That the witness in this case is not privileged, as the mere act of receiving and conveying the title to real estate about which there has not been any action pending, does not bring him within the former common-law rule, as to privileged communications to attorneys and counsel, and since the enactment of 1847 no such privilege exists which can be claimed for the witness in this case.

That the questions are pertinent to the issue and proper, and the witness must answer.

BLATCHFORD, J.—On the facts stated by the Register, the five questions set forth were proper, and must be answered by the witness, and are not within the privilege of confidential communications between attorney and client.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

COURT OF APPEALS OF MARYLAND.[1]

SUPREME COURT OF PENNSYLVANIA.[2]

ASSUMPSIT.

Transfer of Contract.—Thompson contracted to buy an interest in two oil-wells, afterwards an oil company was incorporated to which Thompson transferred his interest, the vendors in the mean time receiving and selling the oil; by agreement, the vendors made the deed to the corporation, and dated it back to the date of the contract, agreeing to deliver Thompson's share of the oil to the company: *Held*, that *assumpsit* in the name of the company for oil received by the vendors between the contract and the incorporation could be maintained: *Snow* v. *Thompson Oil Co.*, 59 Pa.

The facts constituted an original contract between the vendors and the company: *Id.*

BANKS.

Usage—Special Deposits—Contracts for Payment in Coin.—On the 30th of December, 1861, A. sent to the Chesapeake Bank $3000, in gold coin of the United States, which in accordance with a previous agreement, was received as a *special deposit*, and entered on the bank-book of A., as follows: "1861, Dec. 30th, Cash (coin) $3000." At the date of this deposit, the banks of the state had suspended specie payments, and gold coin was at a small premium. A. drew two checks

[1] From J. Shaaf Stockett, Esq., Reporter; to appear in 29 Md. Rep.

[2] From P. Frazer Smith, Esq., Reporter; to appear in 59 Pa. Rep.

on the bank for the amount so deposited—one dated the 27th of May, 1864, for $3000, "in gold coin," the other dated 28th May 1864, for $3000, "in coin." When the first was presented gold was refused, and notes were offered, which were declined; and the like occurred with the second check. The bank-book of A. was balanced at different times between the date of the deposit and the dates of the checks, and the balance of money in bank to A.'s credit was never under $3000. On the 28th of May 1864, gold was at eighty-five and eighty-six-and-a-half premium. On the 2d of July 1864, A. brought his action against the bank to recover the amount of the deposit in specie. *Held:*—

That the single entry in the bank-book of the plaintiff of the deposit made on the 30th of December 1861, apart from the other entries in the book, was admissible as evidence on his behalf for the purpose of verifying the testimony of the witness, who testified as to the circumstances of the deposit, and of showing the nature of the entry itself, as indicative of the character of the deposit—the defendant being at liberty to use the other entries;

That the plaintiff could properly introduce evidence to show, that according to the general and well-known usage of the banks in the city of Baltimore, existing before and at the time of the deposit, and ever since, the entry in his bank-book imported an agreement on the part of the defendant to return the deposit in kind;

That the subsequent payment of checks, and the striking of balances in the bank-book of the plaintiff, from time to time, did not necessarily extinguish the special deposit;

That if the contract between the plaintiff and defendant be established, as alleged by the former, then he is entitled to recover in specie the amount of the coin so deposited, with interest thereon payable in like currency, from the time of the demand;

Whether the Legal Tender Acts of Congress be constitutional or otherwise, a contract which provides for payment in coin, may be enforced in conformity with its stipulations, and judgment may be rendered for the amount in coin, and the same enforced by execution, on which coin only shall be collected: *Chesapeake Bank* v. *Swain*, 29 Md.

Broker.

Commissions.—A broker, to be entitled to his commissions for negotiating a sale of property, must find a purchaser in a situation, and ready and willing to complete the purchase according to the terms agreed on, and who ultimately becomes the purchaser: *Kimberly* v. *Henderson*, 29 Md.

Congress.

Act of 1864 *as to Compensation to Members for Services.*—A., a lawyer, was a candidate for Congress at the election in 1864: neither he nor his competitor received a certificate of election. On the 20th of April 1865 he procured from the war department the discharge of a drafted man, under a contract previously made. On the 19th of February 1866, he obtained his seat on his *primâ facie* case and was ousted July 16. *Held*, that the contract was not in violation of the Act of Congress of June 11th 1864, prohibiting members of Congress, &c., from receiv-

ing compensation for services before a department, &c.: *Bowman* v. *Coffroth*, 59 Pa.

