ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF INDIANA.[2]

SUPREME COURT OF MARYLAND.[3]

SUPREME COURT OF NORTH CAROLINA.[4]

ADMIRALTY.—See *Shipping.*

Foreign Ship and Foreign Parties—Jurisdiction of U. S. Courts—Transhipment of Cargo.—Where a libel was filed against a foreign ship, in an admiralty case, in an Admiralty Court of the United States, the libelant and claimant both being foreigners, the place of shipping and the place of consignment being foreign ports, and the whole ground of libel a matter which occurred abroad, this court considered the question of jurisdiction open for argument here, though it was not raised by the pleadings, and had not been suggested by any one in the court below: *The Maggie Hammond*, 9 Wall.

Where a lien exists by the maritime law of foreign jurisdiction, our admiralty has jurisdiction to enforce it here, even though all the parties be foreigners. Its enforcement is but a question of comity: *Id.*

Semble, that by the law of Scotland, the shippers, where the goods have been sold, lost or injured during the voyage, may have recourse upon the vessel as a guarantee for the personal obligation of the ship owner: *Id.*

Under the statute of 24 and 25 Victoria, commonly known as the Admiralty Courts Act, jurisdiction exists in the English Courts of Admiralty to enforce by proceedings *in rem* a claim by an owner, domiciled in Canada, of a bill of lading of goods carried into a port of Wales where the master abandoned the voyage without lawful excuse, improperly entered into a new contract of affreightment and proceeded on a distant voyage, leaving the goods at the Welsh port, and neither carrying them himself to their port of destination, nor seeking to forward them in another vessel: *Id.*

Redress may be had in our Admiralty Courts in the case of a master thus there acting, although the ship have been a foreign vessel and the shipment made between foreign countries, as Scotland and Canada. And this is so, whether the statute be regarded as giving a maritime lien or only a right to sue the ship: *Id.*

The master of a vessel is bound to carry the goods shipped on her to their place of destination in his own ship, unless he is prevented from so doing by the act of God, the public enemy, the act of the shipper, or by some one of the perils excepted in the contract of shipment. When the vessel is disabled in the course of the voyage and cannot be seasonably repaired to perform it, he is bound to tranship the goods and send them forward in another vessel, if one can be had in the same or in any reasonably contiguous port: *Id.*

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1 From J. W. Wallace, Esq., Reporter; to appear in vol. 9 of his Reports.
2 From J. B. Black, Esq., Reporter: to appear in 31 Ind. Rep.
3 From J. S. Stockett, Esq., Reporter; to appear in 30 Md. Rep.
4 From S. F. Phillips, Esq., Reporter; to appear in 64 N. C. Rep.

Entry of Master in the Wrong Port.—A captain who, in the night and in a fog, enters a port, supposing it to be his port of destination, enters at his peril of its being so, unless there has been some necessity for his seeking a port. If there has been proper ground to doubt whether the port was the one which he supposed it to be, and he could safely wait outside till morning, or could signal a tug-boat to pilot him in, he should not proceed till he can see or know where he is going: *The Portsmouth*, 9 Wall.

A loss of a part of the cargo by a jettison resorted to in order to lighten the boat after she had run aground in consequence of violating such a dictate of prudence, is not a loss by dangers of the navigation within the meaning of a bill of lading having an exception in those terms: *Id.*

A vessel proceeding in the night and in a fog into port, is bound to proceed at a low rate of speed: *Id.*

If a vessel is stranded, it is the duty of the captain to take all possible care of the cargo. If the vessel must be lightened before she can get of, he should get lighters, if possible, and land it, not make a jettison of it: *Id.*

Practice—Appeal to Supreme Court—Names of Parties.—A writ of error or appeal to this court cannot be sustained in the name of a steamboat, or any other than a human being, or some corporate or associated aggregation of persons: *Steamboat Burns*, 9 Wall.

The acts of the State legislatures authorizing suits to be sustained by or against steamboats by name, confer no right so to sustain them in the Federal courts: *Id.*

Any person, however, who in the State courts, has substantially made himself a party to the case, by asserting on the record his interest in the vessel, and conducting the defense in the highest court of the State, may prosecute a writ of error in his own name in this court under the 25th section of the Judiciary Act: *Id.*

Collision—Navigation in Narrow Channels.—A steam vesse entering a short, narrow, and artificial channel, in some parts shoal such as the "Straight Cut" at Milwaukee, in which it is liable to meet tugs coming from the other end with tows, is bound to exercise caution as to the way it enters and proceeds, and to have and keep itself, both as to course and rate of speed, entirely under control: *The Alleghany*, 9 Wall.

