Hubbard, 8 N. Y. 196.

94. A devises his real estate to B in trust, to hold the same during the joint lives of his three children, C, D and E, and to pay them the income during that time; and on the death of the survivor to convey the same to F, with power in the trustee to sell the same at any time and declare the trust at an end and give the principal to F. Is the trust valid, or not? Give your reasons.

A. Valid trust. The power of alienation is not suspended, as the trustee can convey a good title in fee at any time.

Laws 1896, Chap. 542, Art. II, Sec. 32.

Robert v. Corning, 89 N. Y. 225.

Matter of Charlier, 22 App. Div. 71.

95. A is the executor of an estate and gives the ordi-

nary promissory note for money borrowed for the estate and signs "A, Executor." Is there a personal liability on the note against A?

A. Yes.

Laws 1897, Chap. 612, Sec. 39.

Eaton on Negotiable Instruments, p. 38.

Negotiable Instruments Law, Sec. 39.

96. A applied to B for a loan of \$5,000, and said that if B would give him the cash at once he would on the next day execute and deliver to him a mortgage on his farm X to secure the payment of the loan. B let A have the \$5,000, and A refuses to execute the mortgage. What are B's rights, and what would you advise him to do?

A. *B can sue to recover the \$5,000; or can compel specific performance by A.*

22 Eng. & Am. Enc. L. p. 973.

97. A father's property is not adequate to support his son in becoming style, but as a trustee under a will the father holds as trustee a large property for the benefit of the son. What, if anything, may the father do?

A. *He has the right to use enough of the income from the trust fund to support the son properly.*

98. Your client has paid \$500 on account of the purchase price of a piece of land which Brown agreed to convey to him for \$5,000. The contract of sale is in writing, and contains no representations or covenant as to title. It turns out that Brown has title to only one-

half of the land, although he supposed he owned the whole of it. Brown has no property except the land. How may your party enforce his rights? What principle of law is involved?

A. Brown being unable to perform, purchaser can repudiate the contract and sue to recover the \$500; or he can take one-half of the land and pay the proper proportion of the \$5,000 for it. B having agreed to convey the whole piece, is also liable in damages for the breach, no difference how innocent of intended false representation of title.

99. A corporation and its financial agent have a voluntary accounting out of court. The result was that they entered into an agreement in which he acknowledged that he was indebted to the corporation for an amount named in the paper. He now brings suit for the reformation of the contract on the grounds that even though he examined the footings, he did not examine the items, and if he had he would have found a mistake in the items charged against him; but he admits that the defendant was not intentionally in error. Demurrer to the complaint. Judgment for whom, and why? What principle of law is involved?

A. Judgment for defendant. The contract expresses the agreement of the parties. Equity will reform a contract which does not express the agreement as made; but will not make a new contract.

Sterndack v. Friedman, 23 Misc. 173.

100. You are a stockholder in a corporation which has a surplus applicable to the payment of dividends, but the directors in bad faith and without reasonable reason refuse to declare one. Have you a remedy, and how would you enforce it?

A. Yes. Any stockholder can maintain an action to compel the directors to declare a dividend.

Hiscock v. Lacy, 9 Misc. 578.

Sterndack v. Friedman, 23 Misc. 173.

101. A corporation engaged in the dry goods business, and was charged by the Financial News, a newspaper, with being insolvent. Can the corporation maintain an action for libel? If it can not prove any special damages, would that have any difference as to your advice?

A. Corporation can maintain action for libel without showing special damage.

Shoe & Leather Bank v. Thompson, 23 How. Prac. 253.

Woodruff v. Bradstreet Co., 116 N. Y. 217.

102. The president of a railroad corporation, without any express authority of directors to do so, but with an informal discussion of a majority of the directors, who express a wish that he do so, has executed an agreement to convey to A a large part of the real estate owned by the corporation. A desires a specific performance of the contract. What are his rights? What principle of law is involved?

A. He can compel the corporation to convey. The formal resolution is not necessary.

2 Cook on Stock & Stockholders, Sec. 712-716 (3 Ed.).

Mutual Life Ins. Co. v. Yates County Nat. Bk., 35 App. Div. 218.

103. A corporation carrying a knitting business becomes insolvent and executes a chattel mortgage upon its knitting machines for collateral security for its commercial paper in order to give preference to the holders thereof. What do you say as to the validity of such a mortgage as to the other creditors?

A. The mortgage is void.

L. 1892, Chap. 688, Sec. 48.

Berwind v. Ewart, 11 Misc. 490.

Crooks v. People's National Bk., 43 App. Div. 335.

104. The defendant B is the father of the plaintiff. When the plaintiff, who has just become of age, was 16 years old and was about to leave home, the defendant persuaded the plaintiff to remain with him and work and he would pay for the work done. The defendant admits this and admits that the plaintiff performed the work, but claims that the law will not enforce any such contract, because the plaintiff was not bound to work for the defendant. What are the rights of the parties, and why?

A. The law presumes the services to be gratuitous, but if the child can prove the agreement he can recover.

Conger v. Van Aernum, 43 Barb. 602.

Domestic Relations Law (L. 1896, Chap. 272).

105. A question has risen on habeas corpus as to the proper person to have the custody of a child three years old. The father claims it as a right, and he is not charged as a person unfit for its custody. The mother is also able to take care of it. Upon what consideration should the court decide the question, and what is the inquiry which properly ought to be made?

A. The sole question is, what is for the child's best interest? The American courts do not recognize any claim of the parent to the child as a right. Other things being equal, the father will be given the preference, he being presumed to be better able to provide for the child.

17 Am. & Eng. Enc. Law, p. 364.

Matter of Reynolds, 28 N. Y. St. Rep. 538.

Perry v. Perry, 17 Misc. 28.

106. A minor worked for B at the agreed wages of \$5.00 per month. He worked for six months and B paid him his wages. The minor's parents now claim the same and sue B therefor. State the rule governing the transaction.

A. Payment is valid.

L. 1896, Chap. 272, Sec. 42.

Domestic Relations Law (L. 1890, Chap. 272), Sec. 42.

Stanley v. National Union Bank, 115 N. Y. 122.

Lind v. Sullestabt, 21 Hun, 364.

107. On Jan. 30, 1894, when B committed the crime of petit larceny, it was punishable by a sentence of not more than six months in jail, or a fine of not less than \$500, or by both in the discretion of the court. On Feb. 4, 1894, a codification of the laws went into effect, which provided the punishment of the crime of petit larceny committed since Jan. 1, 1894, should be imprisonment for not more than one year in the penitentiary. What constitutional question is involved, and what is the effect of the legislation?

A. B must receive the punishment inflicted by the law in force when the crime was committed. As to all crimes committed between Jan. 1st, 1894 and Feb. 4th, 1894, the new law is ex post facto and prohibited by the U. S. Constitution.

Sec. 2 Penal Code. (Cases cited.)

108. What must an affidavit in an action of replevin contain?

A. See Code Civ. Pro. Sec. 1695.

109. A man is sued for goods sold and delivered; he comes to you with a receipted bill for the goods.

Draw him up an answer to the action, omitting title and verification.

A. The defendant above named appearing by A. B., his attorney, for answer to the complaint of the plaintiff herein, says that on or about the — day of ———, 1899, he paid said plaintiff the sum of ——— dollars, in full payment of the goods mentioned and described in said complaint as sold by plaintiff to the defendant.

110. On the first day of Jan., 1896, A recovered a judgment against B for \$500; on the first day of Feb., 1896, C recovers judgment against B for \$1,000. Each judgment was duly docketed at the time of recovering. On the first day of March, 1896, B inherits real estate as the only heir-at-law of his father. The property is sold to the sheriff and under both executions brings \$900. How should sheriff distribute same?

A. The proceeds should be divided in proportion to the amounts due on the judgments. Matter of Hazard, 73 Hun, 22.

111. On the first day of May, 1879, B recovered a judgment against A for \$10,000. On the first day of Aug., 1891, without any further proceedings whatever, issues execution on the judgment and the sheriff sells property belonging to A on May 1, 1879. Is the title good, and if you had been B's attorney, how would you have proceeded? The judgment was duly docketed at the time of the recovery.

A. Title is not good. Before execution issues notice must be given to the County Clerk describing the judgment, execution and property levied on where execution is issued ten years or more after entry of judgment.

Code Civ. Pro. Sec. 1252.

112. A agrees with B to deliver to him at his warehouse to-morrow 100 barrels of flour at \$5.00. Flour falls in price over night \$1.00 per barrel, and upon delivery of the flour B refuses to accept the same.

A. The state of facts shows only breach of contract. In an action for damages A can recover the difference between the contract price and market price. If the facts showed an agreement that title should pass at once there would be a sale and A could leave the flour and recover the full price.

113. A delivers to a tailor 1,000 yards of cloth, to be made into pants at \$1.00 per pair. Upon the completion of 250 pairs of the pants the tailor delivers the same up to A without receiving or demanding his pay. When the tailor is ready to deliver the remainder of the pants, A tenders to him at the rate of \$1.00 per pair for such balance. The tailor declines to give them up unless he is paid for those already delivered, claiming that he has a lien on the goods in his possession. What are the rights of the parties?

A. Tailor has a lien on balance of cloth for full amount.

Wiles Land Co. v. Hahlo, 105 N. Y. 234.

114. A delivers to a miller 1,000 bushels of wheat, for which he is to receive 200 barrels of flour. The miller puts the wheat in his grainery and this is destroyed by fire. Upon whom does the loss fall?

A. On above state of facts there is a barter and the wheat becomes the miller's on delivery. If A was to receive his flour out of the wheat delivered there was a bailment and the loss falls on A in absence of the miller's negligence.

3 Am & Eng. Enc. Law, 2nd ed. p. 747.

115. A calls at the house of B and falsely represents to B's wife that B has been arrested and has sent him for his watch, upon which he can obtain money to have himself released. A receives the watch with felonious intent and wrongfully converts it to his own use. Is A guilty of any crime, and if so, what?

A. This is larceny.

Pen. Code, Sec. 528.

116. A sells a horse to B, which horse, as it afterwards transpired, A had obtained from a thief. B, upon being compelled to deliver up the horse to the true owner, sues A for the price paid. Is he entitled to recover?

A. Yes. It is breach of warranty of title.

Newton v. Porter, 69 N. Y. 133.

117. A man is being tried on the charge of burglary. The prosecuting officer, against the objections and exceptions of the defendant, is allowed to introduce evi-

dence that the defendant's character for honesty was bad just prior to the commission of the alleged burglary. Was the exception well taken?

A. Yes. Evidence of bad character can be given only to rebut evidence of good character.

118. Your client is on trial for his life. A juror, on being examined, states that he has formed an opinion as to the guilt of the accused. You desire to have him excused, but have exhausted your peremptory challenges and the juror will not be excused now, except for cause or bias. (a) What are the qualifications of a juror? (b) What must the district attorney show to make this man a competent juror?

A. Qualification of juror outside of N. Y. and Kings County.

See Code of Civ. Pro. Sec. 1027.

In N. Y., Code Civ. Pro. 1079.

In Kings County, Code Civ. Pro. Sec. 1126.

(b) The district attorney must show that the opinion will not prevent his rendering a verdict in accordance with the evidence.

People v. McQuade, 110 N. Y. 284.

Sec. 376, Criminal Code.

119. The by-laws of a corporation provide that a majority of the board of directors shall constitute a quorum for the transaction of business. The board of directors consists of five members and three of them are present at a meeting regularly called. By a vote

of two to one it is resolved to sell corporation real estate. Is the title good?

A. Yes. The act of a majority of a quorum present is the act of the board.

Laws of 1892, Chap. 687, Sec. 29.

White on Corporations, Sec. 48.

120. A loaned \$1,000 to Brown, of the firm of Brown & Jones, upon Brown's statement to A that they wished to increase their capital stock by one thousand dollars each, and Brown thereupon gave to A the firm note for the amount loaned. A sues the firm. Does his right to recover against both partners depend upon whether a part or the whole of the money was applied to the partnership?

A. If Brown's intention was to borrow on behalf of the firm, and A's intention was to loan to the firm it would be a firm debt, and the use of the money by the firm would make it liable. Such appears to be the case because the firm's note was given and accepted at the time of the loan. If the intention was to borrow and lend to B individually the firm is not liable...

17 Am. & Eng. Enc. of Law, p. 1015.

Burchell v. Voght, 35 App. Div. 190.

121. A father makes a voluntary conveyance of his property to his son. Afterwards, having settled with his creditors, the father asks his son to re-convey. What are the rights of the father and the son?

A. This is a gift, and re-conveyance cannot be en-

forced. Any promise of the son's to re-convey would be based on an illegal consideration.

Harris v. Osnowitz, 35 App. Div. 594.

122. A stockholder of a corporation is sued under the statute by an employee. He defends on the ground that there is no corporation, as it has not been regularly organized. Plaintiff demurs. Judgment for whom?

A. Judgment for plaintiff. There being a de facto corporation lack of incorporation cannot be pleaded collaterally.

Matter of Grand Central Bk., 42 App. Div. 157.

123. A person marries a woman, who, at the time of marriage, he supposed to be chaste. The woman used no fraud or deceit, except concealment, and the husband afterward learned that she had been a common prostitute before marriage. He now wishes to get out of the marriage contract. What is his remedy?

A. He has no remedy. Concealment of previous unchastity is not fraud.

Schouler, Dom. Rel. Sec. 23.

Shrady v. Logan, 17 Misc. 329.

124. A man is sued for necessaries furnished his son by a stranger. Plaintiff proves the infant was without necessary clothing, and that the clothing furnished by him for the infant was not unfitted to the station of the infant. Plaintiff rests and asks for judg-

ment upon the facts proved. What should the judgment be?

A. Judgment for defendant. Plaintiff must show that the father refused or neglected to furnish the necessary clothing.

17 *Am. & Eng. Enc. Law*, p. 351.

Tillotson v. Smith, 12 *N. Y. St. Rep.* 331.

125. A goes to the X bank with \$5,000 to deposit, upon which the president of the bank agrees that he shall receive 6 per cent. interest. It is admitted that the president of the bank has authority to bind the bank for such an agreement, and upon the deposit of the money, hands to him as a part of the transaction the following certificate of deposit:

“Albany, N. Y., Oct., 1895.

Plaintiff has deposited in the bank \$5,000, payable to his order upon the surrender of this certificate.

(Signed.)

_____,
Bank Cashier.”

At the end of the year A demands his money with interest. A sues the bank, and upon the trial the evidence appears to show agreement made by the bank president. Is the evidence admissible?

A. Yes. This evidence does not vary the written agreement, but proves a collateral separate one.

Read v. Bank of Attica, 55 *Hun*, 154.

126. The question is whether a sum of money is paid. A, a witness, is upon the stand, and upon being shown a memorandum, states that his memory is not re-

refreshed as to the transaction. Is the memorandum admissible, and under what circumstances?

A. Yes, if the memorandum is an original, and A swears that he knows that it was correct when made, the memorandum is admissible.

127. Upon a trial you produce a paper on notice from your adversary. After he has inspected the same he refuses to put it into evidence. Can he be compelled to put it in or not?

A. No.

Smith v. Bentz, 131 N. Y. 169.

128. A died, leaving him surviving five children of a deceased son, and one son of a deceased daughter, his only heirs-at-law. How is his property distributed among the grandchildren?

A. Real property goes per stirpes. One-half to the five children of the deceased son; the other half to the son of the deceased daughter.

L. of 1896, Chap. 547, Secs. 282, 283.

Personal property will be divided per capita.

Code Civ. Pro. Sec. 2732.

129. A wills his property in trust to his executors to pay the income to his widow for 20 years, and at the end of that period to divide it among his children. Is the trust valid?

A. Yes. There is no suspension of power of alienation beyond a life in being, as the trust determines if the death of the widow occurs before the expiration of

20 years because the object of the trust has been fulfilled.

Laws of 1896, Chap. 547, Sec. 89.

130. A dies, leaving a will, in which he directs his executors to sell his real estate immediately upon his death and divide the proceeds among B and C. After A's death, and before the property could be sold, B dies, leaving a widow and one child surviving. How is B's share divided?

A. There is an equitable conversion and so the widow will get one-third, the child the rest.

Code Civ. Pro. 2732, p. 1.

131. A deeds his property to the N. Y. Trust Co. in trust, to pay the income to him during his life, and upon his death to distribute as he by his last will and testament should direct, or, upon his dying intestate, to distribute the same to his heirs-at-law and next of kin. B thereafter sues A and obtains judgment against him for \$10,000. Is the trust valid, and what are the rights of B?

A. The trust is invalid as against subsequent creditors.

Schenck v. Barnes, 156 N. Y. 316.

132. A statute in force in 1776 comes in conflict with a treaty made by the U. S. with G. B. The state court is called upon to decide which shall prevail. What should the judgment be?

A. The treaty prevails.

U. S. Const. Art. VI.

133. The statute passed by the State prohibited the carrying on of barbering and shaving on Sunday. A, who does not believe in Sunday as a religious institution, claims that he needs the money that could be earned on Sunday for a living, and that he has no other business but barbering. Is the law unconstitutional, and if so, on what grounds?

A. *Not unconstitutional.*

People v. Havnor, 149 N. Y. 195.

134. A corporation owed a *bona fide* debt to one of its directors. He sued the corporation and, as it had no defense, he took judgment, issued execution, which was satisfied out of the corporation property. The corporation was insolvent, and a receiver being appointed, he could not find any assets belonging to the corporation. What are the rights of the receiver and what are the proceedings he may take?

A. *Receiver can have the judgment vacated.*

Kingsley v. First Nat. Bank, 31 Hun, 329.

Olney v. Baird, 7 App. Div. 95.

French v. Andrews, 145 N. Y. 445.

135. An answer of general denial is made to a complaint which is discovered after time to demur has expired not to contain facts sufficient to constitute a cause of action. The defendant having neglected to demur, what can he now do, and must the cause come to trial?

A. *The defect is not waived by failure to demur. Move to dismiss before plaintiff opens.*

Code Civil Pro. Sec. 499.

136. A person died intestate, leaving no property except a piece of real estate, upon which was growing at the time a piece of rye, and also a crop of apples. He has debts which either the apples or rye will satisfy. How are the apples or rye to be considered or distributed?

A. *The rye is personalty.*

Hartwell v. Bissell, 17 Johns. 128.

The apples being on the trees are realty. It is the difference between Fructus Industriales and Fructus Naturales. Hence rye must be taken.

Redfield's Surrogate Practice, 5th ed. p. 390.

137. Directly after a tenant has moved into a house under a lease of one year, the landlord comes and removes the tenant's property from the main part of the house so the tenant cannot get into it. The tenant continues to occupy the wing for the balance of the year and is sued for the rent for the term upon *quantum meruit*. Is he entitled to recover?

A. *No.*

Carter v. Byron, 49 Hun. 299.

Johnson v. Oppenheim, 55 N. Y. 280.

Lansing v. Thompson, 8 App. Div. 54.

138. A surety on a contract is sued by B, who holds a chattel mortgage upon property belonging to the prin-

principal debtor as security. B has proceeded against A without exhausting his remedies against the principal debtor. Can he collect from the surety, and what right has the surety?

A. B can sue surety without exhausting his rights against the principal. The surety can be subrogated to all B's rights against the principal.

139. A man indorses a note and takes a chattel mortgage as security for making such an indorsement. The plaintiff who now sues the indorser, relying upon the chattel mortgage by which the indorser had secured himself, gave no notice of protest. The plaintiff was a *bona fide* holder for value before maturity. Is the indorser liable?

Negotiable Instruments Law, p. 100.

Otsego Co. Bank v. Warren, 18 Barb. 290, held notice not necessary if security was taken before maturity. But quære whether is still law.

See L. 1897, Chap. 612, Secs. 160, 180-186.

140. A is surety for the X corporation for the faithful performance of a contract to supply the city with water. The corporation is paid in advance, and upon being sued for the performance of a contract, the contract is declared by the court to be void, but the defendant is to repay the money received. Is the surety liable?

A. No. The money is to be repaid, not in performance of the contract, but as a return of the consideration on a void contract. The judgment discharges the

principal from performance, which discharges the surety.

141. A contract is executed, signed and sealed, which recites: "John Smith, by his attorney, party of the second part." The last clause of the instrument read, "In witness whereof, the said Thomas Brown, as agent for John Smith, and the said Frank Jaynes have hereunto set their hands and seals." John Smith sues Frank Jaynes for breach of contract and defendant sets up in his answer that he made the contract with Thomas Brown and not with plaintiff. What are the rights of the parties?

A. Defendant is liable, knowing that Brown acted merely for Smith. The above signature has the same effect as the signatures "John Smith by Thomas Brown, his attorney."

Casco National Bk. v. Clark, 139 N. Y. 307.

Bank of Genesee v. Patchin Bank, 19 N. Y. 312.

142. Goods sold by commercial agent on 30 days' time. The agent was directed by house he represented to make no collections. At expiration of 30 days' time the agent called upon the party to whom the sale had been made and presented the amount due for the goods, and subsequently absconded. Upon whom does the loss fall?

A. Probably on the buyer. The rule was that mere authority to sell did not imply authority to collect.

See Bassett v. Lederer, 3 T. & C. 671.

Gallup v. Lederer, id. 710.

The rule seems to be unchanged in spite of the present general custom for salesmen to collect from their own customers.

See Lamb v. Herschberg, 1 App. Div. bot. p. 522.

Maxfield v. Carpenter, 84 Hun, 450.

143. On the first day of January, 1895, A buys goods of a firm through a sales agent employed by them. Upon being sued for the goods he sets up a breach of warranty and attempt to prove upon the trial a conversation had before a third party, wherein the sales agent recited the conditions of the sale. This conversation was had with the sales agent 15 months after the sale. Is it admissible?

A. No. The case falls within the general rule that the agent's admissions must be made at the time of the transaction.

Walter A. Wood & Co. v. Pearson, 46 N. Y. St. Rep. 70.

White v. Miller, 71 N. Y. 134.

144. At 10 o'clock in the forenoon A goes into an insurance office and makes an agreement with the duly authorized agent of the defendant's company for insurance upon his house, but neither pays the premium nor receives any policy. At 12 o'clock his house burns down and he sues the company. Can he collect? He tendered the amount of premium before the suit was brought.

A. *Yes. Oral contract to insure is valid.*

Clarkson v. West. Ass. Co., 92 Hun, 527.

O'Reilly v. Ins. Co., 101 N. Y. 575.

Excelsior Ins. Co. v. Royal Ins. Co., 55 N. Y. 343.

145. A is indebted to B in the sum of \$10,000. B, on his own account, takes out a policy of life insurance on A's life for \$10,000 and pays all the premiums. A meanwhile pays up the \$10,000 he owes B and then dies. To whom does the life insurance belong?

A. *To B who had an insurable interest when the policy issued. A has no right to it as he did not pay the premiums.*

Breese v. Met. Life Ins. Co., 37 App. Div. 152.

Sterritt v. Manhattan Life Ins. Co., 38 App. Div. 599.

146. The servants of a property owner leave on the sidewalk in front of his premises an uncovered coal hole. A being rightfully on the sidewalk and without any negligence on his part, walks into the coal hole and is injured. He desires to sue the city, what other facts are necessary to be shown? Would it make any difference in your advice if the unsafe condition of the coal hole had been discovered by a police officer upon his rounds, but failed to report it?

A. *He must show either actual or constructive no-*

tice to the city. The knowledge and negligence of the police officer are imputed to the city.

Tarbar v. City of Rochester, 41 App. Div. 188.

147. A has wrongfully taken from B a horse of the value of \$100. B sues him *ex contractu* for the value of the horse. A demurs and says that the action should have been brought in tort? Judgment for whom?

A. Judgment for B, who can waive the tort and sue on the implied contract.

148. A wrote to B offering to sell him a horse for \$200. B replies he would give him an answer in five days. On the fifth day he wrote a letter accepting A's offer, and as he was on his way to the office, but before he had mailed the same, he received a telegram from A withdrawing the offer. He thereupon mailed the letter of acceptance and now seeks to enforce the contract. What are his rights?

A. None. The offer was withdrawn before accepted.

Howells v. Stooch, 30 Misc. 569.

Howells v. Stooch, 50 App. Div. 344.

149. A woman in the presence of her husband accuses another woman of unchastity. Has she a joint action against the husband and wife for slander? State the rule governing the case.

A. No.

Code of Civ. Pro. Sec. 450.

150. A is injured while in the course of his employment for a railroad company, being caught in a switch operated by the company. He alleges the use of a defective appliance by the company and gives evidence of an improved switch in use by other companies (1 or 2.) The company seeks to introduce evidence that the switch in use by them is the ordinary and usual switch used by railroads. Is the evidence admissible?

A. Yes. They have a right to show that their devise is considered ordinarily safe by the majority of roads.

151. Give three maxims of equity and an example of one of them.

A. 1. He who seeks equity must do equity.

2. He who comes into equity must do so with clean hands.

3. Equity will aid the vigilant, not those who sleep upon their rights.

Ex. (1 & 2.) Where an infant has sold lands representing himself as an adult and has received the purchase price he can not on coming of age maintain a bill for reconveyance without a tender of the purchase money.

