judged more ...ely; for, notwithstanding some questionable dicta, the true conclusion from the authorities seems to be, that it recognizes no artificial presumption in cases of this nature, but leaves the real or supposed superior strength of one of the persons perishing by a common calamity to its own natural weight, i. e. as a *circumstance* proper to be taken into consideration by a jury or ecclesiastical judge, but which, standing alone, is insufficient to shift the burthen of proof. When, therefore, a party, on whom lies the onus of proving the survivorship of one individual over another, has no other evidence than the assumption, that, from age or sex, that individual must have struggled longer against death than his companion, he cannot succeed. But then, on the other hand, it is not correct to suppose that the law presumes both to have perished at the same moment; this would be establishing an artificial presumption against manifest probability. The practical consequence is, however, nearly the same, because, if it cannot be shown which died first, the question will be treated by the tribunal as a thing unascertainable, and that, for all that appears to the contrary, both individuals may have died at the same moment."

POINTS SELECTED FROM E. D. SMITH'S N. Y. COMMON PLEAS REPORTS.*

Action.—A party suffered his infant child, of the age of seventeen months, to be in a public street of the city, without a suitable attendant; and while she was sitting down in the street, a wagon in charge of the defendant's servant passed over her. In an action by the father of the child, there being no proof of negligence on the part of defendant's servant, other than the mere fact that the wagon was driven by him, *held*, that the plaintiff was not entitled to recover damages for the injury. That any degree of negligence on the part of the servant, would subject his principal to an action, when the plaintiff's own negligence exposed his child, *doubted*. *Kreig* vs. *Wells*.

Recovery of judgment upon a contract is no bar to a separate action, for the deceit originally practiced upon the plaintiff to induce him to become a party to it. *Wanzer* vs. *DeBaun*.

* We have to thank the Reporter for an early copy of this valuable volume.—Eds. Am. Law. Reg.

The want of *ordinary* care on the part of the plaintiff, contributing to the injury, is fatal to an action for damages sustained through the defendant's negligence. *Jacobs* vs. *Duke.*

Whether a degree of negligence *less* than the want of *ordinary* care, would deprive the plaintiff of a recovery; *quere? Id.*

A publication unfavorably reviewing the credit and standing of a mercantile firm, and charging one member thereof with dishonesty, is libelous *per se;* and an action will lie by the partners for the injury to the business or credit of the firm. *Taylor* vs. *Church.*

A firm may recover for such a libel without proof of special damage. *Id.*

A servant finding a chattel in the master's house, (not being his property,) and retaining it by the master's consent, may maintain an action of trover against a wrongdoer who converts it. *Mathews* vs. *Harsell.*

Accordingly, where a servant woman found certain Texas notes in the house of her employer, who assumed their custody for her benefit, and entrusted them to the defendant for the purpose of ascertaining their value, &c., apprising him that she (the employer) was acting for the servant, and held the notes for her, and the defendant sold them and appropriated the funds to his own use; it was *held,* in an action brought in the names of the servant and her husband, for a conversion of the notes, that the defendant was liable for the value and interest from the time of their sale by him. *Id.*

Whether a house servant, who finds lost jewels, money or chattels, *in the house of his or her employer,* acquires any title even to retain the possession, *against the will of the employer; quere. Id.*

In an action for the loss of service of the plaintiff's son, caused by an injury received through the negligence of the defendant's servant; the plaintiff is confined to loss of service before suit brought, together with reasonable compensation for the expenses incurred and care bestowed by himself and servants during the illness of the child, and cannot recover for the prospective loss during the minority, unless he has declared specially therefor. *Gilligan* vs. *New York and Harlem R. R. Company.*

The rule varies from that which applies where the suit is brought by the child himself. Injury to the person is there the *gravamen* of the action. When the parent sues, it is the cause only of the loss, and the loss of service forms the gist of the action. To allow to him a recovery for prospective loss not alleged, would violate the rule, that a party can only recover *secundum allegata. Id.*

Agreement.—The common law liability of a common carrier for the

safe carriage and delivery of goods, may be limited and qualified by express contract with the owner. *Mercantile Mutual Insurance Company* vs. *Chase.*

Neither public policy, nor the law of the land, forbids a contract by the owner with the carrier to carry on special terms, whereby the owner shall himself assume and bear the risk of loss from accident or other causes, without actual fault or neglect of the carrier; and such contract, being voluntarily made and upon sufficient consideration, will be enfored. *Id.*

Appeal.—Although, after two trials, with a like finding by the jury, the court would not set aside the verdict *merely* because the evidence is deemed greatly preponderating against it, upon a question of negligence; yet, the fact that the jury has also found, on a question of damages, in decided opposition to the views of the court upon the testimony, forms a coincidence, which strengthens the apprehension of bias and partiality, and may require interference, even where, upon either ground alone, it might have been refused. *Gilligan* vs. *New York and Harlem R. R. Company.*

Apprentice.—The recital, in an indenture of apprenticeship, of the age of the apprentice, is only *prima facie* evidence, and may be rebutted. *Drew* vs. *Peckwell.*

On arriving at the age of twenty-one, the apprentice, notwithstanding such erroneous recital, may elect to abandon the contract or not; and leaving his master's service is evidence of his election. The master has then no right to his service, nor to his wages if employed by others. *Id.*

The defendant, in a suit brought by the master for the services of an apprentice, may prove that the latter, when such services were rendered, had attained his majority, although the fact may appear otherwise by an error in the indentures. *Id.*

Bills of Exchange and Promissory Notes.—A bill of exchange, drawn payable at sight, (in the absence of evidence of any particular local custom of the place where it is payable,) is due and payable on presentment to the drawee. *Trask* vs. *Martin.*

It is not settled, that by the general principles of commercial law, days of grace are allowed on bills payable at sight. The instrument is, therefore, to be construed according to the natural and ordinary import of the language employed. *Id.*

Bills payable in terms on demand—bills, having no time of payment specified, and bank checks, are well settled to be due and payable instantly on presentment. *Id.*