Narrow Channels—Care in Navigating.—Steamers navigating in crowded channels and in the vicinity of wharves, must be run and managed with great caution, and with a strict regard to the established rules of navigation, including that one which requires them, when approaching from opposite directions, to put their helms to port. If they are about to attempt any manœuvre not usual and clearly safe, such as running in under the bows of another vessel in motion, they must not only sound their whistle or give the other proper signal, but before attempting the manœuvre must be certain also that the signal was heard and understood by the approaching vessel: *The Johnson*, 9 Wall.

COLLISION.—See *Admiralty.*

COMMON CARRIER.

Grain Barge—Grain in Bulk—Seaworthiness of Vessel.—It is the duty of the carrier of grain in bulk, in barges on our Western rivers, in the way now usual, as distinguished from the old way in sacks, to see that his barge is capable of resisting, without subjecting the cargo to injury, all the external forces to which it is subjected in the ordinary course of navigation, including especially those incident to the narrow, crooked and shallow water, and the often-changing courses in the currents of the rivers where they are; and to the force with which the large steamers which have them in tow are often brought against their sides in landing, as they do, for the purposes of their ordinary business, every few miles on the river: *The Northern Belle*, 9 Wall.

The barge must be so tight that the water will not reach the cargo, so strong that these ordinary applications of external force will not spring a leak or sink her, so sound that she will safely carry the cargo in bulk through these ordinary shocks to which she must every day be subjected. If she is capable of this she is seaworthy; if she is not, she is unfit for the navigation of the river No other test can be given, and this must be determined by the facts in each particular case: *Id.*

It is the duty of the carrier to have his barges often examined and thoroughly inspected so as to be sure of their condition. He should not use a barge after she has become from age or decay or injury unfit for use, and should repair them often and well, so long as they can, by repairing, be safely used, and no longer. For this he is to be held rigidly responsible: *Id.*

Special Contract—Negligence.—A common carrier cannot contract against liability for loss from his own ordinary negligence. Such a condition is void as against public policy: *I. P. and C. R. R. Co.* v. *Allen*, 31 Ind.

A contract for the shipment of live stock by a railroad company provided, that in consideration of a certain reduced rate of transportation, the owner of said stock should assume all risks of injuries which the animals or either of them might receive in consequence of any of them being wild, unruly, vicious, weak, escaping, maiming and killing themselves or each other, or from delays, or in consequence of heat, suffocation, or the ill effects of being crowded upon the cars of said company, or on account of being injured by the burning of hay, straw, or any other material used by the owner in feeding the stock, or otherwise, and any damage occasioned thereby, and also all risk of any loss or damage which might be sustained by reason of any delay, or from any other cause or thing in or incident to, or from, or in, the loading or unloading of said stock; that said owner should load and unload said stock at his own risk, the railroad company furnishing the necessary laborers to assist, under the direction and control of said owner, who should examine for himself all the means used in loading and unloading, to see that they were of sufficient strength, of the right kind, and in good repair and order; that each person riding free to take care

and charge of said stock, should do so at his own risk of personal injury from whatever cause; and that the owner should release, and hold harmless, and keep indemnified, the railroad company, from all damages, actions, claims and suits, on account of any and every injury, loss and damage heretofore referred to, if any should occur or happen. Suit against the railroad company to recover for certain animals shipped by the plaintiff, under this contract, and lost, while in course of transportation, by escaping through a window open in the end of a car in which they had been loaded by the plaintiff's agent, who accompanied them on the route, and who, after the escape of one of the animals, told the conductor to fix said window, and the conductor not doing so, fixed it himself: *Held*, that the railroad company was liable for the loss: *Id.*

CONFEDERATE STATES.—See *Execution.*

Prosecution for Treason against—Action of Trespass for.—A prosecution in a so-called "court of the Confederate States of America," for treason, in aiding the troops of the United States in the prosecution of a military expedition against the said Confederate States, is a nullity, and the fact that the tribunal had clothed itself in the garb of the law gives no protection to persons who, assuming to be its officers, were the instruments by which it acted: *Hickman* v. *Jones et al.*, 9 Wall.

The fact that a man was himself a traitor against the United States, does not necessarily prevent his recovering damages against other traitors, for having maliciously arrested and imprisoned him before a so-called court of the Confederate States, for being a traitor to these; the alleged treason having consisted in his giving aid to the troops of the United States while engaged in suppressing the rebellion: *Id.*

Captured Property—Acts of Claimant in aid of Rebellion.—Claimants under the Captured and Abandoned Property Act, of March 12, 1863, are not deprived of the benefits of that act because of aid and comfort *not* voluntarily given by them to the rebellion: *United States* v. *Padelford*, 9 Wall.