152. When and how must a verification be made by a party pleading?

A. Code Civil Pro. Sec. 525.

153. A going along a highway discovered a fire which threatened the buildings of B. He thereupon

set about to extinguish the fire and called to his assistance two others. He prevented B's buildings from burning up, and now sues for services rendered and money expended in so doing. Can he recover?

A. *No. The act was purely voluntary and no promise can be implied.*

Bartholomew v. Jackson, 20 Johns. 28.

154. A rents a house situated at No. 30 Grand street, Buffalo, N. Y., for one year at a monthly rent of \$50 per month, commencing on May 1, 1894. A fails to pay his rent for the months of May, June and July, 1894. Draw a summons and complaint in the Supreme Court to recover the rent.

A. *(Caption.) (Complaint.)*

(Title.)

Plaintiff, by his atty., William Blackstone, complains of the defendant and alleges that heretofore and on or about May 1st, 1894, the plaintiff leased to the defendant certain premises known as No. 30 Grand street, in the city of Buffalo, State of New York, for one year, beginning with the said May 1st, 1894, at a monthly rental of \$50, payable in advance, which sum defendant agreed to pay. That said defendant has not paid said rental for the months beginning May 1st, June 1st and July 1st, 1894, amounting in all to the sum of \$150, and that although plaintiff has demanded said sum defendant has failed to pay the same or any part thereof, and there is now due and owing to the plaintiff thereon said sum of \$150 with interest on \$50 from May 1st, 1894, and on \$50 from June 1st, 1894, and on \$50 from

July 1st, 1894. Wherefore plaintiff demands judgment against the defendant for said sum of \$150 with interest as aforesaid, and the costs of this action.

*WILLIAM BLACKSTONE,
Plaintiff's Attorney.*

(Verification.)

(Caption.)

(Title.)

(Summons:)

To the above named defendants.

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons exclusive of the day of service, and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, Aug., 1894.

*WILLIAM BLACKSTONE,
Plaintiff's Attorney.*

Office and P. O. Address, No. —, ——— Street, Buffalo, N. Y.

155. What is the object of a warrant of attachment? In what actions can it be had, and what is necessary to obtain it?

A. The purpose of a warrant of attachment is to keep defendant's personal property within the control of the court until they can be levied on under execution.

See Code Civ. Pro. Secs. 635, 642.

156. A client places in your hands a note made by A, which is on its face 9 years overdue. No payments have been made and no indorsements of liability have been made thereon. Can a judgment be had thereon? Should the defendant plead the statute of limitations?

A. Claim is barred by the statute of limitations.

Code Civ. Pro. Sec. 382.

But the defense must be set up by answer.

Ib. Sec. 413.

157. A and B are copartners in trade and make a firm note. C's attorney brings an action against A and B, but serves only on A. B is worthless and out of the State. State how you would enter up judgment and issue execution?

A. Enter judgment against both, the judgment roll stating that B was not served. The execution should contain the same statement, the sheriff can then levy on all property belonging to the firm and to A individually.

Code Civ. Pro. Secs. 1932, 1934, 1935.

158. What are the qualifications of trial jurors in counties other than in N. Y. and Kings?

A. Code Civ. Pro. Secs. 1027, 1029.

159. A gave B instructions to go to C and purchase a horse for him. B went to C and made the purchase. The horse was delivered by C, and then B told C that the purchase was for A. What rights has C in the matter? Answer in full.

A. Case of undisclosed principal. C can elect to rescind the sale or to look to either B or A for the price.

160. A tenant is sued for rent of his premises by his landlord and appears, but does not answer. Judgment was taken by default. Afterwards the tenant sues the landlord for damages caused by former eviction. The landlord sets up the judgment by default on the former action by him as a defense. The tenant plaintiff demurs to the answer. Judgment for whom, and why?

A. Judgment for landlord. While ordinarily a defendant having a counter-claim is not bound to set it up, yet when the same facts constitute the counter-claim and the defense, judgment in the first action becomes res adjudicata as to the second.

Nemethy v. Naylor, 100 N. Y. 562.

161. A fences a part of a highway and uses it and occupies it for 50 years. The authorities commence an action in ejection. Can the action be sustained? Give reasons for your answer.

A. No.

Code Civ. Pro. Sec. 362.

162. A contest has arisen over a will. It is alleged that undue influence has been used. The attorney who drew the will, although not a subscribing witness, was called as a witness. Is his evidence admissible? What principle applies?

A. It depends on what evidence is desired. The

attorney is not relieved from the prohibition contained in Code Civ. Pro. Sec. 835.

Matter of Chase, 41 Hun, 203.

163. A loaned money to defendant on his promise to pay same to plaintiff, to whom A said he owed and had promised to pay a like sum. What principle of law is involved, and can action be maintained?

A. The question is can a person maintain an action for breach of contract made between two others for his benefit? It is settled in New York that he can.

Laurence v. Fox, 20 N. Y. 268.

164. A is on trial for robbing B of a gold watch. The indictment states that the robbery occurred on the 20th day of December, 1896, and the property that of B. The evidence shows that it was on the 30th of December, and the watch one loaned to B and the property of C. The attorney for the defendant asks the court to instruct the jury to acquit the defendant on the ground that there is a variance between the indictment and the evidence. What should the ruling of the court be?

A. Motion should be denied.

Crim. Code, Secs. 280, 285.

165. A is injured by reason of rotten timbers in a bridge on a railroad and sues the railroad company. On the trial the plaintiff offers to show that five days after the accident the company sent men to repair the bridge. Is the evidence admissible? Why?

A. It is not admissible to show previous knowledge of defect or negligence; but in a proper case may be admissible e. g., to show that the repair could have been made previously.

18 *Weekly Dig.* 303, *Brennan v. Lachat*, 6 *State Rep.* 278.

Show that the defendant had control of the bridge.

Bateman v. N. Y. C., etc., R. R. Co., 47 *Hun*, 429.

Hinkel v. Muir, 31 *Hun*, 28.

Corcoran v. Peekskill, 108 *N. Y.* 151.

166. A indorses a note with B, with which to pay a certain other note in the X bank, A not liable on first note. B goes to the cashier of the X bank and states the facts to him, but says he wishes to have the note discounted so that he might pay still another note, and that he will pay the one then due within a few days. B paid the note as agreed. The discounted note was not paid when due, and X bank sues A upon the note. What are A's rights? Answer in full.

A. A has a good defense, the bank having knowledge of the diversion.

Nickerson v. Ruger, 76 *N. Y.* 279.

167. A agrees with B, a servant of C's, that at an appointed time B shall unlock the door of C's house, so that A might come in C's house and commit burglary. The door is unlocked and A enters, but before he takes away anything he is frightened away and is afterwards arrested. Upon the trial for burglary the defendant's

attorney asks the court to charge the jury to acquit the defendant because burglary has not been committed. What should have been the ruling of the court? Why?

A. Motion should be denied, for A has committed burglary.

Penal Code, Secs. 496, 499.

168. The executor of a will, living in the State of Massachusetts, discovers property in this State (personal property.) He comes to you for advice. What would you advise him to do?

A. Advise him to take out ancillary letters testamentary.

Code Civ. Pro. Secs. 2695-2700.

169. A and B agree to raise the price of corn in the market by a corner on the crop. As evidence of their good faith each deposits with C the sum of \$5,000 to the one performing if the other failed to perform. A fails and B sues C for the \$10,000. At the same time A sues C for the return of the \$5,000. What are A's and B's rights?

A. Each has the right to the return of his deposit on demand.

15 Am. & Eng. Encl. of Law (II ed.) p. 1007, par. 9.

170. Your client hands a broker \$5,000 with which to purchase bond and mortgage, which he did. The bond and mortgage were left with the broker to collect the semi-annual interest when due, but not to collect the

principal when due. Broker collected the interest and by a forged satisfaction piece collected the principal and satisfied the record and gave the bond and mortgage to the mortgagor and absconded with the principal. Upon whom does the loss fall?

A. Loss falls on mortgagee. The broker was acting within the apparent scope of his authority.

171. A rented a farm with 10 cows thereon to B, with the agreement that B at the termination of the lease leave 10 cows on the farm of equal value, and pay him \$5 per cow. The cows died from disease. What are the rights of the parties?

A. This was a sale, and the loss falls on B.

172. The barns of A were consumed by fire caused from the sparks of an engine which passed close to the farm. It was not from negligence from owner, but solely from negligence of the railroad company. The property was insured for \$5,000, which insurance company paid promptly to A. A then sued the railroad company for value of the buildings, \$10,000, and the company answers and alleges the payment of the \$5,000 by the insurance company, and offers a judgment for \$5,000 balance. Can A recover the full amount? If he can, what is his relation to the insurance company?

A. A can recover the \$10,000, \$5,000 of which the insurance company can recover from him by right of subrogation. This is always provided for in the policy.

173. A buys a piece of land of B, and by mutual mistake left out part of description in the deed. B sues A afterward for ejectment, and A wishes to defend. What would you do? What are the rights of the parties?

A. A has a good defence. Allege the mistake and ask to have the deed reformed.

174. While upon his deathbed, and while in full realization of his condition, A gave to B a pass-book of deposits in a bank, saying that he gave it to him as his own. Is the gift valid?

A. Yes, as a gift causa mortis. See McMath v. O'Connor, 11 App. Div. 627.

14 Am. & Eng. Enc. L. (II. Ed.) p. 1062.

175. Testator owned two certain houses and lots in Buffalo. He died leaving a widow and son and a daughter. He willed one of the houses to his son and the remainder of his property to his daughter. After the will one of the houses burned and he recovered \$6,000 insurance on same and deposited in bank. What are the rights of widow, son and daughter?

A. The \$6,000 is personalty and goes to daughter as residuary legatee. The widow gets dower in all the realty. The remainder to son and daughter as per will. The widow has no dower interest in personalty.

176. Two partners are tenants in common of land and partners in business of farming. One sells and conveys to third person. What are the rights of third person as to growing crops, and can he enforce his

rights? What effect has conveyance and assignment on partners?

A. The purchaser becomes a tenant in common in the land and is entitled to the vendor's interest in the crops after the firm debts are paid, the crops being personally. Conveyance or assignment by one partner dissolves the partnership, but transfers to grantee all of grantor's interest in the process.

177. A and B are copartners in trade and bought real estate. A died and left a widow. What right has the widow in the property? How does it affect the property?

A. A's death dissolves the partnership. His widow has dower in his share of the real estate.

178. A buys goods from sample from agent upon the warranty of the goods. They are not as represented. A sues the dealers and in defense they set up that the agent had no authority to warrant. Is it a good defense?

A. No. The law implies a warranty that the goods are equal to the sample.

15 Am. & Eng. Enc. Law (2 Ed.) p. 1225.

179. S leased certain premises to T, and upon the termination of the lease the lessee (T) did not move out, and, unbeknown to S, remained there for three months before S found it out. What are the rights of S and T?

A. Landlord can eject him without notice, or can

treat him as a tenant at will or by sufferance; or the holding over is evidence of a new demise.

12 Am. & Eng. Enc. Law, p. 758.

180. A is sued for a conversion of a note. No evidence is given of the value of the note on trial. If the jury find the defendant liable, is there any presumption as to the liability? Why?

A. The presumption is that a note is worth its face value.

Atkinson v. Printing Co., 43 Hun, 167.

181. A husband and wife hold a house and lot by entirety. The husband afterwards secured a divorce and marries C. The husband dies intestate. What are the rights of the parties, and how does the divorce affect the parties?

A. The divorce makes them tenants in common, and C has dower in her husband's interest.

Stelz v. Shreck, 128 N. Y. 263.

182. A decedent left real estate in trust, the rents and profits to accumulate till his then ten-year-old son was 25 years old, and then to go to him for business purposes. Is the trust a valid one?

A. The trust is valid until the son becomes twenty-one. L. 1896, Chap. 547, Sec. 51.

183. A is arrested for selling liquor without a license, and upon the trial is asked if he had a license.

Assuming the question to be a proper one and admissible, need he answer? Why?

A. No. The answer would tend to incriminate him.

184. A is on trial for murder. His attorney offered to show that he was intoxicated at the time of committing the murder. The district attorney objects. Is the evidence admissible?

A. Yes, as bearing on the question of intent.

185. X is assaulted and injured by M and has a cause of action therefor. X assigns the cause of action to Y, who sues to recover it. Can he maintain the action? Why?

A. No. Right of action for personal injuries is not assignable.

Pulver v. Harris, 52 N. Y. 73, 75.

186. A, a director of a corporation, and certain creditors, agree that the creditors should sue the corporation by service upon A, and that A, the director, would not report the service to the officers and other directors, and the creditors might take judgment. This was done. Is there any valid objection to the judgment?

A. If the corporation is insolvent this would be a fraudulent preference and voidable at the instance of another creditor. If solvent and the company had a good defense, it could have the default opened.

Sec. 1283, Code Civil Procedure.

187. The directors of a corporation made a valid contract with A, but when the stockholders had a meet-

ing they refused to accept the contract as that of the corporation, and the directors subsequently sided with them. What are the rights of A?

A. The corporation is bound by the contract of the directors. A can get damages.

Hamilton Trust Co. v. Clemes, 163 N. Y. 423.

188. A firm owns realty bought with partnership money and for partnership purposes. One dies, leaving a widow. Is the widow dowable?

A. Yes, in her husband's share after partnership debts are paid.

Barrow v. Calkins, 159 N. Y. 503.

189. A has four children. At his death he left a will giving one-half to charities. The other half is divided equally among his children, naming each. Another child is born after the will and the child is not named therein. What are his rights? Is the legacy to charities valid?

A. The after-born child is entitled to one-fifth of the whole estate, one-fifth of each of the other legacies being deducted therefrom for that purpose. The bequest to charities will be valid to the extent of four-fifths of itself.

3 Birdseye's Stat. (2 Ed.) p. 3512, P. 17; p. 3513, P. 25.

Smith v. Robertson, 89 N. Y. 555.

Sanford v. Sanford, 4 Hun, 753.

Sec. 1868, Code Civil Procedure.

190. A checked his trunk at the N. Y. C. & H. R. R. R. Co. in New York City for Albany, and the next day called for his trunk at Albany. It could not be found. A sues the company, proves the delivery to the company, the contract, the demand and value. The company does not offer any evidence. Judgment for whom, and why?

A. Judgment for plaintiff. Proof of the contract with himself is sufficient proof of title and failure to deliver is prima facie proof of negligence.

Abbott's Trial Evidence, Chap. XXX, pp. 37, 41.

Mortland v. Phil. & Reading R. R. Co., 81 Hun, 473.

191. A covenant in the deed prohibits the building of anything but a dwelling house on the land. A grantee commences to build a manufacturing establishment and claims that the surroundings have so changed that it is a very unsuitable location for a dwelling house. Conceding that the covenant runs with the land, has the defendant a sufficient defense? Why?

A. Yes, in such a case equity can relieve him from the burden of the covenant. A. in land damages.

Ammerman v. Deans, 132 N. Y. 355.

Kurtz v. Potter, 44 App. Div. 262.

Krekeler v. Aulvach, 51 App. Div. 591.

Barney v. Everard, 32 Misc. 648.

192. A owns a farm some distance away. B, wishing to buy, goes to A and inquires. A tells him that

the farm is worth \$100 per acre, and in reality it was only worth \$10 per acre. A also tells him if he wishes he (A) would take him (B) out to see the farm, or if he (B) wishes he could inquire as to its value. B purchases without doing either. What right has B in the matter under the circumstances?

A. B can probably recover the purchase price. The difference between the actual and represented value is so great as to be strong evidence of a fraudulent misrepresentation. Nor is B bound to go "some distance," even at A's expense. Whether he is guilty of laches depends upon the distance and inconvenience he would be put to. This would be for the jury to decide.

193. A is surety for the firm of C on a bond to the extent of their purchases. Unbeknown to A, another partner is taken into the firm and afterward A is sued on the bond. What are A's rights?

A. A is not liable; he was not surety for the new firm.

French v. Graves, 50 App. Div. 522.

194. A duly sold to B 1,000 tons of iron, which B wrongfully refused to accept and pay for. A consults you at once. What are his rights?

A. This is a sale. A can hold the iron subject to B's order and can recover the contract price; or, he can sell the iron elsewhere and sue B for the difference; or can keep the iron and sue for breach of contract.

Vandegrift v. Cowells Engineering Co., 151 N. Y. 435.

195. X purchases a lot in Buffalo with certain moneys which he has and intends to build thereon with certain other moneys which he has. Before he builds the legislature enacts a law extending the fire limits and thereby prohibiting him from building anything but a brick or stone house. Because A has not the means to build such a house he is prevented from building. What principles are involved in the case? Is the Act a valid one?

A. The Act is valid. It is a mere exercise of the police power. The only possible questions that could be raised are (a) was A deprived of his property without due process of law? (b) Is he denied the equal protection of the law?

196. A man is killed by the alleged negligence of a railroad company. On the trial of an action by his personal representatives for damages, plaintiff offered to prove dying declarations of A as to manner of his injuries, not as part of the *res gestae*, but purely as dying declarations and as material to the issue. Objected to as incompetent. Is it admissible or not? Why?

A. No. Such declarations are only allowed in civil actions as part of the res gestae.

Waldele v. N. Y. C. & H. R. R. Co., 19 Hun, 69.

McDonald v. Wesendouck, 30 Misc. 601.

197. A husband agreed with his wife that they should live apart and that he should pay her \$10 per

week for her support. This was done, but \$10 was not enough, and she went to a grocer who knew of the contract and purchased goods. The grocer sued the husband. What are his rights? Answer in full.

A. Yes, if he can prove necessary, and that the husband did not supply his wife with them or the money to buy them. Whether the amount furnished by the husband is sufficient is for the jury.

Hatch v. Leonard, 38 App. Div. 128.

Baker v. Barney, 8 Johns. 38.

Fenner v. Lewis, 10 Johns. 38.

Lockwood v. Thomas, 12 Johns. 248.

198. As Smith and Brown were walking along the street they were struck by a falling wall owned by the defendant. Brown escaped injury from the wall, but was injured by the falling of a paint bucket from a scaffolding where a painter was working for defendant. The painter was thrown from the scaffolding by reason of the falling of the wall. What are the rights of the painter, Smith, Brown and defendant?

A. If defendant is negligent all can recover. The painter because this is not a risk incident to his employment. Brown can recover, as damages are not too remote.

Ryan v. Miller, 12 Daly, 77.

199. A was elected to a public office which had certain fees attached thereto by law. After A had duly qualified and entered upon the discharge of his duties, the legislature cut down his fees one-half. What are A's rights? Give your reason in full.

This Act was unconstitutional.

N. Y. Const. Art. III, Sec. 18.

200. C was indebted to B for coal and indorsed to him certain promissory notes payable to C's order before maturity, made by D, for payment for tobacco sold by C to D. B entered C's account with full face value of the notes, including the accrued interest thereon. The notes were not paid at maturity. B has sued D, the maker. D answers and admits notes, transfer and non-payment thereof, and sets up affirmatively a breach of contract of the sale of the tobacco by C, for which notes were given, and claims damages therefor to amount of notes for an offset. B demurs to answer. Judgment for whom, and why? If the defense is available to D, for what reason? If not, why?

A. Judgment for B, who is a holder in due course.

Laws 1897, Chap. 612, Secs. 91, 96.

Negotiable Instruments Law, Secs. 96, 97 and 98.

201. A was surety, B principal, and C creditor on an obligation. B asked C to refrain from suing or pressing claim until B could pay same. C said he would be patient, but would not agree to give him any time. When due B was solvent, but became insolvent soon after. Surety had no knowledge of conversation and C made no demand. C now sues surety for the debt. What are the rights of surety?

A. A is not discharged. An agreement to extend

time, in order to discharge the surety, must be for a definite time and based upon a sufficient consideration.

24 Am. & Eng. Enc. Law, pp. 826, 832.

The surety can give the creditor notice to proceed against the principal, and failure to do so within a reasonable time discharges the surety if he has suffered by the delay.

Waufiel v. Tricky, 23 Weekly Dig. 92.

Meise v. Newman, 76 Hun, 341.

202. A gave a note to B for \$100, dated April 1, 1890, due on demand. A received only \$90 for it from B. On March 3, 1897, B sued A on it. Draw up an answer for A.

A. A demand note is due at once.

(Caption.)

(Title.)

The above named defendant, by _____, his attorney, answering the complaint of the plaintiff herein, alleges:

That this action was not commenced within six years after the cause thereof accrued.

Wherefore, etc.

203. When and in what cases may an injunction order be obtained?

A. Code Civ. Proc. Secs. 603, 604.

204. Plaintiff's attorney notices a case for trial within 20 days after the service of an answer therein upon him. After the notice is served, but before the

court sits, and within 20 days, defendant's attorney served a *bona fide* amended answer, setting up a new defense, regularly upon the plaintiff's attorney. Plaintiff's attorney seeks to force defendant to trial for the term of court for which notice was served. Note of issue was regularly filed and case put on calendar. Amended answer was served so late that new notice of trial could not be given. Can defendant be compelled to try at that term, and why?

A. *No.*

Ostrander v. Conkey, 20 *Hun*, 421.

Evans v. Olmstead, 31 *Misc.* 692.

205. A wrote B, offering to sell the latter 600 bushels of oats at 25 cents per bushel, and gave the latter seven days in which to accept or reject the proposition. On the second day thereafter A sold the oats to C, and B on the third day, without notice, wrote A, accepting the offer. On being informed of the sale, B sues A. What are the rights of the parties? Would their proposition be changed if B had notice of the sale before accepting the offer?

A. *B can recover. He accepted before the offer was withdrawn. If he knew of the sale to C, that would be a notice of withdrawal.*

Howells v. Stooch, 31 *Misc.* 569.

Howells v. Stooch, 50 *App. Div.* 344.

206. A was indebted to B upon a certain promissory note which was past due, and upon which B desired judgment and A was willing he should have it. In

what way could this be done, and what proceedings are necessary? Answer fully.

A. *Confess judgment.*

Code Civ. Proc. Sec. 1273 et seq.

207. A holds B while C, A's wife, takes B's pocket-book and money. A and C are shortly after indicted for robbery. On trial the defendant's attorney asked court to discharge the wife on the (6) ground that her act was committed in the presence of the husband and she was not therefore responsible. What should the ruling of the court be? State the rule.

A. *She must show coercion.*

Goldstein v. People, 82 N. Y. 231.

Sec. 24, Penal Code.

Seiler v. People, 77 N. Y. 411.

208. A instructs his coachman to shovel the snow off his roof and to be careful not to throw any of it on the passersby in the streets. The coachman secures the assistance of a friend of his and leaves him for a few moments. During the absence of the coachman the friend injures a passerby in the street below by throwing a quantity of snow and ice upon him from the roof. Has the passerby an action against any one, and if so, against whom?

A. *Against A.*

Althorp v. Wolfe, 22 N. Y. 355.

Fish v. Coolidge, 47 App. Div. 159.

Levy v. Ely, 48 App. Div. 554.

209. A and B are tenants in common. There is a stream of water running through the land. A owns land further down, upon which he has a mill. He dams the stream so it overflows their land owned in common, and covers about five acres thereof. This continues for a period of 25 years, during which time B makes no complaint. A sells his mill, etc., to D, with the privilege of operating the mill and using the dam the same as used by him. A few days thereafter A and B sell their land without reservations to C. C brings an action against D for damages caused by the overflow. D claims a right by prescription. Judgment for whom, and why?

A. Judgment for C. A only had a license. A tenant in common can gain adverse possession only by having sole possession and a denial of his co-tenant's title.

See Kathan v. Rockwell, 16 Hun, 90.

210. The president of two corporations leases land of one corporation to the other without consulting the board of directors. A stockholder makes complaint. What are his rights? State rule.

A. The board of directors alone can make a valid lease. If the board of directors refuses to repudiate the lease the stockholder can maintain injunction on behalf of himself and the other stockholders.

Broadway Theatre Co. v. Dessau Co., 45 App. Div. 475.

Wood v. Manchester Fire Ins. Co., 55 App. Div. 522.

211. A engages to work for B for a year for 500 bushels of wheat at \$1 per bushel. At the end of the year B refuses to pay A the 500 bushels of wheat and A sues B for \$500 in money. Can he recover, and why?

A. Yes. The obligation becomes merged in to one to pay money.

*N. Y. News Pub. Co. v. Natl. Stmshp. Co.,
148 N. Y. 39.*

212. A leaves a watch with a jeweler to be repaired. The shop was burglariously broken into without fault of the jeweler and A's watch was stolen. A brings an action against the jeweler. Can he recover? State the rule.

A. No. The bailee is not an insurer and is liable, in case of reciprocal bailment, for loss from his negligence.

Kaiser v. Latimer, 40 App. Div. 140.

213. A gives B, his attorney in fact, power to sell real estate. B, as such attorney, knowing that A is in need of money, obtains a mortgage on the real estate and signs the same as A's attorney under the power to sell. He sends the money thus obtained to A. A dies intestate. What are the rights of A's heirs as to the mortgage?

A. A's retention of the money is a ratification. His heirs hold subject to the mortgage.

214. A brings a wagon to B for repairs. It is worth \$25 when taken. B repairs the wagon, increasing its

value to \$100. C has a judgment against B, and offers A \$25 for his interest in the wagon. A refuses to accept it. C then levies on the wagon and sells it under his judgment against B. A brings an action against C. Can he recover, and what is the extent of the recovery?