A. was not a member of Congress within the meaning of the act: *Id.*

The contract was against public policy and void, whether compensasation for the services was fixed or contingent: *Id.*

CONTRACT. See *Congress.*

Privilege on Another's Land.—Cowan by writing granted to Johnston and others as partners, the privilege to take clay from his land for twenty years at 12 cents per ton; to pay $150 at the end of every six months, although they should not then have taken away so much clay as would amount to that sum. *Held*, that the writing was an instrument for the payment of money within the Affidavit of Defence Law: *Johnston et al.* v. *Cowan*, 59 Pa.

The plaintiff by a special count set out that the defendants agreed in writing to pay him "$150 on the 1st of October 1866, $150 on the 1st of April 1867, $150 on the 1st of October 1867, and $150 on said days semi-annually thereafter, a copy of which agreement is hereto attached," &c. *Held*, to be sufficiently specific for the court to order a liquidation by the prothonotary: *Id.*

Filing the agreement was of itself a copy of the claim, and no more could be recovered than was due on it: *Id.*

The writing was an agreement to pay for the privilege of taking clay whether exercised or not: *Id.*

The sums to be paid if the *minimum* of clay was not taken out were liquidated damages, being a payment for a privilege and the contract not being a mere license: *Id.*

The agreement was signed by the grantor, and the firm name was signed "per J. R.," one of them. *Held*, that if the grant of an interest in land, it was a sufficient signing within the Statute of Frauds: the owner having signed and that bound him: *Id.*

The owner who conveys must be bound by writing, but the other party for anything contained in the statute need not so be bound: *Id.*

CORPORATIONS. See *Railroad.*

Contracts ultra vires.—The Maryland Hospital agreed with F., in consideration of $1200, to support his sister, then a lunatic patient in the institution, for the remainder of her life. The money was paid. F. also fully paid for the support of his sister to the 1st of July 1863, and the sum paid in commutation relieved him from that date from any further charge in the future for her support. The lunatic died on the 12th of August 1864. Subsequently, F. sued the hospital to recover back the sum he had paid under the contract, less the necessary expenses incurred in the support of his sister, from the 1st of July 1863 to the 12th of August 1864. *Held*:—

1st. That the hospital had no power under its charter to make this contract with F.; it was *ultra vires* not binding on the corporation, and could not have been enforced in favor of F.;

2d. That the contract was neither *malum in se* nor *malum prohibitum*, and the parties to it were not *in pari delicto*, and F. was entitled to recover back the sum paid by him, less the amount properly charge-

able as a fair and reasonable allowance for the care and keeping of his sister during the period which intervened between the 30th of June 1863 and the 12th of August 1864, the date of her death: *Maryland Hospital* v. *Foreman*, 29 Md.

Criminal Law.

Disturbance of a Meeting.—Maliciously disturbing a meeting of school directors is indictable at common law: *Campbell* v. *Commonwealth*, 59 Pa.

It is too late to make objections to the form of an indictment in the Supreme Court: *Id.*

Estoppel.

Silence when there is Duty to speak.—Positive acts tending to mislead one ignorant of the truth, which do mislead him to his injury, are good ground of estoppel, and ignorance of title on the part of him who is estopped will not excuse him: *Chapman* v. *Chapman and Gansamer*, 59 Pa.

Silence will postpone a title when one knowing his own right should speak out: *Id.*

One led by such silence ignorantly and innocently to rest on his title, believing it secure, and to expend money and make improvements, without timely warning, will be protected by estoppel: *Id.*

Sale of Public Property.—A., an officer of the United States army, took a horse belonging to the government, and having had the brand removed used him as his individual property for some time, and then sold him to B., who for nearly a year hired him out as a public livery-horse to parties, both civil and military, in the city of Baltimore. No steps were taken during this time by any agent of the United States Government to recover the horse. B. finally sold the horse to C., and shortly thereafter he was taken out of his possession under an order of the assistant provost-marshal, as the property of the United States Government. In an action against B., by the last purchaser, to recover what he had paid for the horse, it was *held*:—

1. That the government was not estopped from reclaiming the horse as its property;

2. That persons dealing with agents or officers in regard to public property, are bound to know the extent of their authority;

3. That the bare possession of the horse by A., with the consent of the officers of the government, and the sale by him to B., were not sufficient to pass title to the purchaser;

4. That although A. may have obtained possession of the horse from the quartermaster, and B. may have been a *bonâ fide* purchaser, a sale thus made, without the authority or assent of the government, could not operate as a transfer of title against the latter: *Johnson* v. *Frisbie*, 29 Md.

Frauds, Statute of. See *Contract.*

Insurance.