But voluntarily executing as surety, through motives of personal friendship to the principals, the official bonds of persons acting as quarter-masters or as assistant commissaries in the rebel army, was giving aid and comfort to the rebellion, although the principals, by their appointment to the offices named, escaped active military service, and were enabled to remain at home in the discharge of their offices respectively: *Id.*

Taking possession of a city by the national forces was not, of itself, and without some actual seizure of it in obedience to the orders of the commanding general, a capture within the meaning of the act, of the cotton which happened to be in the city at the time of the entry of the forces: *Id.*

Hence, where prior to any such seizure an owner of cotton, who though opposed to the rebellion, had given aid and comfort to it to the extent above mentioned, but was not within any of the classes excepted by the President's proclamation of December 8, 1863, and

in regard to whose property in the cotton no rights of third persons had intervened—took the oath prescribed by that act and kept it: *Held*, after a seizure and sale of the cotton by the government, that he was entitled to the net proceeds as given to loyal owners under the Abandoned and Captured Property Act. Having been pardoned, his offense, in executing the bonds, could not be imputed to him: *Id.*

Confederate Notes.—In ordinary dealings during the war, without design to aid the rebellion, Confederate treasury notes were a sufficient consideration to support a contract: *Kingsbury* v. *Lyon* 64 N. C.

Acts of State Authorities—When Valid.—The distinction between such acts of the State authorities during the recent war as are valid, and such as are not, turns upon the inquiry whether or not they were extraordinary, arising out of the condition of things and intended to obstruct or modify some part of the policy of the United States in regard to the rebellion, or not: *Leak* v. *Commissioners of Richmond Co.*, 64 N. C.

Measures taken during the war by parties, whether States, counties or individuals, the object of which was to counteract plans set on foot by the United States for the suppression of the rebellion, were, and are, contrary to the public policy of that government; and so contracts arising out of them cannot be enforced: *Therefore*, notes taken for money lent in 1862, to a county to enable it to provide *salt* for its citizens, and thus avoid one of the penalties of *blockade*, are void: *Id.*

The present State and county authorities are under no obligation to fulfill contracts made by their predecessors during the rebellion, unless they come within the provision of the Ordinance of 1865 (October 18th), "Declaring what laws and ordinances are in force," etc., and that requires such as it validates to be "consistent with allegiance to the United States," which is not true of the transaction in question: *Id.*

The burden of proving that any act of the State authorities during the late rebellion which may be under debate, was "consistent with allegiance," is owing to the general position of those authorities, upon the party who asserts it: *Id.*

Transactions like that under consideration fall under the provisions of the Ordinance of 1865 (October 19th), and the Constitution of 1868 (Art. VIII. § 13), *forbidding* the payment of obligations incurred in aid of the rebellion, directly or indirectly: *Id.*

Those prohibitions are merely declaratory of principles of the common law in regard to contracts, and therefore do not impair the obligation of the *contracts* referred to: *Id.*

CONSTITUTIONAL LAW.—See *Internal Revenue.*

Retrial of Cases Already Tried by Jury.—Act of 1863.—The provision in the seventh amendment of the Constitution of the United States, which declares that no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to

the rules of the common law, applies to the facts tried by a jury in a cause in a State court: *The Justices* v. *Murray*, 9 Wall.

So much of the fifth section of the Act of Congress of March 3, 1863, entitled "An act relating to habeas corpus and regulating proceedings in certain cases," as provides for the removal of a judgment in a State court, and in which the cause was tried by a jury, to the Circuit Court of the United States for a re-trial on the facts and law, is not in pursuance to the constitution, and is void: *Id.*

CONTRACT.

Consideration—Failure of—Sale.—Suit on a note. Answer, that the defendant bought of the payee a certain number of fruit trees; that it was agreed by them that said trees should be in good condition, and that if any of them should not grow, the seller would replace them with other trees; and that on the day the note was given (in November), the seller delivered said trees, and represented them to be as provided for by said contract; that the defendant not being experienced in the nursery business, believing the trees to be as represented, in consideration thereof executed the note, and properly set out the trees; that the same were not in good condition, but were wilted, and in bad condition, and *wholly worthless;* that defendant did not and could not know their condition till long after the note was executed; that they did not grow, of which the seller had notice on the first day of the next June; yet he had wholly failed to replace them: *held,* that the answer was good on demurrer: *Morehea* v. *Murray*, 31 Ind.

The trees were delivered to the buyer upon his written order directed to the seller, for certain trees at specified prices: *held,* that parol evidence was admissible to prove an agreement of the parties at the time of making said order, that the seller should replace any of the trees that might not grow: *Id.*

As steps in proving the authority of one as an agent in the transaction in controversy, evidence of his similar transactions with different persons and of his declarations therein was held admissible: *Id.*

Destruction of Subject by Fire before Performance.—After the execution of a written contract for the sale of a house and lot, and before the day fixed for the delivery of the possession, and payment of the first installment of the purchase-money, the house was accidentally destroyed by fire, without fault of either party or of the tenant then in possession. The vendor had a fee simple title to the property, and at the proper time, under the contract, offered to deliver possession of the premises in the condition in which they then were. This the vendee refused to receive. On a bill filed by the vendor for a specific performance of the contract: *held,* that from the time the owner of an estate enters into a binding agreement for its sale, he holds the same in trust for the purchaser, and the latter becomes a trustee of the purchase-money for the vendor, and being thus in equity, the owner, the vendee must bear any loss which may happen, and is entitled to any benefit which may accrue

to the estate in the interim, between the agreement and conveyance: *Brewer* v. *Herbert*, 30 Md.