A. Yes. It was his wagon and he can recover its value when taken, i. e., \$100. He will, however, hold the cost of repairs in trust for B whose creditors can reach it.

Sec. 1690 Code Civil Procedure.

215. A is employed in the X bank. He takes and appropriates to his own use from the bank's funds \$1,000. This is afterwards discovered and A makes the amount good. He is retained in service on condition that B becomes surety for him. B becomes his surety without knowledge of the former embezzlement and the bank know the fact, and that B does not know of it. A afterwards embezzles \$1,000 and absconds. The bank brings an action against B as surety. Judgment for whom, and why?

A. This has been held fraud on bank's part.

24 Eng. & Am. Enc. Law, p. 793.

U. S. Life Ins. Co. v. Salmon, 91 Hun, 535.

216. A was the owner of stock in a corporation. He sells it to B. B makes application to the officers in charge to issue him a certificate. They refuse on the ground that the company has a large claim against A. Rights of B, and why? Answer fully.

A. A mandatory injunction will lie to compel the transferees; or B can sue for conversion of his stock.

*See 1 Cook Stock and Stockholders (3rd ed.),
Secs. 391, 392.*

Johnson v. Underhill, 52 N. Y. 203.

McNeal v. Tenth Nat. Bank, 46 N. Y. 325.

217. A is not a partner of B, but holds himself out as such, in order that B may obtain credit. C sells B but does not know that A has held himself out to the world as being a partner of B, but finding that B is unable to pay and that A has held himself out as partner to others, brings an action against A and B. State the rule.

A. A is only a partner by estoppel, and so liable only to those who have dealt with B in that belief. C did not sell to the firm, but to B.

Mechem Part., Sec. 69.

Elliott v. Vallaro, 16 App. Div. 630.

Griffin v. Carr, 21 App. Div. 51.

218. A married man gives a mortgage for the purchase price of some property. After his death the mortgage still remains on the property, and the widow claims dower in the same. What are her rights?

A. A mortgage given for part of the purchase price is valid as against dower.

*Real Property Law (L. 1896, Chap. 547),
Sec. 173.*

Brackett v. Baum, 50 N. Y. 8.

Ulrich v. Ulrich, 17 N. Y. St. Rep. 414.

219. A applies for a policy of insurance and in reply to the question concerning his age, answers "53." The application states "the applicant warrants all statements therein contained to be true," and A signs the same in good faith. The company discovers that at the time he was 55 years of age. They would have insured him at that age, the only difference being 400 in premiums. The beneficiary, after the death of A, applies to you for advice. What would you tell him?

Schmidt v. Nat. Life Association, 84 Hun, 128.

A. No recovery, not even of the premium.

Foot v. L. Ins. Co., 61 N. Y. 571.

220. An insurance policy provides that if the property insured now or hereafter has a chattel mortgage on it, the policy shall be void. A, the insurance agent for such company, insures B's personal property, there being at the time a chattel mortgage thereon which is filed in the town clerk's office. The property is destroyed by fire. B, not having made any concealment, and having acted in good faith, brings suit against the insurance company. The company claims the contract is void, because of the mortgage. Judgment for whom, and why?

A. Judgment for defendant. B has made a false warranty. The company is not bound to search the files.

221. A is indorser on C's promissory note, which is overdue and notice of protest has been served on both

A and C. A requests of the holder to proceed at once against the maker, as he fears in a short time C will not be able to pay. The holder neglects to do so and the maker fails. The holder sues A and C on the note. Judgment for whom, and why?

A. Judgment for A. It is the duty of indorser to take up the note.

Trimble v. Thorne, 16 Johns. 152.

Negotiable Instruments Law, Sec. 116.

222. A leases B his land on which to grow grain. B. sub-lets to C on condition that the latter shall give him half the crop. B actually occupies the land during the term. What are the relations of B and C, and why? Are they copartners?

A. C is B's tenant only. B's share of the crop is the rental.

Taylor on Landlord and Tenant, 7th ed., Sec. 16.

Davis v. Morris, 36 N. Y. 569.

223. A leases land of B for one year and puts a building thereon to conduct his business. At the expiration of the year the lease is renewed by parole agreement for five years. A short time before the expiration of the second lease A consults you as to his rights to remove the building. What is your advice?

A. The building belongs to the landlord. The parole lease, being for more than one year, is void. But whether it becomes thereby a renewal by implication,

or is a tenancy at will, or from year to year, makes no difference. It is more than a mere holding over, and so the right to remove is gone.

Loughran v. Ross, 45 N. Y. 792.

Talbot v. Cruger, 151 N. Y. 117.

224. The president and board of directors of a warehouse company passed a resolution, giving to the president of the company authority to sign receipts for the goods in the warehouse. The president issued a receipt to himself, claiming that he had goods in the warehouse, when in fact, there were none. The president then pledged such receipt to the X bank and secures money on it. The bank sues the company for the amount of the receipt. Judgment for whom, and why?

A. Judgment for bank. The corporation as the principal is liable for the acts of its agent within the apparent scope of his authority.

Hanover Bk. v. A. D. & T. Co., 148 N. Y. 612.

Corning Exchange Bk. v. A. D. & T. Co., 149 N. Y. 174.

225. A becomes engaged to marry B. Afterwards A discovers that B is a married man. She sues B for breach of promise. Can the action be maintained? Give reasons.

A. No. The contract was void.

Haviland v. Halstead, 34 N. Y. 643.

Plaintiff's remedy is in deceit.

4 *Am. & Eng. Enc. Law*, p. 884.

Blattmacher v. Saal, 29 *Barb.* 22.

226. The vendee has goods in his possession which he has bought of the vendor, and the vendor believes that the vendee is unable to pay for the same. The vendor consults you. What would you advise? State fully.

A. (1) *To get security if possible; or*

(2) *Get a return of the goods; or*

(3) *Get a confession of judgment and issue execution; or*

(4) *If debtor refuses to confess judgment, serve him and get judgment as soon as possible; or*

(5) *Under facts shown under Secs. 635 and 636 Code Civ. Pro., get a warrant of attachment; or*

(6) *Under facts shown in Sec. 549, p 4, Code Civ. Pro., get an order of arrest.*

227. A makes a contract with B to build him a house with the agreement that the contractor is not to sub-let any of the work. B sub-lets a portion of the work and afterwards sues A on the contract, and A puts in evidence of the agreement to show B had no right to sub-let. The contractor claims that there was a parole agreement before the instrument was signed that a portion might be sub-let. State the rule.

A. *This is plainly an attempt to vary a written contract by parole evidence.*

Mobile v. Montgomery R. R. Co., 111 *U. S.* 584.

228. A gives B a deed and subsequently a dispute arises between the parties in regard thereto. A claims that there was an oral agreement under which the deed was delivered. Is such evidence admissible?

A. This is not varying the deed, it is only showing that the deed was given as part of a previous oral agreement.

Van Brunt v. Day, 81 N. Y. 251.

229. A witness is asked on cross-examination if he has ever been convicted of larceny. He answers he has not. (a) How may he be contradicted? (b) State the general rule.

A. It can be contradicted either by the record or by cross-examination.

Code Civ. Pro. Sec. 832.

230. A and B are husband and wife. The evidence of his wife is inadmissible at the time the following action is brought. C sues B on a claim and thereafter the legislature passes a law that the wife's evidence shall be admissible. C knows the wife has knowledge of material facts, the evidence of which would be admissible under the last law and subpoenas her. Is her evidence admissible, and why?

A. Yes, the statute creates no new liability, but merely enlarges the number of witnesses.

12 Am. & Eng. Enc. Law (2nd ed.), 531.

Hoyt v. Territory, 110 U. S. 574.

231. A is sitting in his room counting his money. B

enters with a loaded pistol in his hand and points it at A, demanding the money. A is scared and immediately drops the money and runs out of the room. B gathers the money A left and departs with it. Of what crime and in what degree is B guilty?

A. This is robbery unless it be held that the taking is not in A's presence. Penal Code, Sec. 224. On this point see State v. Calhoun, 72 Iowa, 432; 21 Am. & Eng. Enc. Law, p. 424. If not robbery it is larceny.

Penal Code, Sec. 528.

Sec. 228, Penal Code.

232. A and B are partners. B contracts an individual debt in the partnership name. C sues the firm for the debt, and A only answers. Can A introduce evidence to show that it was B's individual debt?

A. Yes, if C knew it was B's individual debt or if it were a debt outside the partnership business.

Vlemenstok v. Ammidown, 155 N. Y. 47.

233. A's coachman is sleeping in a room which is fitted up for him in A's barn. A, thinking the coachman has gone away for the night, sets fire to the barn, but the fire is extinguished before any material harm is done. Section 486 of the Code provides that a person who "wilfully burns or sets on fire, in the night time, a dwelling house in which there is at the time a human being is guilty of arson in the first degree." Under this law A is convicted of arson in the first degree. On appeal the defendant asks that A be discharged on the grounds, (a) that the indictment did not allege or the

proof show any intention to burn the building. (b) That a man cannot be convicted of burning his own building. (c) That A did not know there was a man in the building. (d) It was not a dwelling house. (e) That nobody was injured. Should A be discharged? State your opinion on each one of these sub-divisions.

A. See Penal Code, Sec. 486. It must be a "wilful" burning. The words used in the statute need not be strictly pursued, and a defect in form will not invalidate it unless defendant is prejudiced. Code Civ. Pro. Secs. 283, 285. As to proof of intention it is a question for the jury on the facts and

(b) A man can be convicted for burning his own building. Penal Code, Sec. 495.

(c) If a dwelling house it makes no difference whether A knew of the coachman's presence. Pen. Code, Sec. 486.

(d) It is a dwelling house. People v. Orcut, 1 Park, 252.

(e) Personal injury is not necessary. Pen. Code, 486.

234. A is the financial agent of B and B is accustomed always to indorse notes that he sends by A to the bank to be cashed. B has a note payable to bearer. He sent it by A to be cashed at the bank, especially instructing him that it is payable to bearer and does not need to be indorsed. A presents the note at the bank and the bank refuses to accept it unless A indorses it. A informs the bank that B instructed him not to in-

dorse the note, but the bank still refuses unless A indorses B's name. A then does so and receives \$1,000 on the same. The maker becoming insolvent, the bank brings an action against B. Judgment for whom, and why?

A. Judgment for B. The bank had notice of A's lack of authority.

Bliss v. Sherrill, 24 App. Div. 280.

235. A enters into a contract with B, who agrees to erect a building. B directs some workmen to erect a scaffold. They do so, using poor material without utilizing the good material furnished by B for the purpose. C, an employee, is injured by the falling of the scaffolding, his fall being caused by stepping on the defective material used, and he brings an action. Against whom should he bring it, and what is the rule as to his recovery?

A. There is no recovery against A as he let the work to a contractor.

Pierrepoint v. Lawless, 72 N. Y. 211.

No recovery against B if C were employed in building the scaffold as it would be the negligence of a fellow servant.

Judson v. Olean, 116 N. Y. 655.

If after the scaffold was erected C, having no part in its erection, were employed in working on the house, he can recover against B. The master cannot delegate to his servants the duty of supplying a safe place to work.

Sellick v. Langam & Co., 13 N. Y. Sup. 858.

236. A, B's coachman, with B's footman, riding on the seat beside him, and B, the owner, in the carriage, negligently drives into another vehicle driven by the owner. The footman and the owner of the second carriage are injured. What are the rights of the parties?

A. The footman can not recover as the accident was due to the negligence of a fellow servant.

The owner of the second carriage can recover provided he was guilty of no contributory negligence.

237. A makes his will, appointing an executor. A dies and the executor refuses to act. What should be done?

A. Secure the appointment of administrator with will annexed.

Code Civ. Pro. Secs. 2639, 2643.

238. A makes a will, leaving one-third of his realty to his wife and the residue and remainder to be divided equally between his sons, C who is unmarried and B who is married. A dies and one hour after the probate of his will his son B dies. Personal property amounts to \$30,000; real estate consists of 400 acres. B leaves no children. What are the rights of A's heirs?

A. A dies intestate as to his personalty. Widow gets her one-third plus one-fourth of B's share. C gets his one-third plus one-fourth of B's share. B's widow gets one-half of B's share.

Code Civ. Pro. Secs. 27, 32.

As to realty: If the provisions for widow were in

lieu of dower, property will be divided as follows: Widow will get one-third plus B's share after the termination of B's widow's estate. C gets his one-third. B's widow to life estate in one-third of B's share as dower.

3 Bird. Stat. (2nd ed.), p. 2659, par. 281.

239. A makes a will, leaving his personal property to his son and a stranger. The stranger dies before the testator. What rights have the executors of the stranger in A's estate?

A. None. This was the rule at common law. By statute it is different if the legatee be testator's child.

3 Bird Stat. (2 ed.), p. 3512, par. 20.

Redfield's Surr. Prac. 627.

240. A brings an action against B to restrain him from operating a furnace, claiming that it is a nuisance and that the smoke and cinders escape therefrom and annoy him, etc. B has operated a furnace under the same conditions for the past 10 years. What would you advise him?

A. The fact that it has been running 10 years without objection raises a strong presumption that it is not a nuisance. If it is, however, length of time is no defence. The general rule warranting an injunction of a nuisance is, is the business as carried on a proper one for that neighborhood?

Sec. 603 Code Civil Procedure.

241. A, through collusion with servants of B, enter's

B's house in the night time and takes certain articles belonging to B. Of what crime is he guilty?

A. *Burglary.*

Pen. Code, Sec. 499.

242. B guarantees the payment of A's rent. A fails to pay and the landlord sues the guarantor without exhausting his remedy against the tenant. Can he maintain the action? Why?

A. *Yes. This is an absolute guarantee.*

14 Am. & Eng. Enc. Law, p. 1141, par. 4, p. 1153, par. 3 (2 ed.)

243. A man employs a boy 16 years of age to work for him and pays him at the end of each month. Eight months after the beginning of the boy's work his father demands the boy's wages of the employer. What are the rights of the parties?

A. *The employer is exempt from liability for money theretofore paid the child.*

L. 1896, Chap. 272, Sec. 42.

Liberman v. 3rd Ave. R. R. Co., 25 Misc. 704.

244. A marries a widow who has a son 16 years old. The son lives with A and is treated by him as his own son. The son is injured by the negligence of a railroad company, and A expends a large sum of money for medical attendance, etc., and claims he also loses his services. Has A a right of action against the railroad company, and what would be the rule of damage, if any?

A. Yes. *The rule of damages would be the same as if it were his own child.*

17 Am. & Eng. Enc. L., pp. 342 and 390.

Otis v. Hall, 117 N. Y. 121...

245. A persuades his daughter on the ground that he believes it is not safe for her to live with her husband on account of statements which he has heard concerning the husband's moral character, which statements A hears from what he considers a reliable source, and which he honestly believes to be true, to leave the husband and live away from him. There was, in fact, no foundation for the charges and they were utterly false, but A acted in good faith. Can the husband maintain an action against the father for damages?

A. No. *This is a privileged communication.*

20 Barb. 439.

246. A loaned B \$5,000 on the condition that B will give him a mortgage on his farm for that amount. B represents that he needs the money at once and agrees to execute the mortgage the next day, but does not do so. Has A any lien on B's real estate? What are the rights of the parties? How can they be enforced?

A. *A can recover his \$5,000, or if the circumstances are such that the action at law would not be an adequate remedy specific performance will be decreed.*

Pawling v. Pawling, 86 Hun, 502.

247. A takes insurance in B insurance company. Clause in policy states no other insurance allowed and



policy will be void if other is taken. A afterwards secures another policy in same company. Is policy No. 1 vitiated? A seeks to recover thereon. Can he do so?

A. The issuing of the second policy was a waiver of the condition in the first.

Kelley v. Met. Life Ins. Co., 15 App. Div. 220.

248. A wishes to obtain a right of way through B's farm, but B refuses to sell it to him. The legislature passes a special act which compels by its terms B to sell the right of way to A. What is your opinion as to the constitutionality of the act?

A. It is unconstitutional. The legislature can exercise the right of eminent domain for public purposes only.

Taylor v. Porter, 4 Hill, 140.

249. The legislature passes an act authorizing a street railroad to lay its tracks along certain streets without further proceedings. The owners along such streets object. Have you any remedy? Give your opinion as to this legislation.

A. The abutting owners can sue for the damages to their property. The legislation, however, is constitutional as it is not taking private property for a private purpose.

7 Barb. 508.

250. Draw an affidavit of merits in a civil action, to be sworn to by the defendant in the action.

—————, being duly sworn, says that he is the defendant herein; that he has fully and fairly stated his case to his counsel, who resides at the city of Buffalo, in the State of New York; that he has a good and substantial defense on the merits to the action, as he is advised to his said counsel after said statement, and verily believes it to be true.

Sec. 980, Code Civil Procedure.

251. On what grounds may an injunction be granted? At what time during the progress of the action may it be granted?

A. Code Civ. Pro. Secs. 603, 604, 608.

252. In an action the summons was served by publication upon a non-resident of the State. Judgment was entered upon default for \$2,000. There was personal service of the judgment, with notice of entry, upon the defendant without the State. During the action an attachment was issued upon the property of the defendant within the State, and upon judgment this property was sold under execution and \$500 was recovered. Two years after a second execution issued to the sheriff and additional property of the defendant to the value of \$1,500 was sold. Defendant coming into the State and learning these facts sues the sheriff. Upon trial the above facts were proved, and only above facts. The sheriff moves to dismiss. What would be the ruling of the court?

A. The second levy was illegal.

Code Civ. Pro. Sec. 707.

253. A holds check drawn upon X bank for B. As a matter of fact B's signature is a forgery, but A is ignorant of the fact. A has the X bank certify the check. Later A presents the check for payment and the bank refuses to honor it. In an action by A against the bank the latter sets up forgery as a defense. State the rights of the parties.

A. Certification vouches for the genuineness of the signature.

3 Am. & Eng. Enc. Law, p. 221.

254. A makes a note to B or order. It is duly indorsed by B, C, D and E, the last indorsing it over to B, the original holder. Default and due notice, etc., in paying at maturity. B sues the maker and all the indorsers. Advise all parties.

A, C, D and E have a good defense. Whatever rights B, as last indorser, has against them are set off by his liability as first indorser to them. He must look to A.

255. There is an insurance on A's life payable to A's wife, or if she be dead, to their children. They have two children, X and Y, and X dies, leaving a son, then A's wife dies, then A dies. Who recovers under the policy, and what proportions?

A. X's son and Y divide equally.

256. Furniture is shipped from Yonkers to Rochester. Upon its arrival at Rochester the consignee is notified by the carrier, who then places it in the freight

house. At the end of a week no request or attempt at a delivery having been made, the freight house is burned by an incendiary and the property destroyed. The consignee sues the carrier, and upon the trial a motion is made to dismiss by the defendant. Give the argument of counsel for both sides upon the motion.

A. It is a question of what is a reasonable time for the consignee to remove the goods.

Fenner v. B. R. Co., 44 N. Y. 505.

257. A makes a contract with B for the sale of real property. A acts as agent for a disclosed principal, C. Upon a suit to enforce by C, B sets up as a defense that the agency was not in writing. Rights of the parties.

A. Our statute says that the memorandum must be "subscribed by the lessor or grantor or his lawfully authorized agent." L. 1896, Chap. 547, Sec. 224. It seems that C's ratification sufficiently authorizes A's act.

See 1 Am. & Eng. Enc. L., (2 ed.), p. 1180.

258. A lease for one year reads: "AB as agent for CD, party of the first part, and XY, party of the second part." There are the usual covenants, and it is signed "AB, agent," and "XY." Upon an action to enforce the covenants, brought by XY, CD claims that AB alone is liable. State rights of the parties.

A. The principal is liable. The body of the instrument shows that AB acts as agent for CD.

1 Am. & Eng. Enc. L., pp. 385, 389.

259. A lease expires on May 1, 1897. At that time the tenant's child is so sick that the doctor positively forbids his removal. Upon May 4, 1897, the child is able to be moved and the tenant quits. The landlord consults you as to his rights, if any, against the tenant. How would you advise him?

A. Landlord can treat it as a renewal., Hester v. Mullen, 9 App. Div. 593. Contra, if the board of health had ordered tenant to remain.

Regan v. Fosdick, 19 Misc. 489.

260. There is fire insurance upon a mill, which policy provides that it shall be null and void if the mill is inoperative for two weeks. The mill is closed and inoperative for one week in order that repairs to the machinery may be made. The next week it is inoperative because the miller is so sick he cannot work. The mill burns upon the last day of the two weeks. State the rights of the parties.

A. The insurance company is liable. There must be a closing with an intention to remain closed.

Ladd v. Ins. Co., 147 N. Y. 478.

261. A and B agree in writing that "A shall hire B at \$5 per week as long as B shall be satisfactory to A, and that B shall give A two weeks' notice in writing before leaving him, or forfeit \$100. B works until \$100 is due him and then leaves without any notice having been given. He sues A to recover the wages. Upon trial A does not deny that \$100 is due, but sets up the forfeiture agreed upon. Can B recover?

A. Yes. This is a penalty and not liquidated damages. A can counter claim his actual damages by reason of B's breach.

262. A sells B 20 barrels of ale, barrels to be returned or paid for if not returned. B returns 10 barrels and is about to return the other 10 when a fire in his store, arising through no fault of his (B's), destroys them. On whom does the loss fall?

A. This is a sale with agreement to repurchase the barrels if returned. Title is in B when barrels burned. His loss.

263. A, of the firm of A, B, C Co., in the firm name induces a contract by fraud against the express orders of his partners. The creditors sues the firm. What are the rights of the parties?

A. The firm is bound.

Chester v. Dickerson, 54 N. Y. 1.

264. A delivers a team to B with the understanding that if at the end of two weeks B is satisfied with the team he (B) is to have the title to it upon the payment of \$200. Before the end of the two weeks B sells the team to C, an innocent third party, for \$200. What are the rights of the parties?

A. C is a bona fide purchaser for value and has a good title. A can recover the price from B.

Weaver v. Barden, 49 N. Y. 286.

265. A is a partner in the A, B Co. Upon an indi-

vidual judgment against A an execution issues against A's interest in the firm. Thirty days later an execution under a judgment recovered against the firm is issued. There is not enough property to satisfy both executions in full. What disposition should be made of what property there is in reference to the executions?

A. The execution against the firm takes precedence. Dunham v. Murdock, 2 Wend. 553. Contra. If the sheriff receives the latter execution subsequent to the notice of sale under the first.

266. A owes B \$500. A has no property, but is the owner of a claim for personal damages suffered by him against C. A wishes to assign the said claim in satisfaction of B's debt and consults you. Advise him.

A. Not assignable.

Code Civ. Pro. Sec. 1910.

267. A and B commit a joint assault and battery upon C. C sues A without any allegation in the complaint as to B. A demurs upon the ground that B should be a party. Should the demurrer be sustained?

A. No. Tort feasons are jointly and severally liable.

Creed v. Hartmann, 29 N. Y. 591.

268. A, a resident of Oregon, borrows in New York City \$5,000 from B, a resident of New York State, for use in Oregon. A note is given for security, dated New York City, payable in Oregon. The legal interest in Oregon is 10 per cent., in New York it is

6 per cent. Upon default suit is brought upon the note in New York State, claiming interest at 10 per cent. A sets up a defense of usuary. What are the rights of the parties, and what law governs?

A. No defence. A note is governed by the law of the place where it is payable.

2 Am. & Eng. Enc. L., p. 331.

269. A sells real property to B, taking in payment a note made by C. B orally guarantees the note. Upon default A sues upon the oral guarantee. Can he recover?

A. Yes.

8 Am. & Eng. Enc. L., p. 680.

270. A surety requests his creditor to sue the principal debtor, but the creditor neglects to do so. Five years after the creditor sues, but the debtor is insolvent. In an action to enforce, can the surety set up as a defense his request to sue as a bar to recovery?

A. Yes.

King v. Baldwin, 17 John. 384.

271. What is an easement? A owns the X farm and the Y farm adjoining. He makes a way through the Y farm to the X farm and uses it for 40 years. A then sells to C the X farm "with all easements" and the Y farm to B, "subject to all easements." B seeks to close the way across the Y farm. State C's rights.

A. An easement is a right which one proprietor has to some profit, benefit, or beneficial, use out of, in or

over the estate of another proprietor. C has an easement.

Lampman v. Wilkes, 21 N. Y. 505.

272. A owns property upon which is situated a valuable spring. B, owning adjoining property, for the ostensible purpose of digging a well to water his cattle, but with malice and intent to harm A, digs down and intercepts the underground supply to A's spring, causing it to dry up, to A's great damage. Rights of the parties? Has A an action?

A. Yes, if done maliciously.

Trustees v. Youmans, 50 Barb. 316.

273. A contracts with B for 20 special carriages, selected by A from those in B's factory. B delivers 10 of the carriages, and as he is about to deliver the other 10, a fire, caused by no negligence of B, consumes them. A will not accept the 10 delivered and threatens a suit for breach of contract. B will not take back the 10 delivered and sues to recover their price as agreed on in the contract. How would you advise the parties?

