Notes of United States Reports.

Mortgage—Forfeiture.

1. Where it is stipulated in a mortgage that in case of a default in the payment of the interest, the principal shall immediately become due and payable, and that the mortgagee may immediately proceed on the mortgage, such a stipulation is an essential part of the contract entered into between the parties, and will be enforced.

2. Such a stipulation is not in the nature of a forfeiture or penalty against which equity will relieve.—*Gulden* v. *O'Byrne*, Phil. Leg. Int., July 3, 1868.

A sale under a writ of partition is a judicial sale, and discharges the lien of judgments and of a mortgage by one of the tenants in common of his undivided portion.

Such mortgage is discharge in Pennsylvania although it be a first mortgage and have priority of all other liens. The Acts of 1830 and 1845 only preserve the lien of such mortgage from discharge by sale under a *writ of execution.*

What irregularities in the proceeding for partition will not vitiate it.—*Farmers and Mechanics' National Bank* v. *Girard Insurance and Trust Co.*

Negligence.

1. A father's negligence is a defence to an action by the father for injuries to his child.

Permitting a child four years old to run at large in a city, is evidence of gross negligence.—*Railway Co.* v. *Glapey*, Phil. Leg. Int., June 5, 1868.

See Railway Company.

Profits of Office on Quo Warranto—Measure of Damages.

1. Where an intruder, ousted by judgment on *quo warranto* from an office having a fixed salary, and of personal confidence as distinguished from one ministerial purely, takes a writ of error, giving a bond to prosecute the same with effect and to answer all costs and damages, if he shall fail to make his plea good, thus, by the force of a supersedeas, remaining in office and enjoying its salaries, does not prosecute his writ with effect, and is, after his failure to do so, sued on his bond by the party who had the judgment of ouster in his favor, the measure of damages is the salary received by the intruding party during the pendency of the writ of error, and consequent operation of the supersedeas.—*United States* v. *Addison*, 6 Wallace 291.

2. The rule which measures damages upon a breach of contract for wages or for freight, or for the lease of buildings, where the party aggrieved must seek other employment, or other articles for carriage, or other tenants, and where the damages which he is entitled to recover is the difference between the amount stipulated and the amount actually received or paid, has no application to public offices of personal trust and confidence, the duties of which are not purely ministerial or electoral.—*Ib.*

Railway Company.—Negligence.

1. In an action against a railroad company for injury caused by an accident, evidence that the conductor was intemperate or otherwise incompetent is admissible to raise a presumption of negligence.

Admissions or declarations of the company, made subsequently to the accident, are not competent as part of the *res gestæ.*

The declarations of an officer of the company stand upon the same footing.

In an action for damages by a person injured by negligence, evidence of the number of plaintiff's family or of his habits and industry is not admissible unless special damage is averred.

It is no justification for the employment of an incompetent servant that competent ones were difficult to obtain.

Where a person injured by a railroad accident had accepted a ticket or pass describing him as "route agent, an employee of the Railroad Co.," this pass is competent evidence for the company, but it does not estop the plaintiff from showing that he was not, in fact, an employee of the company.

In an action for injury by negligence the damages should be compensation for the actual injury, and it is error to leave the measure and amount of damages, as well as the rules by which they are to be estimated, entirely to the jury.—*The Pennsylvania Railroad Co.* v. *Books* Am. L. Reg., 524.

2. A person receiving a printed notice on his ticket or check at the time of delivering his goods to a carrier is to be charged with actual knowledge of the contents of the printed notice.

Where such a notice stated that the carrire would not be responsible "for merchandise or jewelry contained in baggage, received upon baggage checks, nor for loss by fire, *nor for an amount exceeding* $100 *upon any article*, unless specially agreed for," &c., the words "any article" mean any *separate* article, not a trunk with its contents. The language bears that construction, and must be taken strictly against the carrier.

Therefore, a traveller who gave a single trunk to a carrier and received such a notice, was allowed to recover the value of separate articles in the trunk amounting to $700.