EASEMENT.

Covenants Creating Run with the Land.—Covenants creating easements, *run with the land*, even as against assignees in fee, where the intent to create them is clear, the easements themselves apparent, and the covenants consistent with public policy, and so qualifying and regulating the mode of enjoying the easements, as, that if disregarded, the latter will be substantially different from what is intended: *Norfleet* v. *Cromwell*, 64 N. C.

Therefore, a covenant to repair a canal dug for the purpose of draining the lands of the parties to the covenant, runs with such lands, and binds a subsequent purchaser in fee: *Id.*

A party thus bound is entitled to *notice* of a call to contribute *after the repairs have been done;* and the want of such notice, even where, *previously to the making of the repairs*, he had *disclaimed* liability therefor, is fatal to an action against him: *Id.*

Covenants are the proper mode of creating such servitudes as consist in acts to be done by the owner of the servient land: *Id.*

EQUITY.

Irregularities in a Sale by a Sheriff cognizable only in the Court from which the Execution issued.—M purchased of B, by parol agreement, a house and lot for $900, to be paid from time to time, as convenient to M, to whom, on the payment of the entire purchase-money, the property was to be conveyed in fee by a clear and undisputed title. At the time of making the agreement, a part of the purchase-money was paid by M, who shortly thereafter entered into possession—other part of the purchase money was subsequently paid. Sometime afterward B died, leaving children; W was appointed his administrator, and as such recovered judgment against M for the unpaid purchase-money; execution was issued thereon, and the property was sold and purchased by W, for the debt, interest and costs, who applied for a writ of possession, upon the refusal of M to surrender the property. M filed a bill against the administrator and heirs-at-law of B, alleging these facts, and charging fraudulent misrepresentations to him by B, at the time of the sale, as to his having an undisputed title to the property, when, in fact, he had none, and also irregularities and defects in the proceedings of the sheriff by whom the sale to W was made. The bill prayed for an injunction to restrain the execution of the writ of possession, and perpetually to enjoin the judgment recovered against M, and for a decree declaring the original sale to him void for fraud and want of consideration, and that the money paid by him be refunded, and for general relief. The injunction was issued as prayed. Answers were filed for the adult defendants, denying the material allegations of the bill, and the minors answered by guardian *ad litem: held*, that the alleged regularities and defects in the proceedings of the sheriff, by whom the sale to W was made, were within the cognizance only of the court from which the execution

issued, and to which the return was made. They were not within the jurisdiction of a court of equity: *Wilson* v. *Miller*, 30 Md.

ESTOPPEL.

False Representations.—A false representation not acted upon by him to whom it is made does not estop: *Devries* v. *Haywood* 64, N. C.

The maxim *ex turpi causa non oritur actio*, does not apply to prevent a party to a statement from maintaining an action in which it becomes necessary for him to show such statement to be false: *Id.*

EVIDENCE.—See *Contract.*

Proof of Papers on file in Government Offices.—The proper mode of proving papers on file, in any of the departments or public offices of the government, is by procuring certified copies from those persons who have them in custody. The counsel for the government cannot be compelled to produce either such copies or the originals for the benefit of parties who may be litigating with the government. *Barney* v. *Schmeider*, 9 Wall.

Notice, therefore, to the party or counsel representing the government to produce such paper does not authorize the party giving the notice to use other copies than those properly certified as above stated: *Id.*

EXECUTION.

Satisfaction—Confederate Notes.—A sheriff who was instructed by the plaintiff to receive upon an execution "cash in bank bills of the state or specie," received upon it its amount in Confederate currency, and endorsed "*Satisfied;*" upon returning it to the clerk, his attention was drawn to the instructions upon the writ, and thereupon he withdrew it, erased "satisfied," and entered "Received, August 30th, 1864, the amount of this execution in Confederate currency notes, which plaintiff refused to accept:" *held*, that the judgment was not discharged; and therefore that the defendant had no right at a subsequent term to move that alias writs of execution which had been issued should be set aside: *McKay* v. *Smitherman*, 64 N. C.

An execution can be satisfied only by a seizure and sale of property; or by payment in coin, or in such currency as the plaintiff gives the officer express or implied authority to receive: *Id.*

EXECUTOR AND ADMINISTRATOR.