A. If for any reason A could not use part of the carriages without all B should not recover as the contract would be entire. *Baker v. Higgins*, 21 N. Y. 397. Otherwise the contract seems to be divisible.

274. What is meant by the term burden of proof? A contracts with B for labor and services. (a) B answers, denying any contract. (b) B answers admitting contract and amount claimed and pleads pay-

ment. Upon whom does the burden rest in (a)? In (b)? Who has the right to open and close as regards the burden of proof?

A. By burden of proof is meant the duty of establishing one's claim. It is usually coincident with and often confounded with the "burden of going forward." It rests on the party against whom judgment would be given if no testimony were taken.

In (a) the burden of proof is on A, as his allegation is denied.

In (b) it is on B, as A's allegation is admitted and B's denied.

Burden of proof and the right to open and close go together.

275. An infant living apart from his father, but with his father's consent, contracts for clothes. In a suit by the creditor a defense of infancy is interposed. What are the rights of the parties? Suppose the contract price was exorbitant?

A. If the creditor can show that the clothes are necessary and that the father did not furnish them or the money to buy them he can recover a reasonable but not an exorbitant price.

276. What are the stockholders' rights as to voting by proxy? May directors and trustees exercise the same rights as to voting at meetings?

A. Stockholders can vote by proxy.

L. 1892, Chap. 687, Sec. 21.

Directors cannot.

Craig Med. Co. v. Bank, 59 Hun, 561.

277. A railroad corporation has the right given it to condemn private property for the purpose of its incorporation. The railroad seeks to condemn land belonging to A that it may build a storage warehouse thereon in which the goods of its shippers along its line may be kept until a favorable market for their sale exists. A consults you. What are his rights?

A. He can enjoy it. It is outside the scope of strict railroad purposes. The right of eminent domain is strictly construed.

R. R. Co. v. Davis, 43 N. Y. 137.

278. By a statute of the legislature it is enacted "that the name of John Doe is hereby changed to Richard Roe, and by that name he shall hereafter be known." Is the statute valid?

A. No.

N. Y. Cons., Art. III, Sec. 18.

279. The issue in an action is "the taking of goods with the knowledge that they are stolen." Evidence is offered to prove the receipt of similar goods at about the same time by the same party. Is it admissible?

A. No, unless all were stolen from the same person and delivered by the same thief, and the prisoner knew that the goods were stolen.

Coleman v. People, 55 N. Y. 81.

280. The plaintiff serves notice to produce a paper upon the defendant. The defendant produces the paper and the plaintiff reads it at the trial. Later the plaintiff wishes to refer to the paper but the defendant objects, claiming it is not in evidence. Should the objection be sustained?

A. The word "read" probably means "inspected." The paper is not in evidence, but plaintiff can offer it and then refer to it.

Carridine v. Hotchkiss, 120 N. Y. 608.

Smith v. Rentz, 131 N. Y. 169.

281. The criminal code provides that burglary in the first degree must be committed in the night time. While A and his family are all in the house, and but five minutes after sunset, while it is still as light as day, A's house is entered and burglarized. Of what degree is the crime? What does the code say constitutes night time within the meaning of its provisions?

A. Burglary in the first degree. Pen. Code, Sec. 500 has been repealed by L. 1892, Chap. 677, which provides (Sec. 27) "Night time includes the time from sunset to sunrise."

282. A sues to reform a contract because at the time of making, it was under such a mistake of fact as to have changed his whole intention had he known the truth. Upon trial both parties move for a verdict. (a) Upon the facts alone stated above who would have verdict? (b) Would any additional fact change the decision? If so, what fact?

(b) *Either mutual mistake or mistake induced by defendant's fraud.*

283. An estate is given to A and his wife B in entirety. Later A secures an absolute divorce from B and marries C. By his marriage with C he has one son, X. A dies, leaving no will, and there survives him his divorced wife and X. How shall the estate in the entirety be divided, and who has an interest in it, and what is that interest?

A. A having secured the divorce B loses her right of dower. C being dead on A's decease X and B hold as tenants in common. Divorce converts a tenancy by the entirety into a tenancy in common.

284. A dies, devising his entire property to his only son X, and appointing his father, X's grandfather, the general guardian of X. A's widow consults you as to her rights. Advise her.

A. She has dower in A's realty. A had the power to bequeath all his personalty and appoint a guardian by will.

285. A man and his wife made a joint will, each devising their entire estate to the other. Is it valid? May either revoke without the other's consent? If so, what is the effect upon the unrevoking party?

A. It is valid and revokable by either party upon notice to the other, but not after the death of either if the survivor takes under the provisions of the other.

29 Am. & Eng. Enc. L., p. 138.

286. A dies, leaving a valid will, but naming no executor therein. Is the will valid? How would it be carried into effect if valid?

A. *Yes. Administration with the will annexed.
Code Civ. Pro. Sec. 2643.*

287. The issue upon a trial is as to whom credit was given upon a certain sale. A offers to prove by B that two hours before he made the sale to C and X, B, in conversation with him (A), advised A not to give credit to X. A offers this evidence to prove that he really gave the credit to C. C objects to it as heresay, and as something which took place while he was absent. Is the evidence admissible?

A. *This would be evidence of the state of A's mind at the time of giving credit, to show intent. It would not be evidence of X's financial condition.*

288. Two infants kill a horse by overdriving, which is worth \$200, the owner claiming \$100 from each. A's father pays his \$100, but B refuses to pay and is sued by the owner of the horse for \$100. Defense (a) non-joinder of A or any mention of the \$100 paid by A. (b) Infancy. What are the rights of the parties? Suppose infancy alone had been pleaded.

A. *Infancy is no defense to an action in tort; contra, if the tort grows out of contract.*

16 Am. & Eng. Enc. L., pp. 307-310 (2nd ed.).

Apparently there was no contract here and as tort

feasors are liable severally and jointly the action was well brought.

289. A trial upon an indictment for obtaining goods under false pretenses and with fraudulent intent. The accused is asked by his attorney, "What was your intent?" The district attorney objects to the admissibility of the evidence. Should the objection be sustained?

A. No.

35 Barbour, 630.

290. An action is brought against the directors of a corporation by a creditor for misappropriation of the funds of the corporation. The director comes to you and wishes you to hinder and delay the suit until he has a chance to make restitution. He wishes you to object on the ground that the attorney general alone has the power to bring such a suit. What would your answer be to him? What single proposition of law would you state to him covering the whole matter?

A. The corporation alone can bring this action. If, on request, it refuses a stockholder can do so for his benefit and others similarly situated.

Greaves v. Gough, 69 N. Y. 156.

The theory is that only the persons injured can bring the action. There is nothing to show that the creditor's claim would not be paid. He should act through a receiver.

291. Decedent creates a trust for the benefit of A,

B and C during their lives. There is a proviso that if the trustee shall see fit he may sell and defeat the trust at any time. Is the trust a valid one?

A. Yes. There is a person in being by whom an absolute fee in possession can be conveyed.

L. 1896, Chap. 547, Sec. 32.

292. Decedent devises two city lots and \$10,000 to A. He leaves all the rest, residue and remainder of his estate to B. A dies before the decedent. (a) The executors claim A's devise. (b) B claims A's devise as the devisee of all the rest, residue and remainder of decedent's estate. (c) C and D claim an interest in A's devise as the next of kin to the decedent. How is the estate to be divided, and in what shares?

A. B gets the whole estate. Both lapsed devise and legacy falling into the residue.

Cruikshank v. Home for the Friendless, 113 N. Y. 353.

293. The directors of a corporation vote an extra compensation to the president of the corporation for services performed. A stockholder objecting, consults you. What are his rights, if any?

A. The president cannot recover for past services in the absence of an agreement.

Barril v. Calendar, etc. Co., 50 Hun, 257.

The directors are liable for money so paid him.

2 Cook Stock and Stockholders (3rd ed.), Sec. 657n.

294. A contracts with B for 20 pounds of tea. B delivers 10 pounds and then refuses to perform as to the other 10 pounds, although it is within his power to do so. A seeks specific performance to compel B to perform the contract. May A have his remedy, and why?

A. No. A has an adequate remedy at law.

295. An action upon an instrument under seal reciting a consideration of \$10,000. Upon the trial one of the parties offers to prove that the consideration was not in fact \$10,000, but one hundred sheep valued at \$10 per head, and that he has tendered the 100 sheep, but that the other party refuses to accept them. The other party objects to the evidence. Is it admissible?

A. Yes. Parole evidence is admissible to show the actual consideration.

Hibbard v. Haughian, 70 N. Y. 54.

296. In a criminal proceeding the criminal escaped after trial and pending an appeal. After his escape his attorney presents to the trial court his case and exceptions for a settlement on the appeal. The judge refuses to settle the case and the attorney seeks mandamus to compel the judge to settle. The criminal was not recaptured. What are the rights of the parties, and will a writ of mandamus lie?

A. The prisoner has no rights.

People v. Genet, 59 N. Y. 80.

297. Upon a trial A proves that while he was law-

fully upon the highway, and through no negligence of his own, he was injured by the explosion of B's steam boiler, upon B's premises. This is all the evidence. A rests. B moves for a dismissal. Decision for whom?

A. There would probably be a presumption of negligence on B's part. See

Mullen v. St. John, 51 N. Y. 567.

Lyons v. Rosenthal, 11 Hun, 46.

Smith v. B & N. A. Pack. Co., 46 Supr. Ct. 86.

Geilack v. Eldenyer, 47 Supr. Ct. 292.

Clare v. Bank, 1 Sweeney, 539.

Ulrich v. McCabe, 1 Helton, 251.

McMahan v. Davidson, 12 Minn. 357.

298. Your client was sued in an action for goods sold and delivered. Calls on you and shows you a receipt in full. Draw your answer and set up the proper defense.

A. (Caption.)

(Title.)

The above named defendant by ————— his attorney, answering the complaint of the above named plaintiff, herein alleges that this defendant has paid in full the demand set forth in said complaint, and the sum therein alleged to be due.

Wherefore, defendant asks judgment that said complaint be dismissed with costs.

(Signature.)

(Verification.)

299. Plaintiff asks defendant whether he spoke to the plaintiff over the telephone. Answer, yes. What did he say? Objected to. Is the question admissible?

A. Yes. *The identity of the party is admitted.*

Compare Shear v. Van Dyke, 10 Hun, 528.

300. Of a four-page letter, pages 1 and 2 are offered in evidence. Plaintiff's attorney objects. What should be the ruling of the court?

A. *Objection should be overruled, but plaintiff can offer the rest of the letter.*

Grattan v. Met. Life Ins. Co., 92 N. Y. 274.

301. A person's dismembered body is found. What must the prosecuting attorney prove?

A. *The dismembered body is sufficient proof of death. The district attorney must prove criminal cause of the death.*

1 Bouvier Law Dict., "corpus delicti."

302. A sells B \$2,000 worth of steel on June 1, to be delivered July 1, and on June 15 B tells A that he cannot pay for the goods and does not want same. What are the rights of A?

A. *The word "sells" makes this a sale before delivery. A can (1) sue for the price; (2) sell it at market price and sue for the balance.*

303. A and B were married. B, the husband, had absented himself for five years. The wife, believing

B to have been dead, marries C. Thereafter the husband B returns. B does nothing. What are the rights of C?

A. He has none. The marriage is void, but not bigamous.

Pen. Code, Sec. 299.

304. An infant buys goods from a merchant. The goods were necessary and suitable to the station in life of the infant. Can the merchant recover from the infant? The goods were sold to the infant with the knowledge of the father.

A. Not where infant is living with parent.

Wailing v. Toll, 9 John. 141.

305. A makes a written offer to employ B for 10 months at \$100 a month. B telegraphs A that he accepts his offer and says that he will reduce the contract to writing at a day later. When B presents himself ready to perform under the contract, B finds A has employed C in B's stead. Can B recover?

A. Yes. Whether within the statute of frauds or not.

Sanders v. P. B. F. Co., 144 N. Y. 209.

306. Goods are transported by a common carrier to Buffalo. The train is derailed and train wreckers secure some of the freight. The owners of the freight sue the railroad company. Is the railroad company liable?

A. Yes. Common carriers are insurers against loss

except that caused by public enemies, an act of God, or some inherent quality in the goods.

307. A makes a note indorsed by B, payable three months after date at his bank. The note falls due on Saturday; the note is presented and protested for non-payment on that day. Both A and B set up the want of a legal demand and presentment. What do you think of the defense?

A. A good defense.

L. 1897, Chap. 612, Sec. 145.

308. A sues B on a note for goods sold and delivered and B sets up a general denial. During the course of the trial, which took place in June, 1897, it was shown that the note was due in 1890. Both parties move for judgment. What should the ruling be?

A. Judgment for A. Statute of limitations is an affirmative defense, and must be pleaded.

309. A executes a bond in favor of B. Thereafter C indorsed on the bond "I hereby guarantee the payment of the within bond." A defaults in payment, C is sued and B's attorney seeks to introduce that memorandum on the bond in evidence. Can he do so?

A. This is a sufficient memorandum if signed to bind guarantor, under the statute of frauds.

II Birdsey's Stat. (2nd ed.), p. 1343.

310. A pledges with B two diamond studs. B places one of the studs in his safe, and the other he wears in his necktie. Thereafter the stud in the safe is stolen,

and subsequently thereto, the one in the necktie was also stolen. A demands the return of the diamonds. Can he recover?

A. Pledgee is only responsible if he has been negligent. This is a question for the jury, depending on the facts of evidence. Plaintiff must show actual negligence.

18 *Am. & Eng. Enc. L.*, pp. 660, 661.

311. In one of the standard insurance policies there was a clause that read that if the insured property was incumbered in any way this policy should be null and void. After the issuance of the policy judgment was rendered against insured which was the result of a decision in a contested suit. Would this invalidate the policy? How would a confession of judgment by the insured under the clause against incumbrance affect the validity of the policy?

A. The provision against incumbrances includes only such as are created by act of the insured.

Baley v. Ins. Co., 80 *N. Y.* 21.

Confession of judgment will probably invalidate the policy. A special condition against incumbrance by judgment may be made.

Eagen v. Ins. Co., 5 *Den.* 326.

312. A has insured his life and makes his married daughter B his beneficiary. B died before the insured and then the insured dies. Who gets the insurance money?

A. A's personal representatives. B's right lapsed by her prior death.

313. A, the owner of property, appoints B his agent to collect the rent of certain premises. A thereafter dies and one of the tenants continues to pay the rent to B. B thereafter absconds. Can the administrator recover the rent that was paid to B (the agent) by the tenant?

A. Yes. Death revokes agency.

314. A clerk has made entries in a book kept for that purpose and made at the time of the transaction. He is called as a witness, but does not remember the entries, but remembers having made them. Is the book admissible?

A. Yes, if A testifies that he made the entries and he knew at the time that they were correct.

315. A marshal is elected to office for a three years' term. Thereafter the legislature increased his term to four years. Is this act constitutional?

A. It is not unconstitutional.

(1845) Opinion of Attorney General, 116.

316. A corporation desired to operate its road through the streets of A and is unable to secure the property owners' consent. Thereafter the corporation makes application for the appointment of commissioners, who decide that the company cannot operate its road through the streets of A. The Appellate Di-

vision affirms the report of the commissioners. Thereafter a special law is passed giving them the right to operate its road through the streets of A. Is the law constitutional?

A. *No.*

N. Y. Const., Art. III, Sec. 18.

317. A child is brought before a police magistrate, charged with a misdemeanor. What can the police magistrate do in carrying out the sentence of the court? State the rule as to children being charged with crime.

A. *A child under seven years is incapable of committing crime. Between seven and twelve incapacity is presumed which may be removed by proof.*

The magistrate can reject or accept the child's statement as to age, or can determine the same by personal inspection or by other evidence, or may direct an examination by physicians.

Pen. Code, Secs. 18, 19.

See Penal Code, Sec. 713, as to sentence of minor.

318. A and B are tenants in common. A quit-claims to X, and B quit-claims to X and Y, his wife. After the conveyance to the husband and wife the husband dies, leaving wife and a child. State how the property was held by X and Y, and how the property should be divided.

A. *X and Y as tenants by the entirety in one-half hold as tenants in common with X.*

Fowler's Real Prop. Law, pp. 227, 228.

Hence on X's death Y holds one undivided half in fee, and has dower in the other half. Child takes the rest.

319. On June 21 A publishes in the Sun a reward of \$1,000 to any person who captures a certain thief. On the 22nd of June A publishes in the Sun a revocation of his offer. On the 23rd of June B captures the thief. He now claims the reward. Can he recover?

A. No. Offer is withdrawn before consideration is performed.

320. An agent having a sample in his possession warrants the goods to come up to the sample. When A, a purchaser, is sued for the purchase price, and he sets up the breach of warranty, the plaintiff sets up that the agent had no authority. Is his defense to the counterclaim available?

A. Agent selling by sample has the implied power to warrant.

321. A will is signed by the testator, whose witnesses do not sign in the presence of each other. A question is raised as to the validity of the will. Are the objections good?

A. No. Witnesses need not sign in the presence of each other.

3 Birds. Stat. (2nd ed.) p. 3510.

322. A feloniously in the night time burns a dwell-

ing house of B. By reason of a heavy wind the sparks are communicated to the house of A, which resulted in its destruction. Thereafter A is charged with arson and indicted for having burned the house of C, his wife. Is this error fatal to the indictment, and state the nature of the defense you would interpose if you were called in to defend the prisoner?

A. See Penal Code, Sec. 491.

Woodford v. People, 62 N. Y. 117.

323. A owns property abutting on a non-navigable stream. He conveys the land to B. Does B get the property to the middle of the stream?

A. Yes. A deed conveying property abutting on a non-navigable stream conveys land to middle of stream.

324. A makes a contract with B, executed according to the laws of Massachusetts, but obligatory in this State, by our decisions. A sues B for breach of contract and seeks to introduce in evidence this contract. Can he do it?

A. It is admissible whenever a contract executed according to the laws of the State would be admissible.

325. A is employed by B as agent. Thereafter A is discharged. Subsequent to this discharge, A buys goods from C in the name of B and then absconds with the goods. Is B liable for the value of the goods?

A. If the purchase came within the apparent scope

of A's previous authority. B must give notice of the discharge to free himself from liability.

326. A and B are copartners and employed C and agreed to give C 10 per cent. of the profits as commission. Thereafter X sells a bill of goods to the partnership, and in default of payment seeks to hold A, B and C. Is C liable as a partner?

A. Mere sharing of profits does not create a partnership. The above is merely one method of paying an employee.

327. A and B are in partnership. A being an infant at this time, C sells \$5,000 worth of goods to the partnership. Thereafter A arrives at his majority, and B having been instructed by A not to purchase any more goods of C, buys another \$5,000 worth of goods. A consults you. What are his rights?

A. has no rights as against C, each partner having full power to contract for the firm. In an accounting with B, A might, however, set up any fraud or breach of partnership duty committed by B.

328. A is dismissed from the police force by the police commissioners without a fair hearing. He consults you. State the proceeding you would take in the matter.

A. Certiorari.

Code Civ. Pro. Sec. 2120 et seq.

People ex rel. Grogan v. York, 51 App. Div. 502.

329. You find one of your most important witnesses locked up in jail, and it is absolutely necessary to produce him as a witness. State how you would proceed.

A. Get writ of habeas corpus to testify.

Code Civ. Pro. Sec. 2008 et seq.

330. An executor sells 100 shares of stock to B. B demands that the corporation place his name upon their books as a shareholder, which is refused by the corporation. Has the corporation the right to refuse to recognize the demands of B? If so, why, and state your reasons?

A. Corporation cannot refuse unless the stock was not fully paid up.

L. 1892, Chap. 688, Sec. 40.

331. A sells B a horse in the presence of C, who is the owner. C remains quiet at the time of the transaction. He now seeks to set up his title as against the purchaser. Can he do so? What principle is involved?

A. No. Estoppel in pais.

11 Am. & Eng. Enc. L. (2nd ed.), p. 442.

332. A goes to Europe. During his absence B represents himself to be A, and forges A's name to a deed, and conveys the property to C. Thereafter A returns from Europe and finds C in possession. He brings an action against C to compel the defendant to cancel the record of the fraudulent deed as being a cloud upon the title, and that the deed be delivered up to him, and

further equitable relief. C sets up the plea that A should have brought his suit in ejectment and not proceeded in the manner in which he had. State the validity of C's plea.

A. This deed having been properly acknowledged, to entitle it to record is a cloud on the title and the defense is bad.

Remington P. Co. v. O'Dougherty, 81 N. Y. 474.

333. A and B are husband and wife and are living together. The wife goes to the grocer and individually agrees to be responsible for the debt contracted. Can he recover in default of the wife against the husband?

A. No.

Byrnes v. Rayner, 84 Hun, 199.

334. A and B, husband and wife, are joined as co-defendants, A's wife having uttered a slanderous statement. What is the theory upon which the attorney for the plaintiff seeks to make A and B co-defendants?

A. The theory is that statutes changing common law will be strictly construed and that the common law disabilities incident to the relation of husband and wife still exist except in so far as they have been swept away by express enactment.

Dean v. M. E. R. Co., 119 N. Y. at p. 547.

However husband is not necessary or proper party here.

Code Civ. Pro. Sec. 450.

335. State in what cases the verification of a plead-

ing may be made by the agent or the attorney for the party pleading. Draw the verification of a complaint made by an attorney.

A. *See Code Civ. Pro. Sec. 525, p. 3.*

(*Venue.*)

— — —, *being duly sworn, says that he is the attorney for the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true to deponent's knowledge except as to those matters therein stated to be alleged on information and belief, and that as to these matters he believes it to be true. That the grounds of deponent's belief as to the matters not stated upon his knowledge are (give sources of his information); that the reason this verification is not made by the plaintiff is (state one reason in Code Civ. Pro. Sec. 525, Sub. 3.)*

(*Jurat.*)

336. A, a resident of Connecticut, sues B, your client, a resident of New Jersey, as maker of a promissory note, naming the county of New York as the place of trial. Can you, and if so, on what grounds procure a change of the place of trial?

A. *No, unless facts specified in Code Civ. Pro. Sec. 987, appear.*

See Code Civ. Pro. Sec. 984.

337. A, on his return from Europe, found a judgment by default entered against him on affidavit of personal service of summons and complaint. In fact, there was no personal service. A does nothing for a

year, and then comes to you. What would you advise him, and what would you do, if anything?

A. *Advise that the judgment can be vacated.*

Furman v. Furman, 153 N. Y. 309.

338. Your client sues an infant for personal injuries, for an assault, and alleges \$5,000 damages. The summons is served on the infant and he defaults. Describe the procedure necessary to get judgment.

A. (1) *Have guardian ad litem appointed.*

Code Civ. Pro. Sec. 1218.

(2) *Apply to court for judgment.*

Code Civ. Pro. Sec. 1215.

(3) *Inquisition to ascertain damages.*

Code Civ. Pro. Sec. 2103 et seq.

339. On Feb. 1, 1898, C, a judgment creditor of A, docketts a judgment against A for \$10,000. On March 1, 1898, B sells realty to A for \$10,000, taking back from A a purchase money mortgage for \$5,000, which he duly records. C claims that his prior judgment takes precedence over B's mortgage. Advise B of his rights. Give rule.

A. *A purchase money mortgage takes precedence over a prior judgment.*

Code Civ. Pro. Sec. 1254.

340. A landlord leases premises to a tenant for one year, rent payable monthly. Tenant goes into possession, and after six months landlord allows a nuisance to exist on the premises, which renders them untenant-

able. Tenant ceases to pay rent after the beginning of the nuisance, but stays in possession until the end of the year, when the landlord sues him for the unpaid rent. At the trial attorney for the tenant requests the court to charge the jury as follows:

(a) To create an eviction it was necessary for tenant to surrender the premises.

(b) That landlord cannot recover rent which accrued after the creation of the nuisance.

(c) That even if landlord can recover such subsequent rent tenant has a counter-claim for damages against the landlord.

If you were the judge, how would you charge the jury on these three propositions?

A. *Refuse each charge.*

Edgarton v. Page, 20 N. Y. 281.

341. A, the owner of real property on which B holds a mortgage of \$2,000, gives a warranty deed, in which his wife joins, to C as security for \$1,000 prior indebtedness and for future advances which C may make, C agreeing by the terms of the deed to assume payment of B's mortgage. C quit-claimed to D in consideration of D's agreement to pay the \$1,000 due C from A. D knew the terms of the transaction between A and C, in which title was not intended to pass. D claims that C must pay B's mortgage, and B claims that C is liable for any deficiency on a foreclosed judgment of his (B's) mortgage. C declared: "I have neither received a nickel and I won't pay one to anybody." What is C's liability?

A. C must pay B's claim.

Laurence v. Fox, 20 N. Y. 268.

342. A conveys realty to trustees to collect the rents and profits and pay a certain portion for the support of B, his infant son, then eight years old, until infant arrives of age, the remainder of the income to be accumulated until B is of age, when the realty and the accumulations thereon are to be paid over to C and D in fee. B died at the age of 18. In whom and when does the legal estate vest, and who is entitled to the accumulations in the hands of the trustees at death?

A. Legal estate vests in C and D, and they are entitled to all accumulations.

L. 1896, Chap. 547, Sec. 53.

343. A promises to marry B next Christmas. Six months before Christmas he marries C. B immediately sues A for breach of promise to marry, without alleging demand on her part that A should perform, or that she is ready and willing to perform. A comes to you. What would you advise him?