Partnership Property.—Goods were owned by two jointly; in effecting an insurance the agent told one that to insure the interest of both,

it made no difference whether or not both names were in the policy; he received a premium proportionate to the whole, and a policy was issued in the name of one. *Held*, that these facts showed a mistake in the agent and were admissible in evidence, and that upon a total loss the whole interest might be recovered in a suit in the name of the one to whom the policy had been issued: *Manhattan Ins. Co.* v. *Webster*, 59 Pa.

Each partner being liable *in solido* for the firm engagements, has a right to have the firm assets applied in the first instance to the payment of the firm debts: *Id.*

The interest of a partner is only his proportion of the capital or profits after all the debts are paid: *Id.*

A partner has an insurable interest in the entire stock, and on the receipt for a loss of insurance he must account to the firm: *Id.*

MASTER AND SERVANT. See *Negligence.*

NEGLIGENCE.

Injury by Act of Fellow-servant.—When several persons are employed as workmen in the same general service, though in different parts of it, and one of them is injured through the carelessness of another, the employer is not responsible unless he had employed unfit persons for the service: *O'Donnell* v. *Allegheny Valley R. R. Co.*, 59 Pa.

Ryan v. *The Pennsylvania Railroad Co.*, 11 Harris 384, remarked on: *Id.*

A carpenter working as such for a railroad company, was carried on the company's cars to and from his work as part of his contract of hiring. He was not to be esteemed as employed in the same general service with the hands running the train or repairing the track of the road, so as to relieve the company from responsibility for injury to him from their negligence: *Id.*

The master is bound to use ordinary care in providing suitable structure, machinery, tools, &c., and in selecting proper servants, and is liable to other servants in the same employment, if they are injured by his own neglect of duty: *Id.*

A railroad company is bound to furnish a safe and sufficient roadway to its servants, as well as others travelling over it. The remote negligence of servants as to the roadway will not excuse the non-performance of such duty: *Id.*

If the substructure of a road be suffered to lie until it has become rotten and unsafe, it is the negligence of the company: *Id.*

Casualty from such cause is not an *ordinary peril* which one taking service in the company is presumed to incur: *Id.*

In a suit by an employee of a railroad company who held the relation of a passenger, the court charged, that the baggage-car is an improper place for a passenger to ride; whether the rule against it was communicated to him or not, if he left his seat in the passenger-car and went into the baggage-car it was negligence, which nothing less than a direction or invitation from the conductor would excuse; such invitation should not be inferred from his having ridden there frequently with the

knowledge of the conductor, and without objection. *Held*, to be error: *Id.*

The conductor is the person to administer the rules of the company, and apply them according to the circumstances. The passenger-travel is under his directions and should conform to them. From the nature of his position he must exercise some discretion: *Id.*

Contributory Negligence of Plaintiff.—In an action whose *gravamen* is negligence, it is the duty of the plaintiff to show a case clear of contributory negligence. There must be shown a *primâ facie* case resulting exclusively from the wrong of the defendant, before he can be called to answer: *Waters* v. *Wing*, 59 Pa.

The plaintiff's horse was killed by the shaft of the defendant's carriage running into him, both being on a public highway. The defendant asked the court to charge: "That the defendant had a right to be on the public highway, and if the jury believe that at the time of the alleged accident he was travelling in an ordinary manner, he is not liable for an injury resulting from such use of the public thoroughfare." *Held*, that the point should have been affirmed: *Id.*

PARTNERSHIP. See *Insurance.*

RAILROAD. See *Negligence.*

Negligence.—It is the duty of a railroad company as of a natural person to exercise its rights with a considerate and prudent regard for the rights and safety of others: *Pennsylvania R. R. Co.* v. *Barnett*, 59 Pa.

It is not a justification that the act producing the injury was lawful or done in exercising a lawful right, if the injury arose from doing it negligently: *Id.*

The engine of the defendants having given no notice of its approach whistled under a bridge whilst a traveller was passing over it: his horses took fright, ran off, and injured the traveller. *Held*, that if danger might be reasonably apprehended, it was the duty of the company to give some warning: *Id.*

If it would have been negligence in the traveller to drive upon the bridge just as the train was about to pass under it, had he been aware of its approach, he was entitled to notice, and it was the duty of the company to give it: *Id.*

Negligence is always a question for the jury, when there is any doubt as to the facts or the inference to be drawn from them; *Id.*

If danger to the person or property of others at any point may be reasonably apprehended, or is likely to result from the running of trains without notice, it is the duty of the company to give notice: *Id.*

Sounding the whistle under a bridge as a traveller was passing over, which causes the horses to run away through fright and injure the traveller, was a sufficiently proximate cause of injury to create a liability on the company: *Id.*