Note for Counsel Fees.—A note given by an executor to an attorney for counsel in his office as executor, is payable by the maker personally, and not *as executor*: *Kessler* v. *Hall*, 64 N. C.

Parol evidence of an understanding that it was to be paid out of the testator's assets only, is not admissible: *Id.*

FEDERAL AND STATE COURTS.—See *Admiralty, Internal Revenue, Constitutional Law.*

Mandamus from Federal Court to State Officer.—Mandamus from a Federal court to officers of a county in a State, to levy a tax to pay interest on bonds issued by the county on which a relator has obtained judgment, and has no means of obtaining satisfaction but by the levy of a tax, cannot be, in any way, controlled by an injunction from the State court to those officers against a levy: *Riggs* v. *Johnson County*, 6 Wall. 166, affirmed; *The Supervisors* v. *Durant*, 9 Wall.

It makes no difference whether the relator have been made a defendant to the proceeding in the State court for an injunction or not, no whether the injunction have issued before or after his suit in the Federal court was begun: *Id*

HUSBAND AND WIFE.

Deed of Separation—Husband as Trustee of Wife's Separate Moneys.—A covenant by a husband for the maintenance of the wife, contained in a deed of separation between them, through the medium of trustees, where the consideration is apparent, must now be regarded on authority as valid, nowithstanding the serious objections to such deeds. It will accordingly be enforced in equity, if it appear that the deed was not made in contemplation of a future possible separation, but in respect to one which was to occur immediately, or for the continuance of one that had already taken place. And this especially if the separation was occasioned by the misconduct of the husband and the provision for the wife's support was reasonable under the circumstances, and no more than a court before which she was entitled to carry her grievances would have decreed to her as alimony: *Walker* v. *Walker's Executor*, 9 Wall.

The validity of such a covenant is not impaired by the fact that the deed contains a provision that if the parties should afterward come together, the trust should remain and be executed in like manner, as if they should remain separate: *Id.*

A husband may be chargeable as trustee with the income of his wife's separate property, and if he have received it from her, to invest it for her, and have not invested it, he will be so charged at her suit, whether the income be of property which he has settled upon her or be income from some other separate property of hers: *Id.*

The Federal courts, where they have jurisdiction, will enforce for the furtherance of justice the same rules in the adjustment of claims against anciliary executors, that the local courts would do in favor of their own citizens: *Id.*

A widow by being a mere formal party to a deed of compromise between the heirs-at-law of a decedent and his residuary devisees, by which a specific sum is given to the former and the residue of the estate to the latter, does not estop herself from coming upon the estate with a claim for separate moneys of hers, received by her husband to invest for her, but which he did not so invest; she having done nothing to conceal her claim from the residuary devisees, and

the "residue" which the heirs surrendered having been a residue after the proper settlement of the estate: *Id.*

Nor does she estop herself from asserting such a claim against her husband's executors, by her acceptance of a provision under his will which makes a limited provision for her to be received, with income under a certain trust deed, in satisfaction of dower: *Id.*

The estate of a husband who had maltreated his wife, and obtained from her the income of her separate property under a promise to invest it for her, but who did not so invest it, charged after his death with interest compounded annually, through a long term of years, and deprived of all commissions for services as trustee: *Id.*

Married Women—Separate Real Estate—Contract.—In this State a married woman can charge her real estate by such contracts only as are reasonably calculated to make the estate profitably to her, or to preserve it, or to protect her title thereto: *Smith* v. *Howe and Wife*, 31 Ind.

A married woman who owns real estate in her own separate right and is in the habit of making contracts in her own name without the co-operation of her husband, who has abandoned her and is residing in another State, cannot charge such real estate by her written agreement to pay a certain sum to a third person if he will tell her the whereabouts of her husband, so that she can find him: *Id.*

INSURANCE.

Alteration of building—Construction—Carpenter's risk—Constructive notice to the Company of an alteration in a Policy of Insurance—Concurrent Insurance.—In the absence of any express provision on the subject in a policy against fire, the making of repairs or additions to, or the erection of adjacent buildings, whereby there was a material increase of risk by fire to the property insured, will not prevent a recovery unless the loss was produced in a whole or in part by such increase of risk: *Washington Ins. Co.* v. *Davison*, 30 Md.

The term "carpenters," employed in the third section of the seventeenth condition of the policy of insurance, entitled "Risks—specially hazardous," is simply a prohibition on the use of the insured premises, for the purpose of carrying on therein the work or business of a carpenter, or converting them into a carpenter's shop; it has no reference or application to the erection by carpenters of an adjacent ground, when the insured premises are not used by them as a workshop for that purpose. To avoid the policy under this condition, the insured premises must themselves be used for the purpose of carrying on the prohibited trade.