A. Where the defendant has voluntarily placed it beyond his power to perform, action may be begun at once without demand.

344. A hires as private secretary B for one year at \$1,200. After having worked six months B died and his executors sue A for \$600. A sets up as a defense that the contract was entire and alleges non-performance. Rights of the parties, and reasons?

A. They can recover on a quantum meruit.

Wolfe v. Howes, 20 N. Y. 197.

The contract price is some evidence of the value of the services. Possibly in the case of a private secretary a ratable proportion of the contract price can be recovered.

Clark v. Gilbert, 26 N. Y. 279.

345. A and B are partners on June 1, 1880, and on that day make their joint note to C for three months in payment of a firm debt. On Jan. 1, 1881, they dissolve partnership. On Jan. 1, 1885, B told C that the firm would pay the debt. On Jan. 1, 1888, C began an action against A and B jointly on the note. Set up as a defense the statute of limitations. C got judgment against both. A appeals. Is the appeal good?

A. A verbal promise will not take a case out of the statute of limitations.

Code Civ. Pro. Sec. 395.

As to right of one partner to bind the firm after dissolution, see Forbs v. Garfield, 32 Hun, 389.

346. State the rule as to the disposition of partnership realty as to firm creditors, as to individual creditors, as to the heirs of a deceased partner. (a) X and Y are partners in a firm, in which part of the assets is realty. A few days before the time for the expiration of the partnership, X brings an action for the partition of the realty. There has been no accounting. Can X succeed? Reasons.

A. Partnership realty is considered as personalty

until all debts are paid. It goes, first to pay firm creditors; the balance is considered realty, and goes to the heirs, but can be reached by the individual creditors. Being considered as personalty, it cannot be partitioned in the absence of an accounting.

MacFarlane v. MacFarlane, 82 Hun, 238.

347. A grants a power of attorney to his agent in London to execute a certain contract with C. On the 30th day of June, 1895, B properly executed the contract with C. A had died on the 29th day of June, but neither party knew of it. What are the rights as to C and the representatives of A?

See Huffcut's Anson on Contracts, p. 435.

348. An executor continues his testator's business under the authority of the power of the will to that effect. Is he personally liable for the debts contracted in the business?

Peirson v. Murtha, 18 App. Div. 274.

349. A board of public officers had the granting of a certain contract to which your client is legally entitled; the board, however, granted the contract to another. What would you advise?

Sec. 2120, Code Civil Procedure.

350. What are the different kinds of mandamus and define each.

Sec. 2067, Code Civil Procedure.

351. When is the husband liable for the torts of his wife?

See Gilbert on Domestic Relations, p. 130.

352. A engages B, a broker, to sell a certain piece of property at a certain price; afterwards A sells it to C, a friend of his; the next day B brings a purchaser willing to buy at a stipulated price. What are B's rights against A?

Moses v. Helmke, 18 Misc. 357.

353. A in New York writes B in California, making a proposition of contract; upon receipt of the letter B mails answer accepting proposition. The next day B telegraphs A, rejecting the offer. The telegram and letter reach at the same time. What are the rights of the parties?

See Vassar v. Camp, 11 N. Y. 441.

Howard v. Daly, 61 N. Y. 362.

Trevor v. Wood, 36 N. Y. 307.

354. An attorney was renting an office in a building. During the occupancy the owner rents adjoining rooms to printers, and the noise of the presses is such that the attorney cannot do his work at all and drives him out of his office. He remains until his lease expires, and in an action by the landlord for his rent sets up the defense of eviction. Judgment for whom?

Thompson v. Lansing, 8 App. Div. 54.

355. A sues B and C for damages for assault and

battery committed by the two jointly. On recovering judgment he issued execution and recovers the whole amount from B. What right, if any, has B against C? State the general rule.

Hurley v. N. Y. & B. Brewing Co., 13 App. Div. 167.

356. A purchased cigars from the Admiral Cigar Co. in N. Y.; cigars to be according to sample. A keeps the cigars, says nothing and in an action for their price judgment is taken against him by default, which judgment he pays. A afterwards buys other cigars, which are according to sample, and in an action for their price sets up his damages on a former shipment as a counter-claim. Can it be maintained?

Felix v. Devlin, 50 App. Div. 331.

357. A purchases goods from B, B relying upon the oral promise of C that if A does not pay for the goods, C will pay for them out of money of A's in his possession. A does not pay for the goods. B looks to C for payment; prior to this C has given to A all his money. What are the rights of the parties?

Cahill Iron Works v. Pemberton, 48 App. Div. 468.

358. A woman sues a corporation for personal injuries. Has her husband any further action, and if so, for what?

Bloerhenski v. Howard Mission, 130 N. Y. 497.

359. A sells a farm to B for \$10,000; B does not record his deed, but goes into actual possession. Afterwards A sells the same property to C for \$8,000. C records his deed. Who owns the farm?

See Real Property Law, Sec. 241.

Raynor v. Timerson, 54 N. Y. 639.

Page v. Waring, 76 N. Y. 463.

360. A gives note to B, no interest being specified; B adds interest thereto and conveys the same before maturity to C, *bona fide* holder. Can C enforce the note against A for principal and interest?

Eaton on Negotiable Insts., pp. 30, 31, 104, 105.

Negotiable Instruments Law, Secs. 33, 205, 206.

361. A has lost certain property and offers a reward of \$500 to the finder. B, who knows nothing of the reward, finds the property and returns it to A. Afterwards learning that a reward has been offered, he brings an action against A for the reward. Judgment for whom?

Fitch v. Snedaker, 38 N. Y. 248.

Howland v. Lounds, 51 N. Y. 604.

362. A hired B by oral agreement to make 4 carriages for him for \$400, to be finished and delivered in 6 months. B is to do the work and also to furnish the materials, carriages to be made in a way A has directed. B does not perform. What are the rights of

the parties? Is the contract within the statute of frauds?

Nugent v. Braker, 34 App. Div. 123.

363. A holds himself out to be a partner to B and C, which he is not; D gives credit to the firm without knowing anything about A's claim to partnership. State A's liability generally to the creditors of the firm, and is he liable to D?

Elliott v. Vallaro, 16 App. Div. 630.

Griffin v. Carr, 21 App. Div. 51.

364. State the legal presumption as to the responsibility of an infant for a crime.

Sec. 18, Penal Code.

365. A recovers judgment against B, then learns that prior to the judgment B has conveyed his property to his wife for a nominal consideration. A consults you; what would you advise? State the rights of the parties.

A. Judgment may be set aside.

366. A brings an action against B for conversion of property. Judgment for B on grounds that the transaction is a sale. Can A afterward maintain an action for the value of the property?

A. A may maintain an action for the value of the property.

367. P claims to be a partner with D; can book-

keeper testify as to whether or not there is any entry on the books which admits or denies the fact of partnership?

Foster v. Perish, 68 N. Y. 400.

368. A made a contract with B by which for a certain price A was to repair the boiler in B's factory, price to be paid when the boiler as fixed has proved to B's satisfaction to be a success. The boilers were fixed and B used them for a reasonable time without objecting. In an action for the price B defends on the grounds that the boilers were not satisfactory. Can A recover?

West v. Banigan, 51 App. Div. 328.

369. In an instrument partly written and partly printed there is a repugnance between the written and printed portion. Which will prevail?

Collins v. Knuth, 51 App. Div. 188.

370. A pulsometer pump is sold for \$600 by an agreement in writing. After use one month it is found that it will not throw from the bottom of the mine for which it was purchased to use in. Suit is brought for the purchase price. May an oral warranty be shown to the effect that it would carry water from the bottom to top of the mine?

Dillon v. Anderson, 43 N. Y. 231.

Craighead v. Peterson, 72 N. Y. 279.

371. A is on trial for murder. The judge, under

objection of district attorney, excludes evidence of A's wife given in his behalf. Will conviction stand upon appeal?

Sec. 715, Penal Code.

372. A, one of three endorsers upon a note, has had to pay the same. In suit against the others may A show this relationship by parol evidence? The three endorsers at the time of endorsement made an oral agreement among themselves to be co-sureties.

Sec. 118, Negotiable Instruments Law.

Eaton on Negotiable Instruments, p. 68.

373. The foreman takes to the bookkeeper each night their accounts of work and materials, which are being sued for. The foreman testifies that they never saw the bookkeeper's books. Are the latter admissible in evidence?

A. After proof that the foreman's accounts were correctly entered by the bookkeeper the books will be admissible in evidence.

374. When are dying declarations admissible? Theory of same.

Waldael v. R. R. Co., 19 Hun, p. 69.

People v. Shaw, 63 N. Y. 36.

375. In drawing a panel in a murder case A is one whom you desire to have on the jury, has formed an opinion favorable to your side. What would you do to get him on the jury?

Sec. 239, Criminal Code.

376. A man goes down a chimney by means of a

rope-ladder, takes a gold watch and returns by the same way. No displacement is made. Motive of crime, if any crime, what is it?

Secs. 498 and 499, Penal Code.

377. When may a private person arrest?

Sec. 183, Criminal Code.

378. A, the owner of a building, erected the same knowing that the elevator shaft was defective. B, an employee of A, was riding up the same in course of his duty when the engineer gave it a sudden start, which, together with its defective condition, caused it to fall and injure B. Rights of B?

Schermerhorn v. N. Y. C. & H. R. R. R. Co., 23 App. Div. 17.

Gardineer v. Frederick, 25 App. Div. 521.

379. A and B, minors, together assault C. A's father settles with C for \$100 for A. C assigns his rights against B to D, who brings action against B, your client. What would you advise?

A. Pulver v. Harris, 52 N. Y. 73. The action in tort cannot be assigned.

Sec. 1910, Code Civil Procedure.

380. Your client is induced to buy stock by misrepresentation of A, which turns out to be untrue and to the injury of your client. Your client tells you that A was sincere in his expressions. Any remedy against A?

Warren v. Union Bk. of Rochester, 28 App. Div. 7.

Delaney v. Valentine, 154 N. Y. 692.

381. Your client is left realty encumbered by mortgage by his intestate. He wishes to call upon the administrator to pay the mortgage. State rule of law.

382. A draws a check on First National Bank for \$100. He indorses and transfers it to B for value. B indorses and transfers it to C for value. C indorses and transfers it to D for value, all within a reasonable time. The following day D presents it to the bank and has it certified. The next day the bank fails. State the extent of the liability of all the parties.

A. Certification discharges drawer and indorsers.
L. 1897, Chap. 612, Sec. 324.

383. A signed a note as surety, and underneath his name wrote "Utica, N. Y." At maturity the note was not paid, and the notary who protected it, knowing A's residence and place of business was at Rome, mailed the notice of protest to A, 22 Castle St., Rome, N. Y. A never received it. Is A liable? Why?

A. No. L. 1897, Chap. 612, Sec. 179.

384. A, a farmer, engaged B, a broker, to sell his farm, and agreed to pay 5 per cent. commission. C, at about the same time, also engaged B to look up a farm for him and agreed to pay B 5 per cent. commission. B brought A and C together, and they closed the transaction. Neither party knew that B was acting for the other. B charges both A and C the 5 per cent. commission, and they both refuse to pay it after they find

out the above facts. B comes to you for advice. What would you say? State the general rule.

A. B can recover from neither.

Knaus v. Brewing Co., 69 Hun, 46.

385. A sends B, his servant, with a horse of A's to C with instructions to sell the horse to C for \$500, but in no case to take any money from C. B sells the horse to C for \$400 and makes away with the money. C knows nothing of the instructions to B. What are the rights of A against C, and give the reasons for your answer.

A. No decisions. It is a question of agency and not of master and servant. (14 Am. & Eng. Enc. Law, p. 804.) This is a case of special agency. Usually power to sell, coupled with possession of goods, implies power to receive payment; but quaere as to a special agent.

See 1 Am. & Eng. Enc. Law, pp. 351, 356.

386. A and B are co-sureties on a debt of C to D of \$12,000. C fails to pay. A pays to D \$8,000, and begins action against B for \$4,000 contribution. At this stage of the proceedings what, if any, are the rights of A against B? Reasons.

A. A can only compel B to pay him \$2,000; but can compel him to contribute the other \$4,000 to D. It is a proceeding in equity.

See De Colyar's Law of Guarantees, Principal and Surety, Chap V, III (2nd Ed.).

387. A is a *bona fide* holder of a note for one year, signed by B and C, apparently as joint makers, and

does not know that C is only surety for B. A extends the time of payment for another year on consideration that B give A a chattel mortgage as additional security. What are the rights and liabilities of C? Reasons? State the general rule.

A. C is not released. As against a bona fide holder he is a joint maker, and would not be released by an extension of time to his joint maker. Ordinarily a contract with the maker by payee to extend time of payment releases a surety.

388. A takes out a policy of life insurance and makes B, his wife, the beneficiary. In the application is a question, "Are you married, and if so, to whom?" He answers, "Yes, to B," and warrants in writing that his answers are true. The policy contains a clause that if there are any false statements in the application the policy shall be void. In fact, A is living with B under a contract of marriage, but she is the wife of another man still living. A dies. The company refuses to pay. Can B recover? What point would determine the liability of the company?

A. B can not recover; it is a breach of warranty.

Dwight v. Germania Life Ins. Co., 103 N. Y. 341.

389. On Jan. 1, A insures his stock of goods in the store at 101 Salina St., Syracuse, for one year. In June he closes out his stock at retail, shuts up the store, and goes to the seaside for the summer. In September he returns, puts in an entirely new stock, and opens the

store. In October the entire stock is burned, and the company refuses to pay. What are the rights of A? Give your reasons.

A. The general rule that a policy on stock in trade covers subsequently acquired stock as a "shifting risk" should not apply here. (No decisions found.)

390. A buys an overcoat for \$50 and takes it to a furrier, who agrees to furnish furs and line it for \$150. After the furrier has completed the job and the coat is ready for A, C, a creditor of the furrier, levies on the coat. C offers to pay A \$50, the value of the coat before any work was done on it. A refuses and sues C for conversion, alleging \$200 damages. To whom does the coat belong? If judgment for A, for how much?

A. Title in the fur passed to A when affixed to the coat. Consequently the measure of damages is the value of the article.

See Johnson v. Hunt, 11 Wend. 135.

391. A takes some gold to B, a jeweler, who agrees to make it into a chain for \$100, the money to be paid 30 days after the completion and delivery of the chain. When the chain is completed, A demands it of B, but the latter refuses to give it up until he gets his pay, claiming an artisan's lien thereon. Rights of A and B? State your reasons.

A. B is estopped by his agreement from setting up his lien.

392. A buys of B, who sells through an agent, 10

bales of tobacco, warranted to be of a certain quality. They prove not to be of the quality warranted, but A, knowing the facts, accepts and sells them to third parties. B sues for the purchase price; A sets up breach of warranty as a counter-claim. Rights of A? State general rule.

A. In a warranty, purchaser can (1) rescind contract, or (2) accept and sue for breach of warranty, or (3) set up breach of warranty as a counter-claim.

393. A agrees by a valid contract in writing to deliver 1,000 tons of iron to B in lots of 100 tons each on ten successive days for a specified price per ton, B agreeing to furnish security for the purchase price of the whole amount before the first delivery. Five lots are delivered on five successive days, but B pays cash for each lot as it is delivered, and no security is given, as agreed. On the sixth day iron advances in price and A refuses to complete the contract. B then offers A the purchase price of the remaining 500 tons, which is refused. Rights of the parties and reasons?

A. A, by assenting to B's failure to give security, appears to have waived the breach. He must therefore perform on his side and rely on damages to be recovered from B if there be any. On A's breach B can buy in open market and sue A for the difference.

7 Am. & Eng. Enc. Law (2 Ed.) p. 154.

394. A agrees by a valid contract in writing to sell B 30 days from date a pump, called a pulsometer pump, for \$500, payable on delivery, the pump to be used to

pump water from a mine. The pump was delivered and paid for. B tried the pump, but it did not work satisfactorily, and sued A for breach of an oral warranty that the pump would throw water to the surface from the bottom of a shaft 500 feet deep. On the trial B offered evidence of this parol warranty made by A at the time the contract was made. A's counsel objects to the proof of the warranty on the ground that it is seeking to vary a written contract by parol testimony. Is proof of the warranty admissible, and if so, why?

A. Yes. It does not vary the terms of the written contract of sale. Each is part of a parol contract.

Chapin v. Dodson, 78 N. Y. 74.

395. A is on trial for murder. His attorney puts his wife on the stand as a witness for him. The district attorney objects to her competency, and the objection is sustained by the judge. A is convicted and his attorney appeals on the ground that the court made an error in excluding the testimony of A's wife. Is the appeal good, and reasons?

A. Wife is a competent witness, so appeal is good.

Pen. Code, Sec. 715.

396. A, B and C are the successive indorsers on a promissory note for \$300. At maturity the note is not paid, and A pays it. A then sues B and C each for \$100 contribution, and offers in evidence a parol agreement made by A, B and C at the time of the in-

dorsement that there should be contribution between them. Is the evidence admissible?

A. Indorsers can agree among themselves to stand loss equally, and evidence should be admitted.

397. A is a foreman and B is a bookkeeper of X, a corporation, which is suing C for goods made, sold and delivered. Plaintiff offers in evidence entries on the books of X, and, to prepare the way, calls A, who swears that he does not remember the transactions, but that he always reported correctly to B each day the bills of goods made and delivered. B is called, and swears that he does not remember the transactions, but that he always entered correctly in the books the reports of A. Are the entries admissible? Why?

A. If the bookkeeper testifies that the entries are in his own handwriting, that they were made immediately upon the foreman's report and are correct copies of those reports, the books will be admissible.

398. When, as a general rule, are dying declarations admissible in evidence? Why are they admitted, and on what ground? What circumstances are essential to their admissibility?

A. See Stephens' Digest (Evidence), (2nd Am. ed.), Art. XXVI.

A dying man is presumed to tell the truth.

399. A climbs upon the roof of a dwelling and by means of a rope ladder climbs down the chimney and into the house without disturbing any article of furni-

ture, takes a \$100 gold watch and retires as he came. Of what crime or crimes is he guilty?

A. *Burglary.*

Pen. Code, Sec. 499.

400. You are the attorney for the defense in a murder trial. A is called as a juror and the district attorney shows by his preliminary examination that A has formed and expressed in public an opinion as to the guilt of the defendant. You are quite sure that he would be favorable to your client, and are anxious to retain him. How would you proceed?

A. *Pen. Code, Sec. 376, Sub. 2.*

401. In what cases may a private person arrest another?

A. (1) *For a crime committed or attempted in his presence.*

(2) *When the person arrested has committed a felony, although not in his presence.*

Pen. Code, Sec. 183.

402. A and B, two minors, assault C, who claims \$100 damages from each. A's father pays C \$100, which C accepts in full settlement against A, and gives a written release. A assigns his claim against B to D, who sues B. State how many and what defenses B would set up?

A. *There is no contribution between tort feasons.*

403. A tells B that the stock of a certain corpora-

tion is a safe and good investment, honestly believing that what he said was true. B, relying on the statement, buys some of the stock. It is worthless, and B loses his money. B comes to you for advice, and you find the facts as above. What advice would you give?

A. I would advise B that he has no rights. A simply gives his opinion and does not in any way warrant the value of the stock.

404. A died intestate, leaving mortgaged realty, and B, his only heir at law. B demands that the administrator pay off the mortgage. What is the New York law in this case?

A. See L. 1896, Chap. 547, Sec. 215.

Common Law, contra.

405. You are the attorney for the proponents of a will, in which one of the subscribing witnesses is dead, and the other does not remember the transaction. What would you do?

A. See Code Civ. Pro. Sec. 2620.

406. A makes a will, devising his house and lot to his son John, and the residue of his property to his daughter Jane. Later he sells the house and lot for cash, which he deposits in a bank separate from his other money, and leaves it intact. A few days later he dies. To whom does the cash belong?

A. To Jane, the residuary legatee.

408. The will of A gives the legal title of all his

property, both real and personal, to different legatees and devisees, but there is an obscurity as to the identity of some of the parties intended to take the real estate. B, who claims to be one of the devisees, commences an action for the judicial construction of the will, making the other devisees and legatees defendants. The executor and the other beneficiaries demur on the ground that the facts do not constitute a sufficient cause for action. Is the demurrer good? What principle of jurisdiction is presented?

A. A judicial construction will not settle the identity of the beneficiary. B should begin an action under Code Civ. Pro. Sec. 1819.

408. The testator bequeathed his personal estate in trust, and after authorizing the expenditure of a certain sum out of the rents for the support of a minor child, the testator directed that the unexpended income should be added to the capital of the trust fund, and that the income of the whole fund should be payable to the child after reaching the age of 21. The testator then directed that on the death of the child the whole fund, including the accumulation of unexpended income, should be paid to the other persons named in the will. On becoming of age the child consults you. What are his rights?

A. He has a right to the income given him by the will.

L. 1897, Chap. 417, Sec. 4.

409. A and B, adjoining property owners, by mutual

covenants agree not to build within thirty feet of the street. A builds within thirty feet of the street without objection or molestation by B. Later B starts to build within thirty feet of the street, and A comes to you to know if he can prevent B from so building. What would you say? What maxim of equity is involved?

A. A can not prevent B. "He who seeks equity must do equity;" or, "He who comes into equity must do so with clean hands."

410. The common council of the city of X has 20 members and is authorized by the charter to issue bonds on the city. At a regular meeting duly called for the purpose of authorizing the issuance of certain bonds, there are present 11 members. Six voted to issue bonds, three voted in the negative, and two are recorded as not voting. The bonds are issued. Are they valid, and why?

A. This is regulated by each particular charter.

411. The N. Y. statute requires the certificate of incorporation of a corporation to be signed by a justice of the Supreme Court, and a copy filed with the secretary of state, and also a copy with the county clerk. B contracted with X, as a corporation, and now seeks to hold the stockholders individually liable as copartners, on the ground that the corporation was never legally incorporated. The corporation had failed to file a copy with the county clerk. Are the stockholders liable as copartners? State the rule governing.

A. The weight of authority seems to be that where

a supposed corporation is doing business as a de facto corporation the stockholders can not be held liable as partners.

See Seacord v. Pendleton, 55 Hun, 579.

412. A girl 15 years of age, while living with her parents, marries B, aged 20, without the consent of her parents. The mother brings an action against B to annul the marriage. B demurs on the grounds that (1) the complaint does not state facts constituting a cause of action, and (2) that the mother cannot bring the action. What would be your ruling on each of these points?

(a) Suppose that B had brought the action on the ground that A was only fifteen years old at the time of the marriage, could the action be maintained?

A. (1 and 2) *Demurrer overruled.*

(a) *No.*

Age of consent is 18 years.

L. 1896, Chap. 272, Sec. 4.

Code Civ. Pro. Sec. 1744.

413. A and B, husband and wife, are living in a state of separation, but no decree of a court has been made in reference to their marriage. B has possession of the only child of the marriage, a minor, and the husband wishes to get control of it, and comes to you.

(a) What would you do?

(b) Where would you apply?

(c) What circumstances would control as to the disposition of the child?

A. Begin an action in the Supreme Court for the possession of the child.

The whole question is, what do the child's best interests demand?

414. X, a telegraph corporation, with the consent of the highway commissioners, but without the consent of the property owners, placed their telegraph poles in a highway, the fee to which was in the adjoining property owners, subject to the usual right of the public in highways. C, an adjoining property owner, comes to you for advice. What would you advise him as to his rights? Is there any remedy to the owners, and if so, what?

A. Yes. They have action for damages. Sometimes injunction is allowed. Usually not.

See L. 1890, Chap. 566, Sec. 102.

Tracy v. R. R. Co., 54 Hun, 550.

415. A district attorney has entered upon the duties of his office, having received a smaller number of votes than you, the opposing candidate. What proceedings would you take to obtain your rights?

A. Code Civ. Pro. Sec. 1948.

416. Draw complaint in county court, asking judgment for the highest amount there obtainable for personal services.

A. Highest sum obtainable is \$2,000.

Code Civ. Pro. Sec. 340.

Form of complaint same as in Supreme Court, ex-

cept caption, which will be "County Court, _____ County." Allege that defendant is indebted to plaintiff in the sum of \$2,000 for work, labor and services.

417. A warrant for A is issued in Erie County and executed in Oneida. A demands the right to be taken before a magistrate and ask for bail in Oneida County; the constable who made the arrest refuses. If you were A's attorney, what proceedings would you take? (Crime was burglary in second degree.)

A. Crim. Code, Sec. 158.

418. A has been sued in an action in ejectment and beaten. His attorney failed to take any exceptions on the trial. A desires a new trial. What are his rights?

A. Code Civ. Pro. Sec. 1525.

419. An attachment is issued against the property of A, a non-resident. The sheriff levies upon three out of six piles of lumber belonging to A in Oswego, N. Y. Judgment is obtained against A, and the three piles of lumber are not found sufficient to satisfy the execution. The sheriff levies upon the remaining three piles. The sheriff is sued for conversion, also plaintiff in action. What are the rights of the parties?

*A. It depends on method of service of the summons.
Code Civ. Pro. Secs. 1370, 707.*

420. A sheriff levies upon \$50 in gold and \$40 in silver under execution. Your client is the judgment creditor, and asks the sheriff immediately to deliver

the money to him. The sheriff refuses. Rights of the parties ?

A. *Code Civ. Pro. Sec. 1410.*

Muscott v. Woolworth, 14 How. 417.

421. A sells a farm to B by deed, upon which there is at the time eight cords of four-foot wood, piled in the woods, and a quantity of manure. A sues B for wrongfully retaining possession of the wood and manure, claiming an oral agreement on part of B to allow him to obtain the wood and manure. Rights of the parties ?

A. *The wood is personalty and belongs to the vendor without any agreement.*

Tiedeman, Real Prop. Sec. 2 (2nd. Ed.).

The manure is a part of the realty.

The oral agreement to remove the wood is enforceable within a reasonable time.

Tiedeman, Real Prop. (2nd Ed.) Sec. 652.

Contract as to the manure is not enforceable. It is an exception of part of the realty (Tiedeman, Real Prop. [2nd Ed.] Sec. 843), and must be excepted by the deed or a separate contract valid under the statute of frauds.

L. 1896, Chap. 547, Secs. 207, 224.

422. A sells to B by deed 10 acres of land surrounded on three sides by A's land and on the fourth side by C's. B claims a right to a way over A's land. Rights of the parties ? Afterward B buys land of C

and has easy access to road, but still claims right to pass over A's land. Rights?

A. An easement by necessity, which ceases on the termination of the necessity.

Tiedeman, Real Prop. (2nd Ed.) Sec. 609.

Insler v. Milner, 1 Barb. Ch. 352.

423. A, the wife of B, and C are tenants in common of certain real estate. C deeds his right therein to B, the husband of A. A and B have a child, D. A dies intestate. What respective shares do B and D take?

A. Tenancy by entirety must be created by the same deed. Hence A and B are tenants in common. B has one individual one-half in fee and dower in A's half. The child has the rest.

424. A gives a note to B, of which the following is a copy:

"Rome, N. Y., Jan. 17, 1897.

Thirty days after death, I promise to pay to B six thousand dollars for value received.

(Signed) A."

B is the son of A, and after A's death sues the personal representatives of A for the amount of the note. Rights of the parties?

A. Carnwright v. Gray, 127 N. Y. 92.

425. A enters into an oral agreement with B, by which B agrees to clear a certain wood lot in 18 months. B works six months and is arbitrarily discharged by A, who claims that their contract is void under the

statute of frauds. What are the rights of the parties, and what damages can B recover, if any?

A. *The contract is valid.*

Plimpton v. Curtise, 15 Wend. 336.

426. A buys goods of C, and gives his promissory note therefor in payment. A is a member of a partnership of which B is also a partner, and the goods above named are used by the partnership. At the time of the sale C did not know of the existence of the partnership. He sues B for the value of the goods. Rights of the parties?

A. *C cannot sue B alone, but all the partners. The firm is liable.*

Galway v. Nordlinger, 4 N. Y. Supp. 649.

427. A and B entered into an agreement by which A is to stock his farm and B is to carry it on, furnishing all the labor for one year. A and B are then to divide the crops. B hires C to aid him in carrying on the farm. C sues A for the value of his services. Rights of the parties?

A. *This is a case of working a farm on shares as a means of paying rent. B is neither A's agent nor partner.*

Putname v. Wise, 1 Hill, 234.

428. A gives B his promissory note for good consideration, payable at Mechanics' Bank, Troy, N. Y., at 12 M. On the day of payment B goes to the bank and inquires if the note is paid. B does not protest the

note, but goes to A's place of business, tells him the note is not paid, and there demands pay of A. A refuses to pay. What are the rights of the parties?

A. As between maker and payee, neither presentment, protest nor notice is necessary.

L. 1897, Chap. 612, Secs. 130, 189, 160.

429. A is the holder of a past due promissory note. By a binding agreement he allows C, the principal, three months' additional time in which to pay. D is an indorser for value upon the note before its maturity. Is he released by the agreement of A with C?

A. Yes. Though the note is past due, the indorser taking it up would only succeed to the rights of the holder, and would be bound by his agreement with the maker.

Greene v. Bates, 74 N. Y. 333.

430. A puts \$5,000 into the hands of B, his attorney, to invest the same in real estate secured by bond and mortgage. B is instructed to retain the bond and mortgage and receives interest payments on the same, but not the principal. A year later, by an agreement between B and the principal debtor, the latter pays B \$3,000 upon the mortgage and B absconds, taking the same. Who must bear the loss?

A. The question is, whether B had implied authority to collect the principal. The rule is, possession of the security implies this authority.

Williams v. Walker, 2 Sandf. Ch. 325.

431. A desires to buy goods of B. B says he will not sell the goods unless C goes surety for A. C says he will not go surety for A unless D secures him. D does so, and C goes surety for A. D's agreement with C was oral. C is obliged to pay A's debt. C sues D. D sets up the statute of fraud. What are his rights?

A. D is liable.

Jones v. Bacon, 145 N. Y. 446.

432. A and B, husband and wife, execute a mortgage to C for \$5,000, as a security for a pre-existing debt of A's. The mortgage is not paid at maturity, C forecloses, and sells the property, which is just sufficient to pay the mortgage and costs. B demands bonds, which were held by C as security for the debt previous to the giving of the mortgage. C refuses. Rights of B?

A. If B merely released her dower in the mortgaged premises, she has no right to subrogation. Contra, if premises were hers.

See Platt v. Brick, 35 Hun, 120, and cases cited.

433. A, wife of B, secures an insurance on life of B, payable in ten years to herself in case she lives, and in case she died before her husband, to be paid to her husband. In case she outlived her husband, to be paid to her children, share and share alike. One year after the issuance of the policy A and B execute an assignment of the policy to D. The insurance company, at the end of the ten years, pays to the assignee of A and B. At that time A is living, with her three children.

The children, through a guardian, sue the insurance company for their rights under the policy. What are they, if any, and was the assignment valid?

A. Children have no rights. A being alive when the policy becomes due, it is payable to her assignee, who has succeeded to her rights.

434. A, an insurance company, issues a policy for fire insurance upon the buildings of B, in which there is a clause reading that in case of any change of title by legal process, judgment, whether by procurement of B or otherwise, shall be void. A mechanic's lien without the procurement of B is filed against the property. Shortly afterwards B's buildings are burned by fire. Rights of the parties?

A. Filing a mechanic's lien is not such a change of title as will avoid the policy.

13 *Am. & Eng. Enc. Law (2nd Ed.)*, p. 242.
Wood v. Fire Ins. Co., 149 *N. Y.* 382.

435. A has a debt against B, secured by a chattel mortgage. A has a debt against C, secured by a diamond. Both B and C are in default. What different proceedings may he take in realizing upon the chattel mortgage and diamond?

A. (1) Either may be foreclosed under Code Civil Pro. Secs. 1737 et seq.; or

(2) Pledged property may be sold under L. 1899, Chap. 369, Sec. 1.

(3) A chattel mortgage vests legal title in mortgagee

on default. The mortgage by its terms provides that he may sell the property at public or private sale.

436. A sells to B dressed beef, which he says has not been warmed before selling. B takes the goods and discovers that they were warmed before selling. He keeps the goods. A sues B for their value. Rights of the parties?

A. An express warranty, and defendant can recover damages by way of counter-claim.

Fairbank &c., Co. v. Metzger, 118 N. Y. 216.

437. A consigns goods to B to be shipped to Detroit; then B, who is in Rome, N. Y., is to ship them wherever he pleases. The goods reached the depot of K Company, by which they were carried to Detroit. When A learns that B is insolvent, A demands the goods of K Company, who refuse to deliver them. A sues K Company for conversion. Rights of the parties?

A. The transitu is ended if B has received the goods.

Becker v. Hallgarten, 86 N. Y. 167.

Here B seems to have made the K Co. his agent at Detroit, which would make a delivery.

23 Am. & Eng. Enc. L. pp. 905-915.

438. A sues B. On the trial A's attorney asks C, a witness of B's, as to the whereabouts of a letter written to B by A. C answers, "I think it has been burned, but I don't know, as I have not searched for it." B's attorney, on the attempt by the attorney of A to intro-

duce parol evidence of the contents of the letter, objects. What is the rule?

A. The rule is: Where a writing is in the possession of the adverse party he must be notified to produce it at the trial. His failure to do so admits oral evidence of its contents.

Rogers v. Vanhosen, 12 Johns. 221.

439. A is on trial for arson. The district attorney asks A if he did not commit larceny two years before. A answered "No." The district attorney then attempted to prove by other witnesses that A had committed the larceny which he denied. What should A's attorney do?

A. Evidence is inadmissible. The People are bound by his answer on cross-examination.

People v. Greenwall, 108 N. Y. 296.

440. On trial of an action against an insurance company the attorney for the company admits that a certain man was the agent of the company. The insurance company is beaten, and on appeal judgment is reversed and a new trial ordered. On the new trial the insurance company has a new attorney, and he objects to receiving the admission, made on the first trial by the previous attorney for the company. Can he maintain the objection, and was the admission binding on the insurance company at this trial?

A. It is the party that is bound by an admission, not the attorney. It is binding in any trial of the action.

See Clason v. Baldwin, 152 N. Y. 204.

441. The plaintiff in an action puts in his evidence and on consent of the defendant's attorney and the court, the plaintiff goes out of the State on important business. The defendant then puts in evidence as to certain statements made by the plaintiff, and which the plaintiff alone could deny. The defendant's attorney had given no warning to plaintiff of his intention to introduce such evidence. If you were the plaintiff's attorney, what would you do?

A. (1) *Object to the questions*, (2) *Move to strike out the answer*, (3) *Ask leave to withdraw a juror on the ground of surprise*. See *Rubinfeld v. Rabiner*, 33 App. Div. 374. (4) *If refused, move for a new trial*. It is in the court's discretion.

Code Civ. Pro. Sec. 724.

See Taylor v. Harlow, 11 How. 285; *Baylie's Trial Prac.* p. 503.

442. A, the wife of B, learns that B is living in another State with another woman. A goes to a judge of the Court of Appeals and asks if she may lawfully marry again. The judge informed her that she could and it would be all right. A acted in good faith and stated all the facts to the judge. She marries again. What is she guilty of, if anything?

A. *Bigamy*.

Pen. Code, Secs. 298, 299.

People v. Meyer, 8 State Rep. 256.

443. A finds a gold watch with the name of B, address, street and number upon it. The watch was

found near B's house. What are the rights of B as against A? (A retained the watch and determined as soon as he found it to convert it to his own use.)

A. (1) *B can sue A for conversion.* (2) *A is guilty of larceny.*

Pen. Code, Sec. 528.

444. A, the agent of B, who is a real estate dealer, sells a piece of land to C; shortly afterward B is sued by C in tort for \$10,000, the complaint alleging fraud and misrepresentation in the sale of the land by A, and damages to the amount of the above sum. What were the rights of the parties?

A. *Principal is liable for the fraud of his agent unless upon discovering the fraud he makes complete restitution.*

Dawson v. Chisolm, 15 State Rep. 984.

445. B, the infant child of A, is injured by the negligence of the railroad company. In an action by A against the company, what damages can A recover?

A. *All that he as father has suffered or in reasonable possibility will suffer: medical services, nursing, medicines, loss of service.*

446. A devises his real estate to his executor in trust, to sell and distribute the same in the same manner as if he had died intestate. How should it be divided? On what theory is it distributed, and according to what statute?

A. This is an equitable conversion and the property will be divided according to the statute of distribution.

Code Civ. Pro. Sec. 2732.

447. A owes your client \$1,000. A has a house worth \$1,000, and that is all his property. A gives a deed of the above property to his daughter without consideration. What remedy has your client?

A. Take a judgment and begin judgment creditors' action to have the transfer set aside.

448. A mining corporation is organized Jan. 1, 1897, with a capital stock of \$1,000,000, there being 10,000 shares of the par value of \$100 each. The subscriptions are all paid up Jan. 1, 1898, and, after a vote of the directors, ratified by a majority of the stockholders, it is decided to divide the capital stock of the company into 2,000 preferred shares with a 3 per cent. semi-annual dividend guaranteed, and 8,000 common shares, nothing guaranteed. There were certain conditions of exchange for those who desired the preferred stock, and 1,000 of such shares were issued. A stockholder who did not assent to the preferred stock brings an action to make their issue invalid. What are his rights?

A. Can maintain his action if he moves in time.

Kent v. Quicksilver Mining Co., 78 N. Y. 159.

449. Directors of stock corporations are required by law to file an annual report. They fail to do so. B, a

creditor, sues one of the directors. The director demurs to the complaint on the ground that B must first sue the corporation, and anyway, that he must join the other directors as defendants with him. The debt upon which B sued accrued subsequent to the failure of the directors to file their reports. What are the rights of the parties?

A. The directors are severally liable.

Melsom, etc., Co. v. Baker, 16 App. Div. 581.

450. A corporation becomes insolvent and makes an assignment in which two of its directors are preferred. Two of the creditors put in their claims before the referee and then moved before the referee to reject the preferred claims on the ground of the invalidity of the preference. What are the rights of the parties, and should the motion have been made before the referee?

A. A foreign corporation can prefer to one-third of its assets.

Matter of Halsted, 42 App. Div. 101.

Contra of a domestic corporation.

L. 1890, Chap. 564, Sec. 48.

Kingsley v. First Nat'l Bank, 31 Hun, 329.

The preference is void, not the assignment. The referee has the right to pass on the validity of a claim.

451. To what extent is a husband liable for the antenuptial debts of his wife?

A. See L. 1896, Chap. 272, Sec. 24.

452. A husband and wife are living together. Neces-

saries are sold to the wife by a grocer, and she agrees to pay for them, and the grocer enters the account against her on his book. The grocer then sues the husband. What are the rights of the husband?

A. *The husband is not liable.*

L. 1896, Chap. 272, Sec. 25.

See Bradt v. Shull, 46 App. Div. 347.

453. Discuss the constitutionality of the decision in reference to manufacturing cigars and tobacco in tenement houses in one of the courts of this State. What was the decision?

A. *See Matter of Jacobs, 98 N. Y. 98.*

454. X corporation has a special charter by a special act of legislature. Objection is raised in the Supreme Court that the charter was in violation of the constitution, which says, "Corporations shall not be created by special act except for municipal purposes and cases where, in the judgment of the legislature, the object cannot be obtained under the general laws." The charter does not state that the legislature exercised any judgment as to the above condition. Is the charter valid?

A. *Yes.*

See Met. Bank v. Van Dyck, 27 N. Y. at p. 448.

455. A dies intestate leaving him surviving a widow, a son and two grandchildren, the children of a deceased

daughter. What respective shares have each of the above in the personal property of A ?

A. *See Code Civ. Pro. Sec. 2732.*

456. B gives A \$5,000 to invest in bond and mortgage. A is the attorney of B. A invests the money, \$5,000, in land and has a deed drawn in the name of his wife. What are B's rights ?

A. (1) *A is guilty of larceny.*

Penal Code, Sec. 528.

(2) *B can have judgment that property is held in trust for himself, and can compel conveyance to himself.*

L. 1896, Chap. 547, Sec. 74, Sub. 2.

457. A wrote his own will and, taking it to his friends, told them that it was his last will and testament, and asked them to witness it. They signed their names as witnesses to the will. Then A signed the will in the proper place and says, "That is a good job, well done, and it will stand." One of the legatees of the will objects to its admission to probate. What are his rights ?

A. *Testator's signature must be made first.*

Jackson v. Jackson, 39 N. Y. 153.

458. A by will devises all his real property to his son John and all his personal property to his daughter Jane. At the time of his death there were 100 acres of wheat upon the farm, and 50 had been cut and bound. There was also a large orchard, and 100 bush-

els of apples had been picked and barrelled. State to whom and in what shares the wheat and fruit should go.

A. The wheat that is cut and the apples that are picked are personalty, and go to the daughter. Probably the uncut wheat goes to her also. The apples on the trees go to the son.

See 8 Am. & Eng. Enc. L. p. 302 et seq.

459. Draw a verification by an attorney to a complaint in an action for goods sold and delivered where a client resides in a different county from that of his attorney.

A. State of New York,

County of _____, ss.:

_____ being duly sworn, says that he is attorney for the plaintiff herein and resides at No. _____ street, in the city of _____, County of _____, and has his office at No. _____ street in said city; that the foregoing complaint is true to the knowledge of deponent except as to the matter therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Deponent further says that sources of his information and the grounds of his belief as to all matters therein not stated upon knowledge (give sources of information). Deponent further says that the reason this verification is not made by said plaintiff is that said plaintiff is not within said county of _____.

460. A is a resident of a foreign country who attended as a witness in obedience to a subpoena issuing

from the Supreme Court of Albany County, in an action there on trial in the city of Albany. Just before he was sworn as a witness a summons was served on him in a suit where B, a resident of Albany, was plaintiff. A immediately caused notice of retainer and of appearance in the action to be served by X, an attorney of Albany. Was the service regular? What was the effect of the notice of retainer?

A. The service of summons was irregular, and can be set aside.

Person v. Grier, 66 N. Y. 124.

But notice of retainer waived the irregularity and gave the court jurisdiction over his person.

Chadwick v. Chase, 5 Weekly Dig. 589.

Defendant should have moved to dismiss, appearing for the purposes of the motion only.

461. A brings an action against B for personal injuries inflicted. B makes a default. How will A fix damages and obtain judgment?

A. See Code Civil Pro. Secs. 1214, 1215.

462. In an action where A was plaintiff and B defendant, the original summons was entitled in the County Court, but the summons delivered to B was entitled in the Supreme Court. Which court has jurisdiction?

A. The Supreme Court. The copy served controls.
Bailey v. Sargent Granite Co., 23 Civil Pro.
R. 319.

463. A and B are husband and wife. They have a child, C, which dies when he is eight years old. After the death of the child the wife B becomes seized in fee of real estate and dies intestate, leaving a brother her only heir at law. What are the respective rights of the husband and brother?

A. A has life estate; brother has remainder in fee.

Leach v. Leach, 21 Hun, 381.

Fowler's Real Property Law, p. 610.

464. What is the difference between a writ of certiorari and a writ of mandamus? Give briefly a state of facts where mandamus would be the appropriate remedy.

A. (a) Mandamus orders a ministerial or administrative officer to do some act which it is his duty to do, but which he refuses to do, though having the power.

(b) Certiorari orders an administrative or ministerial officer to send the matter before the court issuing the writ to review the legality of his act, and if found illegal to reverse or set it aside.

People ex rel. v. Rosendale, 76 Hun, 673.

(c) Mandamus is a proper remedy where the officers of a corporation wrongfully refuse to allow a stockholder to review the corporate books.

465. A and B are partners. C agrees with B that if B will give him a firm contract he (C) will pay B \$1,000 for his sole benefit. B gives the contract to C and receives the money. A knows nothing of the private agreement between his partners and C, but finds

it out after the contract has been given to C. A now consults you as to his rights. What would you advise?

A. *He can recover \$500 from B.*

17 *Am. & Eng. Enc. L.*, p. 1060.

466. A has a policy of fire insurance for \$8,000. The insured property is mortgaged for \$5,000 to B, and in the policy is this clause: "Damage, if any, payable to the mortgagee to the extent of his interest." As the result of a fire the insurer becomes liable for \$4,000, but because of the above clause in the policy are undecided as to whom to pay the money, so they refuse to pay to either. Who may bring the intended suit against the insurer?

A. *Either party. The mortgagee because the contract was made for his benefit; the insured because the contract was made with him. Whichever party begins the action, the insurer can bring in the other by inter-pleading, and the judgment will award the money according to the respective rights of mortgagor and mortgagee.*

467. A agrees to buy a house from B on the next day for \$5,000 and gives \$1,000 to bind the bargain. B takes the money, and on the next day tenders the deed to A, who refuses to accept it and to complete the purchase as agreed, at the same time demanding the return of his money. B comes to you. What are his rights?

A. B can keep the \$1,000. A cannot recover for a loss occasioned by his own breach. B cannot have specific performance. The contract is void.

L. 1896, Chap. 547, Sec. 224.

Nor is part payment enough to cause equity to interfere.

Pawling v. Pawling, 86 Hun, 502.

B cannot recover damages. He is not damaged and the contract is void.

468. A owes B \$500. B needs the money and demands it from A. A refuses, but agrees that if B will extend the time of payment of a note of A's held by B for 6 months he (A) will pay the \$500 then and there. B agrees and takes the \$500, but at the date of maturity of the note refused to extend the time of payment, and now consults you as to his rights. Will he be legally justified in bringing suit on this note?

A. Yes. There was no valid consideration for his promise to extend the time, A being under legal obligation to pay the \$500 at the time.

469. A gives B permission to open a road on A's farm. B fenced in the way immediately, and spent considerable money thereon in grading and making it an appropriate roadway to his farm. B has exclusive and unrestricted use thereon as a highway and road to his farm for 40 years. Then A barred up the road and prevented B from using the road in any way thereafter. What are the rights of A and B?

A. This is a mere license, and is revocable at any time.

Duryee v. Mayor, 96 N. Y. 477.

It has been held outside New York that where licensee has expended money, relying on the license, it is an easement by estoppel; but those are cases where the revocation immediately followed the expenditure. In Dowe v. Hollister, 6 Wky. Dig. 427, it was held that licensor must return the expense incurred. But see

Wiseman v. Luckinger, 84 N. Y. 31.

470. A and B are adjoining owners. There are two springs in A's land, one of which A uses for his own water supply, and for a good and valuable consideration, accompanied by covenants of warranty, he grants to B the right to use the other spring. B lays pipes in order to conduct the water to his house for his use and benefit. A's spring dries up finally, and he sinks a well near B's spring, thus cutting off its source and supply and rendering it worthless. Has B a right of action?

A. No. A has not warranted the use of the water.

Bliss v. Greely, 45 N. Y. 671.

See Johnstone Cheese Mfg. Co. v. Veghte, 69 N. Y. 16.

Paine v. Chandler, 134 N. Y. 385.

471. A brings an action against B in trespass for polluting a well on land A is possessed of. At the trial A proves possession, the trespass and his damage, but

not title. B offered to prove title in C to which A objected. Should the evidence have been admitted?

A. No. Illegal possession is sufficient to maintain trespass against all the world except the owner.

Evertson v. Sulton, 5 Wend. 281.

Farnsworth v. W. V. T. Co., 25 N. Y. St. R. 393.

472. John Doe, a gentleman, engages B as his agent to purchase a coach horse for him, and limits him strictly to the price of \$500. B purchases a horse from C for the price of \$625 on Doe's acceptance, and offers it to Doe, who refuses it because of the price. B then sues C for \$500, which he has paid C, who knew nothing of the limitation on B's agency. Can B recover?

A. Yes. The sale was made strictly conditional on Doe's acceptance. There has been no fraud on C.

473. A leaves his horse in first class condition with B to board at the agreed price of \$20 per month, telling B that he is not to use the horse, and is only to give him such exercise as can be given with a halter. B does not heed his instructions and allows his wife to drive the horse, as a result of which the animal becomes foundered. When A finds this out he refuses to pay board any longer for the horse and abandons him as utterly worthless. What action will A bring and what will be the measure of damages?

A. Breach of condition makes a bailee for him guilty of conversion. The measure of damages will be the value of the horse.

Collins v. Bennett, 46 N. Y. 490.

474. A takes out a policy of life insurance in the X Company for the benefit of B, his wife. A and B then, by a written assignment, transfer the policy to C for a good consideration. B subsequently dies, leaving A, her husband, and two children, D and E. At the death of A, C claims the benefit of his assignment, but it is contested by an attorney for the two children, D and E. C consults you as to his rights. What advice will you give—what legal principle is involved?

A. C can recover. D and E have no rights to the proceeds except as next of kin of A and B. As such they have no greater right than A or B would have.

475. A's name appears first as an indorser of a promissory note; B's name appears second on the same note. A, in a suit by the holder against him as first indorser, attempts to show that in reality B signed first, and that they agreed that between themselves B should be primarily liable. Can he show it?

A. No. Each indorser is liable jointly or severally to the holder, and so the evidence would not affect A's liability.

L. 1897, Chap. 612, Sec. 116.

The evidence is admissible as between B and A.

Id. Sec. 118.

476. X is the maker of a promissory note. Y is an indorser who has a store in Buffalo, where he resides. Z is a farmer into whose hands the note has come in the regular course of business. On the day of maturity Z goes to X and, showing the note, asks for the money,

which X refuses to pay. Desiring to save notarial fees Z goes to Y's store the next day, and throwing the note down on the counter, says: "There, X has refused to pay that note and I want you to." Y refuses, and in a few days thereafter, Z hears something of a notice of protest. Has the indorser been discharged? Discuss fully.

A. No. Oral notice of dishonor is sufficient, and is given in sufficient time.

L. 1897, Chap. 612, Secs. 161, 167, 175.

477. A authorizes B to sell his 100 shares of stock in the X bank at par, and transfers his certificate to him for that purpose. In order to induce C to purchase B gives C a warranty in the name of his principal that the stock is actually worth par. B returns the proceeds of the sale, less his commissions, to A, with no information regarding the warranty. A retains the proceeds. The X bank is really insolvent at the time this transaction is completed, although A knew nothing of the insolvency, and actually thought the stock was worth what he received for it. C was damaged to the extent of \$5,000 by the deal and he wishes to sue A on the warranty. What would you advise?