Evidence by the insurance company, through its secretary as an expert, to show that the term "carpenters" used in its policy was generally understood, in the office of the company, to refer to the employment and work of carpenters in erecting or adding to buildings insured, is inadmissible: *Id.*

An insurer taking a risk upon a sulphuric acid manufactory is presumed to know and to have contemplated all the causualities and incidents to which the subject insured might be liable as such manu-

factory, and to have known all the requisites and adjuncts belonging thereto: and if he inspects the premises by himself or his agents, he has notice of all an expert ought to know from such inspection, and is bound by knowledge to that extent, and cannot set up in defense the ignorance or incapacity of the inspectors he employs: *Id.*

The Washington Fire Insurance Company having been applied to for insurance on certain property, for its own convenience and without the request or authority of the party seeking the insurance, applied to the Maryland Fire Insurance Company to share the risk; the premises were examined by the secretaries of the two companies together, with a view of taking the risk conjointly; both policies as originally drawn were precisely similar, of the same date, for the same amount, and both were altered in the same particulars before the premiums were paid, which were paid to both companies on the same day: *held*, that the policy issued by the Maryland Fire Insurance Company was neither *prior* nor *subsequent* to the policy issued by the Washington Fire Insurance Company, but took effect contemporaneously with it: and therefore the non-endorsement in writing on the policy issued by the Washington Fire Insurance Company, that another insurance had been effected in the Maryland Fire Insurance Company did not render the former policy void under the proviso contained therein, that "if any other insurance *has been* or shall *hereafter* be made on the said property," without the consent of the company in writing endorsed thereon, the policy shall be void: *Id.*

An alteration was made in a policy of insurance by a clerk whose authority to do so was denied by the company, who also denied all knowledge of the alteration until after the fire which destroyed the insured premises: at the time of making the alteration the clerk made a corresponding alteration in the record of the policy in the record book, in which all policies issued by the company were recorded: *held*, that the record in the books of the company kept by it for the sole purpose of recording its policies was constructive notice to the company, by which it was as effectually bound as by actual notice: *Id.*

Abandonment—Acceptance by Insurer.—If a party assuring a vessel which has been sunk gives notice that he abandons her, as for a total loss, when by the terms of the policy he has no right so to abandon, the company, even if not accepting the abandonment, will nevertheless make itself liable as for a total loss, if taking possession of the vessel under the provisions of the policy, for the purpose of raising, repairing and returning her, they do not raise, repair and return in a reasonable time. Holding the vessel for an unreasonable time is a constructive acceptance of the abandonment: *Coplin* v. *Insurance Company*, 9 Wall.

This is so, notwithstanding there is a provision in the policy that the acts of the insurers, in preserving, securing or saving the property insured, in case of danger or disaster, should not be considered or held an acceptance of abandonment. The provision refers only to authorized acts: *Id.*

Action on Policy.—B, an insurance broker in Baltimore made an application to the Phœnix Insurance Co., of New York, for an insurance upon the steamer Richmond, on behalf of J. B, Jr. Upon the application was endorsed a description of the steamer, stating her age, and her rate as "A, No. 1." While this application was pending, C, on behalf of H, made application *through* B, to the H. F. & M. Ins. Co., for the insurance of the interest of H, in the steamer, but made no representations to B, concerning the age or rate of the steamer, nor did he authorize B to make any such representations, or know that any representations on that subject had been made by B, on behalf of H. Both applications were granted, and policies were issued to the applicants. In an action brought by H, against the H. F. & M. Ins. Co., on the policy issued by it to him, *Held*:

1st. That the fact that the defendant, in taking the risk, acted upon representations which had previously been made by B to a different company, and on behalf of another party with whom the plaintiff was not in privity, could not in any manner affect the right of the plaintiff, there being no evidence that his agent ever adopted such representations, or had any knowledge of them.

2d. That if the defendant, in acting upon the plaintiff's application, and assuming the risk, chose to rely upon representations which had been made on behalf of other parties in their application to a different company for insurance, and without the knowledge of the plaintiff or his agent, the rights of the plaintiff under the contract would not be affected thereby: *Harmony Co. Hazlehurst*, 30 Md.

Internal Revenue.

Jurisdiction of the United States Courts.—The jurisdiction of suits between citizens of the same State, in internal revenue cases, conferred by the Act of March 2d, 1833, "further to provide for the collection of duties on imports" (4 Stat. at Large 632), and the Act of June 30th, 1864, "to provide internal revenue," etc. (13 Id. 241), was taken away by the Act of July 13th, 1866, "to reduce internal taxation, and to amend an act to provide internal revenue," etc. (14 Id. 172): *Insurance Company* v. *Ritche* (5 Wallace, 541) affirmed; *Hornthall* v. *The Collector*, 9 Wall.

Where such citizenship as is necessary to give jurisdiction to the Federal courts is not averred the suit cannot be maintained: *Id.*

Regulation of Internal Trade of a State.—The 29th section of the Internal Revenue Act of March 2d, 1867 (14 Stat. at Large 484), which makes it a misdemeanor, punishable by fine and imprisonment, to mix for sale naptha and illuminating oils, or to sell or offer such mixture for sale, or to sell or offer for sale oil made of petroleum for illuminating purposes, inflammable at less temperature or first test than 110 degrees Fahrenheit, is in fact a police regulation, relating exclusively to the internal trade of the States: *United States* v. *Dewitt*, 9 Wall.

Accordingly, it can only have effect where the legislative authority of Congress excludes, territorially, all State legislation, as for

example in the District of Columbia. Within State limits, it can have no constitutional operation: *Id.*

Limitations, Statute of.

Presumption in Aid of Title—Adverse Possession.—Where possession of land is shown to have existed for a great length of time without interruption, all those circumstances or formal ceremonies which the law deems necessary to make such possession rightful, will be supplied by presumption, and the possession thus supported will not be disturbed: *Crook* v. *Glen*, 30 Md.

An exclusive adverse possession for more than twenty years by a mortgagee than those claiming under him, without any account or acknowledgment of a subsisting mortgage, is a complete bar to an application for a surrender and cancellation of the mortgage, and a delivery of the possession of the mortgaged premises:

The statute of limitations applies to trust estates: *Id.*

Where there is a trustee in existence to represent the *cestui que trust* and her rights and interests in the trust estate, the statute of limitations bars as effectually as if there existed no disability in the *cestui que trust*: *Id.*

Reasonableness of Time.—Where a right springs not from a contract, but from legislative enactment, the action to enforce a claim under such enactment may be limited by law, and the legislature is the exclusive judge of the reasonableness of the time allowed within which the action may be brought: *DeMoss* v. *Newton*, 31 Ind.

No exception can be claimed in favor of minors, unless they are expressly mentioned by the statute as accepted: *Id.*

A man died in 1854, seized in fee simple of certain real estate, leaving surviving him a widow and brothers and sisters, but no child, or father, or mother. The widow took possession of the entire property. Suit for partition, the plaintiffs claiming title to an undivided interest in the land as brothers and sisters of the deceased: *Held*, That it was a sufficient answer, that before the commencement of the action more than ninety days had elapsed from the 9th of March, 1867, when section 3, of the Act of March 4th, 1853 (Acts 1853, p. 55), was repealed and such limitation fixed to the right of action under its provisions (Acts 1867, p. 204.): *Id.*

National Banks.

Taxation by States.—The right of the States to tax the shares of the national banks reaffirmed: *National Bank* v. *Commonwealth*, 9 Wall.

The statute of Kentucky taxing bank stock, levies a tax on the shares of the stockholders, as distinguished from the capital of the bank invested in Federal securities: *Id.*

This is true, although the tax is collected of the bank instead of the individual stockholders: *Id.*

The doctrine which exempts the instrumentalities of the Federal government from the influence of State legislation, is not founded on any express provision of the Constitution, but in the implied

necessity for the use of such instruments by the Federal government: *Id.*

It is therefore limited by the principle that State legislation, which does not impair the usefulness or capability of such instruments to serve that government, is not within the rule of prohibition: *Id.*

A State law requiring the national banks to pay the tax which is rightfully laid on the shares of its stock is valid under this limitation of the doctrine: *Id.*

NEGLIGENCE.—See *Railroad.*

Railroad Company—Ordinary and Reasonable Care.—In an action under the statute, by a father o recover damages from a railroad company, for the death of his child, aged about five years, caused by its negligence, the plaintiff is entitled to recover if it appear that the death resulted from the want of ordinary care and caution on the part of the defendant, and that the child used such care as might reasonably be expected under the circumstances, from one of her age and intelligence, and that the parent or person to whose care she was entrusted at the time did not, by his negligence, directly contribute to produce the result complained of: *Balt. and Ohio Railroad Co.* v. *The State, use of Fryer,* 30 Md.

The terms of ordinary and reasonable care are relative and dependent, and whether such care has been used can only be determined by considering the age and capacity of the person injured: *Id.*

In actions under the statute, or in other cases where parties sue for personal injuries suffered by others than themselves, no recovery can be had if the party entitled to the action be guilty of negligence or the want of care whereby the injury occurred: *Id.*

Contributory Negligence of Plaintiff.—The plaintiff, who was returning from market about nine or ten o'clock at night, accompanied by his wife, ran forward with his market basket on his arm and called to the driver of a street car; the driver stopped the car, when the plaintiff got on the front platform, placed his basket thereon, and asked the driver to be so kind as to take it—he assented; the car was immediately started and the plaintiff was thrown off, or fell in attempting to get off and was injured. The plaintiff did not intend to remain on the car as a passenger, but his wife did intend to ride therein; the intention however of neither was communicated to the driver: *Held,*

1. That a regulation of the City Passenger Railway Company, prohibiting passengers from getting on or off at the front end or any car, and requiring them to enter and descend by the rear platform only, is a reasonable regulation, and knowingly to violate it, without the compulsion of some existing necessity, is conclusive evidence of negligence on the part of the passenger; so that, should he sustain an injury in consequence thereof, he will have no right of action against the company, notwithstanding the driver may also have been negligent.