A. He cannot recover. Stocks not being sold usually with a warranty, there is no implied power to warrant.

Smith v. Tracey, 36 N. Y. 79.

478. A and B are partners. After a time the partnership is dissolved and A carries on the business, guaranteeing B free from all liability thereon. A then

gives a note in the firm name to C to extend the payment of a firm debt. C, who all the time has known of the above facts, now sues A and B as members of the firm of A and B on the note. What are the rights of A and B respectively?

A. After dissolution A has no authority to give a firm note even for an old firm debt. C, having knowledge of this, cannot recover from B (Bank v. Norton, 1 Hill, 572), but can recover against A.

17 Am. & Eng. Enc. L., p. 1146.

Whether A can recover anything from B depends on whether he guaranteed him from all liability on old firm debts.

479. A, an inhabitant of Cairo, Ill., shipped goods by Illinois Central to Byron Roger, 50 Chambers street, New York City. At Buffalo the New York Central, by its traffic arrangement with the Illinois Central, took the goods for the purpose of carrying them through to New York. By an error of the N. Y. C. agents the address became changed to Brian & Roger, and as the latter was an unknown firm in New York, after nine days, in which the railroad tried to find the addressee, the railroad stored the goods with a reputable warehouseman. The goods were subsequently destroyed by fire, through no fault of the bailee. The consignor wishes to bring suit for the goods. Whom should you advise him to sue? Did the N. Y. C. R. R. use all diligence required of it? What is the duty of a railroad with regard to goods received as these goods were?

A. *He should sue the New York Central.*

Sherman v. Hudson R. R. Co., 64 N. Y.
254.

Generally the railroad company need not notify the consignor.

Weed v. Barney, 45 N. Y. 344.

480. In an action of A v. B, B defaults, A appears. The action is tried. A is sworn in as a witness and gives testimony in his own behalf, and gets judgment. B has the default opened, but before the retrial of the cause A dies. His personal representative continues the action and seeks to have A's testimony in the former trial read from the minutes. B objects. On what ground? Is objection good?

A. *Objection would be on ground that defendant had not had opportunity to cross-examine; but it is not good. He had opportunity to do so.*

Bradley v. Minick, 91 N. Y. 293.

Code Civ. Pro. Sec. 830.

481. A gives his coachman B authority to sell a horse. In order to induce C to purchase, and with consent of A, B tells C that the horse is kind and gentle. C buys the horse and pays for it. A half hour after, when C is about to leave with the horse, B says: "Perhaps I ought to tell you that he ran away once, but that was more the fault of the driver; but better be careful." The horse turns out to be vicious, and C's attorney in a suit on the warranty against A tries to introduce the above quotation. Can he do it?

A. *Not in an action on the warranty.*

Abb. Tr. Ev. p. 341.

482. Father and son are standing together when plaintiff sells his goods. Nothing is said as to the responsibility of either at the time. Plaintiff sues the father and attempts to show that (1) the son is irresponsible; (2) father has paid debts of this kind for the son. Can he show both?

A. *Neither.*

Green v. Disbrow, 56 N. Y. 334.

483. A leased to B his dairy farm with ten cows thereon, with the agreement that B at the close of the lease was to leave ten cows of equal value on the premises or pay \$25 for each cow less than ten not so left there. The cows died from disease through no fault of the lessee. Who bears the loss? What is the nature of this transaction?

A. B. *It is a sale.*

Good v. Winslow, 4 Allen (New Bruns.), 241.

Smith v. Clark, 21 Wend. 83.

484. A and B, husband and wife, agree in writing that "because of certain serious disagreements between us we hereby mutually agree to live apart and separate." A afterwards agrees to pay B \$200 per month. He pays the money for two months, then he does not pay for three months, after which B brings suit for \$600. A defends; on what ground? Rights of B?

A. Contract to live separate and apart, and contract between husband and wife for the latter's support, without the intervention of a trustee, are both void.

Poillon v. Poillon, 49 App. Div. 341.

B has a right to support under the general right of a wife to support.

385. A steals a watch worth \$24, in the daytime from B, but soon after becomes penitent, finds B, returns the watch, and receives from B a written release and acquittance whereby B agrees not to prosecute A. Can A be convicted, if so, of what crime, and degree thereof?

A. It depends on whether "from B" means "from the person of B." If not, then A has committed petit larceny, which can be compromised. Contra, if A has committed grand larceny in the second degree.

See Pen. Code, Secs. 531, 532, 534, 535.

Crim. Code, Secs. 663, 664, 666.

486. A agrees to buy the growing crops of B, a tobacco planter, the same to be well cured in good condition. B sends the tobacco to A who refuses to take it, claiming that some of it is an inferior grade. What are the rights of B?

A. He has none if A's claim is true. The contract is entire and A can reject the whole crop.

Husted v. Craig, 36 N. Y. 221.

487. B is on trial for burglary, and the prosecution tries to show that just prior to the commission of the

crime B's conduct was very bad. Can he do it? What is the rule?

A. No. The rule is that the prosecution can introduce evidence of bad character only in rebuttal of defense's evidence of good character.

488. A is a newspaper publisher. B is a paper manufacturer. A contracts orally with B to manufacture and to deliver to him twenty tons of newspaper in sixty days. B does not deliver the paper according to contract, and in a suit by A on the above contract, B sets up the statute of frauds as a defense. Is it good?

A. No. (a) It is not a contract for the sale of goods, chattels or things in action, but one for work and labor.

8 Am. & Eng. Enc. L., p. 707.

(b) By its terms it is to be performed within one year.

See 2 Birds. Stat. (2nd ed.) p. 1342.

489. A finds a horse and wagon in the street. He takes them with the intention of returning them to the owner; after a short time he meets B, however, who, thinking the horse and wagon belongs to A, offers to buy them for \$200. A sells, and takes the money with the intention of converting it to his own use. Did A commit a crime? If so, what? If not, why?

A. He commits grand larceny in the second degree.

Pen. Code, Secs. 531, 539.

490. A is suddenly awakened one night by a violent

ringing of his door bell. He opens the window and sees B, who says he has a telegram for A. A opens the door. Immediately B thrusts a pistol in his face and demands entrance. A grapples with B, who releases himself and runs off. B had no telegram and intended to rob A's house after gaining entrance by this subterfuge. What crime has B committed, if any?

A. Burglary in first degree.

Pen. Code, Sec. 496.

(1) He obtained entrance by an artifice.

Pen. Code, Sec. 499.

(2) The pistol was thrust into the house.

Pen. Code, Sec. 501.

491. A has \$30,000 in government bonds. He makes a will in '96 whereby he leaves \$25,000 to his wife, and the rest to his only child. In '98 he has another child born to him, and dies in '99, not having made any change in his will, and not mentioning the second child in any way. How will the property be divided? Will the birth of the second child affect the will in any way?

A. He will take the same share that he would have taken if A had died intestate.

L. 1869, Chap. 22, Sec. 49.

So he would get one-third.

Code Civ. Pro. Sec. 2732, Par. 1.

492. A and B, are husband and wife, legally adopt the minor child of D and E. What are the duties of

the child with regard to its foster parents and its natural parents? The child's right of inheritance?

A. See *L. 1896, Chap. 272, Sec. 64.*

493. Is there any statutory limitation to the amount of money damages to be awarded for a death from personal injuries? Is there any restriction on the legislature regarding the granting such damages?

A. (1) *No.* (2) *Yes.*

See *N. Y. Const. Art. I, Sec. 18.*

494. What is meant by administrator with the will annexed? Ancillary letters? Administration *de bonis non*?

A. (1) *Administrator with the will annexed is one appointed to settle the estate where no executor is named in the will, or the person named dies, or is incompetent, or refuses to act.*

(2) *Ancillary letters are letters (e. g. testamentary) issued in a country foreign to the domicile (e. g. of testator), but where there are assets belonging to (e. g. estate). E. g. There may be ancillary letters of guardianship, administration, etc.*

(3) *An administrator de bonis non is one who succeeds a deceased administrator.*

495. A agrees to sell his house to B free of all incumbrances. B pays \$1,000, but it appears that unknown to A or B, an incumbrance exists which A cannot clear away. Rights of each party?

A. *B can refuse to accept and recover the \$1,000*

paid and all damages suffered by reason of A's breach; or he can accept the property, deducting from the contract price enough to compensate for the difference in value caused by the incumbrance.

496. A is 17 years old and conveyed property to B his father. He spends the money received from the sale and now demands a return of the property. What are B's rights? Was the conveyance valid?

A. The conveyance is voidable and A can recover the property without offering to return the money, he having spent it.

Green v. Green, 69 N. Y. 553.

497. A commits an offense in Feb., 1894. The statute of limitations then for that crime was 2 years. In June, 1895, an act is passed by which the limitation is made 3 years. In June, 1897, A is served with a summons to appear in an action founded on the above offense. What would you advise him to do?

A. If this means a civil action, the change of the statute of limitations above mentioned would not affect the matter at all. But if it means, as it probably does, a criminal prosecution, the act is ex post facto and so unconstitutional.

People v. Lord, 12 Hun, 282.

498. The by-laws of a corporation call for annual elections. The board elected Oct., 1894, is sued for failing to file a report in Jan., 1896, no election having been held in 1895. The directors defend by claiming

their terms of office ended Oct., 1895, and that they are not liable for subsequent corporate acts. Is the defense good?

A. *No.*

Cook on Corp. (4th ed.), Sec. 624.

L. 1892, Chap. 687, Sec. 23.

499. A corporation failed to file a duplicate certificate of incorporation as required by law. A who has had dealings with the corporation and who is indebted to the corporation, pleads in a suit by the corporation against him, non-incorporation of the company. Is the plea good? Give reasons.

A. *No. He is estopped from denying its incorporation.*

U. S. Vinegar Co. v. Schlegel, 143 N. Y. 537.

Bank v. Darling, 91 Hun, 236.

500. What was the effect at common law of a dissolution of a corporation by a decree of court, upon an action pending at the time against the corporation? What is the rule in New York to-day?

A. *At common law all debts were extinguished and all suits abated. All its realty reverted to grantor and all its personalty went to the king. Equity, however, will take hold of this property in trust for the creditors.*

4 Am. & Eng. Enc L., p. 306.

In New York a receiver is appointed and the order appointing the receiver enjoins further prosecution of

suits. The receiver holds the property in trust for the creditors.

Code Civ. Pro. Secs. 1784-1793.

501. A, an insolvent debtor, makes a voluntary conveyance to his son. After affecting a compromise with his creditors, A asks his son to reconvey. The son refuses and A brings suit in equity to compel him. Rights of A? What equitable principle is involved?

A. "He who comes into a court of equity must do so with clean hands."

See Proseus v. McIntyre, 5 Barb. 424.

502. Wife indicted with her husband, for robbery committed in the presence of each other. What is the liability of each?

Sec. 24 Code Criminal Procedure.

Seiler v. People, 77 N. Y. 411.

503. A makes a contract with B to buy certain goods. B sends goods which A refuses to receive. What would you advise B to do?

Johnson v. Tyng, 1 App. Div. 610.

504. State generally what may be proved under an answer of general denial.

Wilking v. Richter, 25 Misc. 735.

505. On being sued for an account A puts in an answer of general denial. On the trial offered to prove payment. Admissible or not?

Kapp v. Roche, 94 N. Y. 333.

506. On an answer of ejectment when defendant had put in an answer of general denial he offered to prove that the title was in a third party. Admissible or not?

Raynor v. Timerson, 46 Barb. 518.

507. Wife, in husband's presence, grossly slanders one who afterwards sues both husband and wife for damages. What are the rights and liabilities of the husband?

Kujek v. Goldman, 9 Misc. 34.

508. A makes a will leaving all his estate to his brother. He afterwards marries, has a child, and dies. What are the respective rights of wife, brother and child in his estate?

Sec. 1868 Code Civil Procedure.

509. A is on trial for murder. The judge, under objection of district attorney, excludes evidence of A's wife, given in his behalf. Will conviction stand upon appeal?

Sec. 715 Penal Code.

510. In drawing a panel in a murder case, A is one whom you desire to have on the jury and has formed an opinion favorable to your client. What would you do to get him on the jury?

Sec. 239 Code Criminal Procedure.

511. A takes insurance in B's insurance company.

Clause in policy states no other insurance allowed, or policy will be void if other is taken. A afterwards secures another policy in the same company. Is policy No. 1 vitiated? A seeks to recover thereon. Can he do so?

Kelley v. Met. Life Insurance Co., 15 App. Div. 20.

512. B is walking down Broadway; A puts his hand in B's pocket. There is no evidence that there was anything in the pocket. Is A guilty of a crime and if so, what?

Sec. 528 Penal Code.

513. A died leaving a farm upon which there is growing grass and corn. B is his sole heir-at-law. To whom does the grass and corn belong, heir-at-law or administrator?

A. Grass a part of the realty and belongs to B. Corn is personalty and belongs to administrator.

514. Testator appoints B his executor, granting to said executor or his successor full power to sell real estate. B refuses to qualify, and an administrator with the will annexed is appointed. Can he sell the estate?

Sec. 2642, Code Civil Procedure.

515. A enters into an agreement with B to work a certain length of time. It is agreed by a written instrument that A's wages shall constitute and be a lien upon the real estate of B. Afterwards B transfers an-

other portion to D, who has no notice of the contract; and he transfers another portion by gifts to E. A consults you. What are his rights in the premises and what proceedings would you recommend? Give reasons for answer.

Stryker v. Cassidy, 76 N. Y. 50.

516. A agrees with B to sell certain real estate for \$10,000, deed to be delivered and payment to be made at an appointed time; B signs agreement which satisfies the statute of frauds. At the appointed time A presents good and sufficient deed and demands the money. B refuses to perform his contract. Will equity decree specific performance?

Stokes v. Stokes, 148 N. Y. 708.

O'Beirne v. Bullis, 2 App. Div. 545.

517. Substitute in the above case \$10,000 worth of stock instead of the real estate. What would your answers to the above questions be? Answer in full and give reasons for your answer.

Leonard v. Whaley, 92 Hun, 304.

518. A collector gives to B, a tailor, cloth from which to make 100 suits of clothes; suits to be according to samples at a certain price. B makes the clothes, but they are not according to sample and A refuses to pay for them. Who has the title to the cloth while in the possession of B, and what are the rights of the parties? Give reasons for answers.

Wilds Laundering Co. v. Hahlo, 105 N. Y.

519. A policy of fire insurance contained a clause that the insured should serve a verified proof of loss upon the Co. within 60 days after the fire as a condition precedent to his maintaining an action thereon. The insured served an unverified proof of loss within 60 days, which the Co. retained, making thereto no reply or observation. On the trial of an action on the policy, in addition to plaintiff's damages the above facts were proven. Both sides move for judgment. Judgment for whom, and why?

Messner v. Niagara Fire Ins. Co., 24 App. Div. 241.

520. A delivered to B, a bookbinder, 1,000 books to be bound at \$1 each. Five hundred of the books were bound and delivered by the binder to A without exacting payment. The remaining 500 books were bound by B and then pledged by him to C, as security for a loan of \$1,000. C refuses to deliver the books to A on demand. A counsels you. What is the nature of the transaction, and what are the respective rights of A, B and C under the circumstances? What would you advise A?

Wilds Laundering Co. v. Hahlo, 105 N. Y. 234.

521. A leased his farm with ten cows to B for a term of two years. The lease provided that at the end of the term the ten cows or the like number of same kind and value were to be returned to A. (a) What is the nature of the transaction as to the cows between A and

B? (b) At the very time the lease expired and before B had returned the said cows to A, C levied upon them and sold them on an execution issued on a judgment against B. A sues C for conversion. Can the suit be maintained or not? Give reason.

Costello v. Herbst, 18 Misc. 176.

522. A sold to B by valid contract 1,000 yards of silk at \$1 per yard, to be delivered June 1, 1897. May 1, 1897, B notified A that he would not receive or pay for the goods, and rescinded the contract. What can A do?

Vandegrift v. Cowles Eng. Co., 161 N. Y. 435.

523. A was indorser on a promissory note made by B, discounted by the X bank. The note was protested for non-payment and notice thereof given by the bank by depositing the same in the post-office, properly addressed to A. A never received the notice, but in fact it was stolen and destroyed before delivery by a dishonest post-office employee. Because of its non-receipt A lost an opportunity of saving himself, and he now claims that he is not liable as an indorser, because he did not receive notice of protest. Is he liable? State the rule.

Eaton on Negotiable Instruments, p. 122.

524. A made a note payable to the order of B, and then forged B's indorsement thereon and then for its

face value transferred it to C. The first information B had of the forgery was the receipt of a notice of protest as indorser. He was wholly unacquainted with either C or A. Subsequently he told C that the endorsement was a forgery, but that he would endorse the note and thus avoid trouble and annoyance, but he soon changed his mind and refused to pay. A had fled the county. Can C recover against B? If so, on what grounds? If not, why not?

Meyer v. Huneke, 55 N. Y. 412.

525. Your client executed and left in charge of his clerk a promissory note, with instructions to take it to the bank and have it discounted for the benefit of your client. The agent, however, did not do so, but delivered it to another, whom he asked to take to a bank and have it discounted for your client's benefit. This person had the note discounted for his own benefit. The agent received no benefit from the misappropriation of the note. Has your client any rights? Give your reasons.

Frankla v. McLean, 18 Misc. 221.

526. Your client hands to his broker \$5,000 in cash with instructions to invest the same in bond and mortgage. The broker does so and retained possession of the bond and mortgage for the collection of the interest thereon. He was not authorized to collect the principal. He collected the interest semi-annually and also the principal when it was due by a forged satisfaction piece, and absconded after delivering the bond and

mortgage and satisfaction piece to the mortgagor. Upon whom falls the loss, and for what reasons?

Central Trust Co. v. Folsom, 26 App. Div. 40.

527. A was the principal debtor and B the surety on an obligation held by C. C had collateral given him by A to further secure the debt. On A's default B, the surety, paid the debt. C thereupon handed the collateral to A, who sold the same and is now insolvent. B consults you. What are the rights of the parties?

Bank of Lockhaven v. Smith, 155 N. Y. 185.

528. B is on trial for receiving stolen property; offers evidence that when A brought the property to him he told him where and from whom he bought it and the price he paid for it and when he had bought it. Is the evidence admissible?

Sec. 550, Penal Code.

Willis v. Rando, 3 Park. 473.

People v. Rando, 3 Park. 335.

529. What is the doctrine of Ultra Vires?

Jennison v. Citizens' Savings Bk., 122 N. Y. 135.

530. A corporation is sued for malicious prosecution; corporation demurs. Judgment for whom?

A. Judgment for plaintiff.

531. State the difference between a corporation and a joint stock company.

White on Corporations, p. 729 (3rd ed.).

532. A, B and C are partners. C has a legal title to certain real property bought with the partnership funds used for partnership purposes. B dies leaving a widow and heir-at-law. What are the rights of the several parties? State the general rule. Answer in full.

Barrow v. Calkins, 6 App. Div. 28.

533. A dies intestate, leaving a widow and four children; leaves real and personal property. How will the same be distributed?

Sec. 2732, Code Civil Procedure.

534. B is a contractor building a certain house for A; B is short of help and borrows A's hired man and sets him at work on the building. While at work he negligently lets a beam fall on C, a stranger, who is free from contributory negligence, injuring him. Who, if anybody, is liable to C? Give general rule.

McCauley v. Fidelity & Casualty Co., 16 Misc. 574.

535. A note is drawn so that it is usurious in its inception; before maturity it is transferred for value to a *bona fide* holder. Can holder collect against maker?

L. 1897, Chap. 612, Secs. 91, 96.

536. B makes an agreement with A for the purchase

of 10,000 yards of silk at \$1 a yard, to be delivered on June 30th, 1895; on June 1st, 1895, B meets A and tells him that he cannot use the silk and that he need not send the same. A consults you. What are his rights in the premises, and what is the measure of damage, if any?

Vandegrift v. Cowles Engineering Co., 161
N. Y. 435.

537. B is killed by a railroad accident. Fifteen minutes after the accident B is found by certain parties and carried to the sidewalk, where he tells them about the accident, and then dies. Is their evidence admissible?

Waldele v. N. Y. C. & H. R. R. R. Co., 95
N. Y. 274.

538. A is injured in a railroad accident and wishes to show that the road bed was out of repair and offers evidence that the day after the accident the railroad company had a gang of men at work upon the bed. Is the evidence relevant, or competent?

Sprague v. City of Rochester, 52 App. Div.
53.

539. A servant is returning with his load to his master's warehouse; on the way he met a clerk of his master's, who asks him to go up a side street and get a personal package for him; he does so, and while on the side street injures C. What are the rights of the parties? Give general rule.

Geraty v. National Ice Co., 16 App. Div.
174.

540. A sold flour to B, upon ten days' credit, relying upon B's representations of his solvency. At the time of the sale B was insolvent, also at the time of the sale paid C in satisfaction of C's claim. A consults you; what would you advise?

Delaney v. Valentine, 154 N. Y. 692.

541. A is an intimate friend of B and her family; B is engaged to C. A in good faith tells the father and brother of B that C has been convicted of felony. Has C any right of action, and if so, what? Answer in full.

Stevenson v. Ward, 48 App. Div. 291.

542. Define justifiable and excusable homicide. Are the terms synonymous?

Secs. 179 and 180, Penal Code.

543. B is walking down Broadway; A puts his hand in B's pocket. There is no evidence that there was anything in the pocket. Is A guilty of a crime, and if so, what?

Sec. 528, Penal Code.

544. Is it a crime for a man to burn his own property, and if so, what?

Sec. 495, Penal Code.

Sheppard v. People, 19 N. Y. 537.

545. A conveyed to B by deed with covenants of warranty for quiet and peaceful possession, a farm in pos-

session of which C had occupied uninterrupted for 18 years under a claim hostile and adverse to A's title. B immediately demanded possession of C, which he refused. B took no further steps until the expiration of two years, when C's possession had ripened into a title. B then demanded possession, which was also refused. B then took action against A on his covenants, setting up the foregoing facts, and claiming to have been evicted by C. A demurs to B's complaint. Judgment for whom, and for what reason? When or on which demand or refusal, if at all, was B evicted? State fully.

Sec. 367, Code Civil Procedure.

546. A wrote a letter to B, offering to sell him a span of horses at a certain price, stating that he would leave the offer open for five days for his acceptance by mail or wire. On the third day B wrote and deposited in the mail a letter to A, accepting the offer. Six hours later he wired A, rejecting the offer. A receives the telegram one hour before he received the letter. (a) Was there a contract or not? State the rule. (b) What are the rights and liabilities of A and B respectively in the premises?

Bourker v. L. I. R. R. Co., 89 Hun, 182.

547. A was indebted to B in the sum of \$1,000. It was agreed between them that A should pay to B \$500 in cash and also turn over to him a team of horses for which A was offered \$300. B took the horses and cash

in full for his claim and gave receipt accordingly. B was unable to sell the team for more than \$200, which he did, and then sued A to recover the balance of his original indebtedness. A answers, setting up the facts. B demurs. (a) Judgment for whom, and if for B, what amount? (b) Supposing that A has paid the supposed value of the team, \$300, in cash instead of turning over the team, other facts remaining the same, what then would your answer be? Answer fully.

Burns v. Walsh, 10 *Misc.* 699.

548. B, the wife of A, in his presence grossly slanders C. A did not take part in the transaction, but is joined in the action. What are the rights and liabilities?

Strubing v. Mahar, 46 *App. Div.* 400.

549. A and B are husband and wife, living together; A is a tradesman and hires his wife to work for him; she works ten weeks at \$10 per week and then sues him. Can he set up a defense that there was no contract and that the wages belong to him?

Blaechinski v. Howard Mission, 130 *N. Y.*
497.

550. A admits that he owes B something for services, but there was no agreement as to the amount. A sends to B \$100, stating that he sends it as payment in full on condition that B shall receive it as such. B receives and uses the money, making no answer; but in

a few weeks thereafter sues A for \$200. A alleges the facts as stated, and B demurs. Judgment for whom?

Merchants of Buffalo v. Weill, 29 App. Div. 101.

551. Draw summons in divorce and affidavit of personal service thereof.

Code Civ Pro. Sec. 1774.

Supreme Court Rule 18.

552. A wife voluntarily leaves her husband and afterwards offers in good faith to return, but the husband refuses to allow her to do this. A provides her with certain necessities and consults you. What are his rights?

Lutio v. Shelley, 40 Hun, 197.

Bulkley v. Boyce, 48 Hun, 259.

553. A sells a horse to B, warranting him sound and all right; horse is unsound, which fact B could have discovered by inspection and inquiry. Has B any right of action against A? If so, what are his rights?

Bruce v. Fiss, Doerr & Carroll Horse Co., 47 App. Div. 273.

554. A railroad company having station in a certain city finds it necessary because of its increase in business to have a larger station. It owns no other itself, and the property owners will not sell. The railroad company consults you. What would you advise?

Sec. 335, Code Civil Procedure.

555. A makes a promissory note to B for \$100, payable in one year after date at 4 per cent.; nothing is paid on the note for two years. How much is due?

Ferris v. Hard, 135 N. Y. 354.

556. Sparks from a locomotive of a railroad company burn the barn of B. B is insured and the insurance company pay him \$1,000, being the total amount. B sues the company in tort for damages; the railroad company demurs on ground that there is an action pending by the insurance company for the same cause. Judgment for whom? Answer in full.

Mayer v. Moore, 29 Misc. 475.

557. A takes out a life insurance policy with an insurance company. A warrants his age to be 53, when in fact it was 54. A dies. What are the rights of the representatives against the company?

Schmidtt v. National Life Ass., 84 Hun, 128.

558. A writes to B to ship him a bill of goods; B ships the goods C. O. D. While they are on the railroad they are destroyed by fire. What are the rights of the several parties?

A. A is not liable. B may recover from R. R. Co. if goods were destroyed through its negligence.

559. Define warranty and guaranty, and state the difference, if any.

Frank v. Lanier, 91 N. Y. 112.

560. A and B own adjoining lots; each has a well on his own lot. B gets mad at A and maliciously sinks his well deep enough to strike the general source, drying A's well completely. What action, if any, has A against B? State the general rule.

Smith v. City of Brooklyn, 160 N. Y. 357.

561. A and B are owners in common of certain real estate. B conveys his interest to C, wife of A. A and C enter upon and occupy the land; they have one child. Upon the husband dying, what would be the interest of the wife and child in the property? And upon the wife's dying intestate, what would be the husband's and child's interest in the property?

Bertles v. Nunan, 92 N. Y. 152.

562. A deed upon the face was executed and delivered by A to B, but the intention was that it should be a mortgage. B recorded the instrument as a deed. Can parol evidence be introduced in an action between the parties in reference to the instrument? And what action has A against B?

Horne v. Keteltas, 46 N. Y. 605.

Carr v. Carr, 52 N. Y. 251.

563. A and B entered into a contract by which B was to build a house for A. A was to pay \$5,000 upon completion and when B presented to him a certificate of C, an architect, that the house fully complied with the terms of the contract. B duly completed the house,

but the architect, having a grudge against A, refused to deliver the certificate. What rights have B?

Snaith v. Smith, 7 Misc. 37.

564. A dealer sold and delivered goods to C, knowing him to be a friend of B's. B afterward wrote to A, saying to him that in consideration of the sale to A, he would pay if A did not. Can the dealer recover from B?

See Huffcut's Anson on Contracts, p. 72.

565. A sold a horse to B, and it turned out that A, a vendor stole the horse and B had to surrender it. Has B any right against A?

Newton v. Porter et al., 69 N. Y. 133.

566. A sent an order for 100 bbls. of salt, F. O. B. on 20 days' credit to B., A to pay the freight. B not having 100 bbls. in stock and having only 99 bbls. sent them to A, 10 days' credit. This time of credit had always been customary with B, and A knew of it. B sent a bill to A for the 99 bbls. in 10 days' credit. Goods were destroyed in transit. Upon whom falls the loss?

A. B must stand the loss because there was no contract.

567. A, B and C are partners. A and B buy out C and agree to pay a debt owing by the partnership to the plaintiff. Plaintiff sues A and B. They demur.

What principles of law are involved and judgment for whom?

Serviss v. McDonell, 107 N. Y. 260.

568. Plaintiff in an action for breach of contract asked judgment in the complaint for \$2,000. The jury gave him a verdict of \$3,000. How, if at all, can the plaintiff avail himself of this?

Sec. 1207 Code Civil Procedure.

569. A plaintiff sues B for trespass claiming that B entered upon his premises and polluted and destroyed his well. B answered by general denial. A proved on trial possession of, but not title to, the premises. B offered to prove title in another person. The court refused to receive the evidence. Should it have been received? What effect upon the judgment would it have had had it been received and title to the premises proved in another person?

Taylor v. Wright, 36 App. Div. 568.

571. Give the causes of action upon which a warrant of arrest may be issued.

Sec. 549 Code Civil Procedure.

571. A and B were candidates for the office of county clerk of the county of X. Both claimed the election. The election was given to A, who duly entered upon the duties of the office. B wishes to bring proceedings. In whose name should they be commenced?

Jewett Election Manual, p. 146.

572. A, by fraudulent representations, induces B to sell him goods. Afterwards learning of the fraud sues A for the price of the goods. Afterwards he wishes to get an order of arrest for A, discontinuing his action, and commences an action of deceit. A pleads former action and discontinuance thereof, and knowledge of the fraud on the part of B. B demurs. What principle of law governs and judgment for whom?

Clafin v. Paussig, 7 Hun, 223.

573. An apple tree stands wholly upon the lands of A, but so near the border line that the roots enter upon the lands of B and derive nourishment therefrom. Some of the branches also overhang the land of B. To whom do the apples on the tree belong? Would it make any difference if the apples had fallen from the tree upon the premises of A and B?

Hoffman v. Armstrong, 48 N. Y. 201.

574. B is a *bona fide* owner for value before maturity without notice, of a note given for usurious consideration. He sues the maker, who sets up usury. Is the defense available?

Eaton on Negotiable Instruments, pp. 140-141.

Laws 1847, Chap. 430.

575. In an action for goods sold and delivered defendant set up a general denial. He offered on trial to prove payment. Is it admissible? What is the general rule?

Knapp v. Roche, 94 N. Y. 333.

Griffin v. Railroad Co., 101 N. Y. 354.

576. In an action on a contract in writing the defense was breach of the same and damage to the defendant. On the trial the plaintiff produced the contract, which bore the signature of a subscribing witness. Should the objection have been maintained, and state the rule?

Railroad Co. v. Smith, 21 Wall. 255.

577. Congress passed a law taxing all incomes of over \$4,000, the constitutionality of which is questioned. What principles of law are involved, and is it constitutional?

A. *Such a law is unconstitutional.*

Pollock v. Farm, L. & Tr. Co., 157 U. S. 429.

578. A policy containing the condition that it shall become void if the mechanics do work upon it more than 15 days at a time without notice to the company. In fact they worked 30 days, no notices being given to the company. A loss occurred, but not by reason of their act or cause. Can the injured recover?

Newport Improvement Co. v. Home Ins. Co.,
163 N. Y. 237.

579. Your client is sued. You answer and in addition to separate defenses plead a counter-claim then existing in his favor which has but six months to run before it will be barred by the statute of limitations. The case is at issue of a year; is then discontinued by the plaintiff. What becomes of your counter-claim? State what you would advise under the circumstances.

A. *Object to discontinuance.*

Swathney v. Cheatham, 21 Hun, 576.

580. A recovered and duly docketed a judgment against B. While the judgment was in force B purchased a piece of real estate from C, taking the title thereto in his own name. At the same time, and as part of the transaction, B gave a mortgage thereon to D to secure the purchase money. A issues an execution and claims that his judgment is prior to the mortgage of B. State rule.

Sec. 1254, Code Civil Procedure.

582. New York, Jan. 1. 1896.
\$1,000.

On demand for value received, we promise to pay to the order of C one thousand dollars, with interest.

(Signed) A, Pres. of X Co.

B, Pres. of X Co.

A and B were authorized to issue bills on behalf of the firm. This fact was known to C. A and B are sued on the note. What is their liability? State general rule.

C. N. Bk. v. Clark et al., 139 N. Y. 307.

582. A borrowed \$5,000 at an usurious interest and gave a mortgage to secure same. He brings an action to set aside the mortgage on account of usury. Can he maintain the action? What maxim of equity arises?

Laws 1837, Chap. 430.

Eaton, Neg. Insts. p. 140.

583. A father having in possession \$1,000 of his son's money, purchased land with it in his own name; he dies, having sold it to C, and C took possession of it

ignorant of the facts. The son became of age and consults you. What would you tell him were his rights, and what kind of an action would you bring?

Real Property Law, Secs. 74, 75.

584. The by-laws of a corporation provided that the manager should not have the power to contract debts over \$500 without the direction of the board of directors. A, the manager, in violation thereof, contracts with B for lithographs and show-bills to the amount of \$2,000. The corporation refuses to receive or pay for the work on the ground that A exceeded his authority. What question or questions of law will determine its liability?

See Rathbun v. Snow, 123 N. Y. 343.

Parmelee v. A. P. & S. Co., 9 Misc. 458.

585. A Buffalo manufacturing company, failing to comply with the law in regard to being incorporate, becomes indebted to B in the amount of \$1,000. B brings an action against the company, he having dealt in good faith. The company, now incorporated, defends on the ground that the corporation was not in existence at the time when the debt was contracted. Is such defense allowed?

Lamming v. Galusha, 81 Hun, 247.

586. What would you allege in denying corporate existence?

C. S. & A. Assoc. v. Read, 93 N. Y. 474.

Code Civ. Pro. Sec. 1776.

See also Bengston v. T. S. Co., 31 Hun, 96.

587. A deed is made to "John Smith and Mary, his wife." What estate do they take? What are their interests in absolute divorce?

Hiles v. Fisher, 144 N. Y. 306.

Zornlein v. Bram, 100 N. Y. 12.

Bertles v. Nunan, 92 N. Y. 152.

Bishop on Marriage and Divorce, 6th Ed.,
Vol. 2, Sec. 716.

588. A and B are husband and wife. C, the father of A, induced him to leave his wife; A furnishes her with necessaries, but will not go back to her; therefore she is deprived of his society. What is B's remedy?

Bulkeley v. Boyce, 48 Hun, 259.

People v. Pettit, 74 N. Y. 320.

589. A man left by will real and personal property. It is uncertain from the terms of the will who the devisees really are. One of them wishes to bring an action; settle the fact whether it is maintainable. What question of jurisdiction arises?

Matter of Will of Walker, 136 N. Y. 20.

590. A, going along a highway, discovered a fire which threatened the building of B. He therefore set about to extinguish the fire, and called to his assistance two others. He prevented B's building from burning up, and now sues for services rendered and money expended in so doing. Can he recover?

McCready v. Thorn, 51 N. Y. 454.

Huffcut's Anson on Contracts, p. 405.

591. One witness of a will which you wish to propound is dead; the other has forgotten. What would you do?

Sec. 2620, Code Civil Procedure.

592. A rents a house situated at No. 30 Grand St., Buffalo, N. Y., for one year at the monthly rent of \$50 per month, commencing on May 1, 1894. A fails to pay his rent for the months of May, June and July, 1894. Draw a summons and complaint in the Supreme Court to recover the rent.

Abbott's Forms of Pleadings, Vol. 1, p. 392.

593. What is the object of a warrant of attachment? In what action can it be had and what is necessary to obtain it?

Sec. 635, Code Civil Procedure.

594. In an action by A against B to recover damages for personal injury. B has not appeared, but made default. (a) What, if any, rights has B in such proceedings? (b) How will A proceed to get damages and obtain judgment?

Secs. 1212, 1213 and 1214, Code Civil Procedure.

595. Your client, a resident of N. J., was assaulted in Pa., and informs you that his assailant, a resident of the State of Ohio, is now in N. Y. City and can be served with a summons. He desires to bring an action in the Supreme Court of the State of N. Y., County of

N. Y., and consults you. What advice would you give him, and why?

Burdick v. Freeman, 120 N. Y. 426.

596. State in what actions a defendant may be arrested?

Secs. 549 and 550, Code Civil Procedure.

597. Witness is called to prove a payment to defendant; he is unable to recall that he has made such. On looking up an entry which he made, and which he testifies to be correct, he says his memory is refreshed, and he now remembers the payment, to which he testifies positively. The entry, if offered in evidence, is it admissible?

23 Abb. N. C. note, 118.

Howard v. McDonough, 77 N. Y. 592.

598. Another witness is called to prove the payment; he is unable to recall that he made one. He is shown an entry which states payment and date. He testifies that his memory is not refreshed, but that he had acknowledged the fact when he made the entry and that the entry records correctly what he then knew to be true. Is this admissible?

Abb. Tr. Ev. (2nd Ed.) 521.

599. A is run over by a street car and injured. He brings an action on the ground of negligence of the

motorman, and also that the brakes were out of repair, On trial was allowed to prove that just as the car stopped and while he was under it the motorman, in response to question, said "he could not reverse the car," and that was why he did not stop. Was the evidence relevant, and if so, why?

Anderson v. The Rome, Watertown & Ogdensburg R. R. Co., 54 N. Y. 334.

600. A husband and wife are jointly indicted for robbery in the first degree. Both were present when the act was committed. State general rule governing the liability of the wife?

Sec. 24, Penal Code.

601. A aided and abetted in the misappropriation of a ten-dollar bill which had been entrusted to B to pay on account. Of what is A guilty, and in what manner?

Sec. 29, Penal Code.

602. State whether or not voluntary intoxication is a defense to a crime. A was indicted for murder in the first degree; he conceded the killing, but offered to show that when he committed the deed he was in a state of voluntary intoxication and offered no other evidence. Was it relevant or competent? If so, for what purpose, and what is the general rule?

Sec. 22, Penal Code.

603. A master of a tug boat negligently struck the

tender of a bridge, knocking out the brace and crushing the plaintiff, who was upon it. He could not have foreseen the result. What are the plaintiff's rights, and what is the general rule?

Potter and Parlin v. N. Y. C. & H. R. R. R. Co., 22 *Misc.* 10.

RULES

FOR THE

Admission of Attorneys and Counsellors at Law,

AS AMENDED AND ADOPTED BY THE JUDGES
OF THE COURT OF APPEALS.

RULE I.

No person shall be admitted to practice as an attorney or counsellor in any Court of Record in this State, without a regular admission to the bar and license to practice granted by an Appellate Division of the Supreme Court.

RULE II.

Any person who has been admitted to practice, and has practiced three years as an attorney and counsellor in the highest court of law in another State, and any person who has thus practiced in another country, or who, being an American citizen and domiciled in a foreign country, has received such diploma or degree therein as would have entitled him, if a citizen of such foreign country, to practice law in its courts, may, in

the discretion of an Appellate Division of the Supreme Court, be admitted and licensed without an examination. But he must possess the other qualifications required by these rules, and must produce a letter of recommendation from one of the Judges of the highest Court of law of such other State or country; or furnish other satisfactory evidence of character and qualifications.

RULE III.

All other persons may be admitted and licensed upon producing and filing with the Court the certificate of the State Board of Law Examiners that the applicant has satisfactorily passed the examination prescribed by these rules and has complied with their provisions; and upon producing and filing with the Court evidence that such applicant is a person of good moral character, which may be shown by the certificate of the attorney with whom he has passed his clerkship, or by some attorney in the town or city where he resides, but such certificate shall not be conclusive, and the Court may make further examination and inquiry.

RULE IV.

To entitle an applicant to an examination as an attorney and counsellor, he must prove, by his own affidavit, to the satisfaction of the State Board of Law Examiners:

First. That he is a citizen of the United States, twenty-one years of age, stating his age, and a resident

of the State, and that he has not been examined for admission to practice and been refused admission and license within three months immediately preceding.

Second. That he has studied law in the manner and according to the conditions hereinafter prescribed for a period of three years, and that he is the same person mentioned in his annexed preliminary papers, except that if the applicant be a graduate of any college or university, his period of study may be two years instead of three; and except also that persons who have been admitted as attorneys in the highest Court of original jurisdiction of another State or country, and have remained therein as practitioners for at least one year, may be admitted to such examination after a period of law-study of one year within this State.

RULE V.

Applicants for examination shall be deemed to have studied law within the meaning of these rules only when they have complied with the following terms and conditions, viz.:

1. The provisions for requisite periods of study must be fulfilled by serving a regular clerkship in the office of a practicing attorney of the Supreme Court in this State after the age of eighteen years; or, after such age, by attending an incorporated law school, or a law school connected with an incorporated college or university having a law department organized with competent instructors and professors, in which instruction is regularly given; or after such age, by pursuing such course

of study, in part by attendance at such law school, and in part by serving such clerkship.

2. If the applicant be a graduate of a college or university, he must have pursued the prescribed course of study after his graduation; and if he be a person admitted to the bar of another State or country, he must have pursued his prescribed period of study after having remained an attorney in such other State or country for the period of one year.

3. Applicants who are not graduates of a college or university, or members of the bar as above prescribed, shall, before entering upon the clerkship or attendance at a law school herein prescribed, or within one year thereafter, have passed an examination conducted under the authority and in accordance with the ordinances and rules of the University of the State of New York, in English composition, advanced English, first year Latin, arithmetic, algebra, geometry, United States and English history, civics and economics, or in their substantial equivalents as defined by the rules of the University, and shall have filed a certificate of such fact signed by the Secretary of the University with the Clerk of the Court of Appeals, whose duty it shall be to return to the person named therein a certified copy of the same showing the date of such filing. The Regents may accept as the equivalent of and substitute for the examination in this rule prescribed either, first, a certificate, properly authenticated, of having successfully completed a full year's course of study in any college or university; second, a certificate, properly authenticated, of having satisfactorily completed a

three years' course of study in any institution registered by the Regents as maintaining a satisfactory academic standard; or, third, a Regents' diploma. The Regents' certificate above described shall be deemed to take effect as of the date of the completion of the Regents' examination, as the same shall appear upon said certificate.

Attendance at a law school during a school year of not less than eight months in any year, shall be deemed a year's attendance under this rule; and in computing the period of clerkship, a vacation actually taken, not exceeding two months in each year, shall be allowed as part of such year.

It shall be the duty of attorneys, with whom a clerkship shall be commenced, to file a certificate of the same in the office of the Clerk of the Court of Appeals, which certificate shall in each case state the date of the beginning of the period of clerkship, and such period shall be deemed to commence at the time of such filing, and shall be computed by the calendar year. The same period of time shall not be duplicated for different purposes, except that a student attending a law school as herein provided, and who, during the vacations of such school, not exceeding three months in any one year, shall pursue his studies in the office of a practicing attorney, shall be allowed to count the time so occupied during such vacation or vacations as part of the clerkship in a law office specified in these rules.

RULE VI.

The State Board of Law Examiners, before admit-

ting an applicant to an examination, shall require proof that the preliminary conditions prescribed by these rules have been fulfilled; which proof shall be made as follows, viz.:

1. That the applicant is a college graduate, by the production of his diploma or certificate of graduation under the seal of the college.

2. That he has been admitted to the bar of another State or country, by the production of his license or certificate executed by the proper authorities.

3. That he has served a regular clerkship in the office of a practicing attorney of the Supreme Court in this State, after the age of eighteen years, by producing and filing with the Board a certified copy of the attorney's certificate as filed in the office of the Clerk of the Court of Appeals, and producing and filing an affidavit of the attorney or attorneys, with whom such clerkship was served, showing the actual service of such a clerkship, the continuance and end thereof, and that not more than two months' vacation was taken in any one year.

4. The time of study allowed in a law school must be proved by the certificate of the teacher or president of the faculty under whose instructions the person has studied, under the seal of the school, if such there be, in addition to the affidavit of the applicant, which must also state the age at which the applicant began his attendance at such law school, which proof must be satisfactory to the Board of Examiners.

5. That the applicant has passed the Regents' examination, or its equivalent, must be proved by the production of a certified copy of the Regents' certificate filed

in the office of the Clerk of the Court of Appeals, as hereinbefore provided.

6. When it satisfactorily appears that any diploma, affidavit, or certificate required to be produced has been lost or destroyed without the fault of the applicant, or has been unjustly refused or withheld, or by the death or absence of the person or officer who should have made it, cannot be obtained, the Board of Law Examiners may accept such other proof of the requisite facts as they shall deem sufficient.

7. A law student whose clerkship or attendance at a law school has already begun, as shown by the record of the Court of Appeals, or of any incorporated law school, or law school established in connection with any college or university, may at his option, file or produce instead of the proofs required by these rules, those required by the rules of the Court of Appeals adopted October 28, 1892.

RULE VII.

When the filing of a certificate as required by these rules has been omitted by excusable mistake, or without fault, the Court may order such filing as of the proper date. All certificates heretofore issued to law students by the Board of Regents and founded upon equivalentents instead of an actual examination, are validated and made effectual, and may be accepted as sufficient by the Board of Law Examiners.

RULE VIII.

The State Board of Law Examiners shall be paid as

compensation, each the sum of two thousand dollars per year, and in addition, such further sum as the court may direct, and an annual sum not exceeding two thousand dollars per year shall be allowed for necessary disbursements of the Board. Every applicant for examination shall pay to the examiners a fee of ten dollars, which shall be applied upon the compensation and allowance above provided, and any surplus thereafter remaining shall be held by the treasurer of the State Board of Law Examiners and deposited in some bank, in good standing, in the city of Albany, to his credit and subject to his draft as such treasurer when approved by the Chief Judge. The examinations held by the State Board of Examiners may be conducted by oral or written questions and answers, or partly oral and partly written, but shall be as nearly uniform in the knowledge and capacity which they shall require, as is reasonably possible. An applicant who has failed to pass one examination cannot again be examined, until at least three months after such failure.

RULE IX.

The State Board of Law Examiners shall hold at least one examination in each judicial department, at the city or village in which the Appellate Divisions of the Supreme Court are held, between the tenth day of June and the twentieth day of July in each year, and one examination in each department at the places above named, during the month of January in each year. They may appoint other times and places for additional examinations, and may hold some or all of such addi-

tional examinations concurrently with the regular or annual examination of any law school in this State, and any applicant entitled to be examined, may be so examined in any department whether a resident therein or not.

RULE X.

In all cases where, after the applicant shall have commenced his period of law study as provided by these Rules, he has engaged in the military or naval service of the United States of America, in its late war with Spain, the time of such service shall be included as a part of the period of study required by Rule IV.

The proof of compliance with preliminary requirements under Rule VI, with respect to such service, shall be made to the satisfaction of the Board of Law Examiners.

Rules Regulating Law Examinations.

Adopted by the State Board of Law Examiners for the year 1901.

RULE I.

Each applicant for examination must file with the Secretary of the Board at least fifteen days before the day appointed for holding the examination at which

he intends to apply, the preliminary proofs required by the "Rules for the admission of attorneys and counselors-at-law," as amended and adopted by the Judges of the Court of Appeals, December 2, 1895, to take effect January 1, 1896, from which it must appear affirmatively and specifically that all the preliminary conditions prescribed by said rules have been fulfilled, and also proof of the residence of the applicant for six months prior to the date of the said examination, giving place, with street and number, if any, which must be made by his own affidavit. The examination fee of \$10 must be paid to the treasurer at the time the application for examination is filed.

To entitle an applicant to a re-examination, he must notify the Secretary by mail of his desire therefor, at least fifteen days before the examination at which he intends to appear.

RULE II.

Each applicant must be a citizen of the State, of full age; he may be examined in any Department, whether a resident thereof or not, but the fact of his having passed the examination will be certified to the Appellate Division of the Judicial Department in which he has resided for the six months prior to his examination. He must, however, entitle his papers in the Department in which he intends to apply for examination.

[NOTE.—An applicant must appear for examination in the Department in which he entitles his papers,

unless permission of the Board otherwise granted at least fifteen days before the day appointed for holding the examination.]

RULE III.

In applying the provisions of Rules IV and V of the Rules of the Court of Appeals, "For the admission of attorneys and counselors-at-law," the Board will require proof that the college or university of which an applicant claims to be a graduate, maintains a satisfactory standard in respect to the course of study completed by him. In case the college or university is registered with the Board of Regents of the State of New York, as maintaining such standard, the applicant must submit to the Board, with his diploma or certificate of graduation, the certificate of the said Board of Regents to that effect, which will be accepted by this Board as prima facie evidence of the fact. In all other cases the applicant must submit with his diploma or certificate of graduation satisfactory proof of the course of study completed by him and of the character of the college or university of which he claims to be a graduate..

RULE IV.

The papers filed by each applicant must be attached together, and there must be indorsed upon them the name of the applicant. The papers must be entitled, "In the matter of the application of —— —— for admission to the Bar." Each applicant must state the

beginning and the end of each term spent in a law school, as well as the beginning and the end of each vacation that he has had.

RULE V.

An applicant who has been admitted as an attorney in the highest court of original jurisdiction of another State or country, and who has remained therein as a practicing attorney for at least one year, must prove the latter fact by his own affidavit, and must present also a certificate from a Judge of the court in which he was admitted or from a County Judge in said State, certifying that the applicant had remained in said State or country as a practicing attorney for such period of one year, after he had been admitted as an attorney therein. The signature of the Judge must be certified to by the clerk of the court or by the County Clerk under the seal of the court.

RULE VI.

An applicant whose clerkship or attendance at a law school was already begun, as shown by the record of the Court of Appeals, or of any incorporated law school or law school established in connection with any college or university, and who thereafter engaged in the military or naval service of the United States of America in its late war with Spain, may have the time of such service included as a part of the period of study required by the Rules of the Court of Appeals in relation to the admission of attorneys and counsel-

ors-at-law, on proof of the facts of such service; which shall be made by his own affidavit, showing the branch of the service, the place, and the date of his enlistment, or commission, and the end, or probable time of the duration of his term of service, and by the production of his honorable discharge from such service, in case of his discharge, executed by the proper authorities—which discharge shall be returned when the application for examination is approved.

[NOTE.—Applicants should file their papers at the earliest possible moment amendable defects may be discovered, which can be corrected if attended to promptly.]

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