2. That the circumstances that a driver or conductor may have given permission thus to use the front platform is immaterial: for

the company cannot be bound by the act of their servant in attempting to dispense with a known and positive regulation.

3. That the fact that a notice of the regulation requiring passengers to enter and to leave the cars by the rear platform only, was put up inside of all the cars, and legible to all who entered them, and the fact that the plaintiff had often previously ridden in the cars were evidence from which it might be inferred that he had notice of its existence: *Balt. City Pas. R. R. Co.* v. *Wilkinson*, 30 Md.

NUISANCE.

Injunction—Obstructing Highway.—A private person cannot enjoin the obstructing of a public highway without showing a special and peculiar injury to himself, not common to the public. The fact that the injury to such person is greater in degree than that to others, does not entitle him to such relief. The injury may be to more than one person, but must not embrace the entire public: *McGowan* v. *Whitesides*, 31 Ind.

In a complaint to enjoin the obstructing of a public highway, the only averments connecting the plaintiffs with the highway were, "that it is their usual, convenient and necessary route of travel from their houses, which are all on or in the vicinity of the road to their market town and usual place of business; and that without greater or less circuity, when the road is so obstructed, they and each of them have no other means, nor have the public wishing to use the road, of going to and fro, as they have a right to do for business, comfort and pleasure: *Held*, that the complainant was bad on demurer: *Id.*

RAILROAD.—See *Common Carrier—Negligence.*

Injury to Passenger.—A railroad train ran beyond the platform for landing passengers at a certain station, and stopped over a culvert, and the proper servants of the railroad company announced the name of the station as a notification to the passengers for that station that the train was there, whereupon a passenger for that station, who had paid the company the fare demanded of him, relying on the good faith of the company, alighted upon and into said culvert, without his fault or negligence, supposing he was alighting upon said platform, it being at night and so dark that he could not see that the train had not stopped at said platform, whereby he was greatly injured: *Held*, that the company was liable for the injury so received: *I. and N. Central R. R. Co.* v. *Farrell*, 31 Ind.

A railroad company is not legally responsible for the action of persons not its servants in falsely announcing the arrival of a train at a station, whereby a passenger in attempting to alight from the train is injured: *Id.*

SALE

Deceit.—Where a seller of goods knowingly makes false representations to the buyer as to their quality, but the buyer does not rely upon such representations and is not deceived thereby, the seller is not liable for deceit: *Hagee* v *Grossman*, 31 Ind.

Where a seller has made false representations as to the quality of the goods, but the buyer, in making the purchase relies on a test of their quality made by his own agent who is not prevented by any act or word of the seller from testing the goods, the seller is not liable for deceit: *Id.*

Upon the trial of an action for deceit in the sale of a quantity of flour, its quality at the time of sale being in question, the court refused to permit the flour to be examined by the jury to test its odor: *Held*, that it was properly excluded: *Id.*

SHERIFF'S SALE.—See *Equity.*

SHIPPING.

Stranding of Vessel—Value—General Average.—To constitute a voluntary stranding of a vessel it is not necessary that there should have been a previous intention to destroy or injure the vessel, nor is such intention supposed to exist. It is sufficient that the vessel was selected to suffer the common peril in the place of the whole of the associated interests, in order that the remainder might be saved: *Star of Hope*, 9 Wall.

The stranding is voluntary whenever the will of man does in some degree contribute thereto though the existence of the particular reef or bank on which the vessel grounds was not before known to the master, and though he did not intend to strand the vessel thereon; provided it sufficiently appear that making the exposure of the vessel he was aware that stranding was the chief risk incurred by him, and that it was not wholly unexpected by him: *Id.*

As a general rule the contributory value of the ship, when she has received no extraordinary injuries during the voyage, and has not been repaired on that account, is her value at the time of her arrival at the termination of the voyage. But where, as in this case, the ship has sustained injuries during the voyage and undergone repairs, her contributory value is her worth before such repairs were made. In the absence of other proof on this point, her value in the policy of insurance at the port of departure is competent evidence. From this, however, should be made a just and reasonable deduction for deterioration: *Id.*

The expenses of an *ex parte* adjustment made by the charterers of a ship at the port of delivery are not chargeable in admiralty on the ship or freight, unless the results were adopted and used in the court below by the commissioner who stated the adjustment made under order of the court: *Id.*

Repairs cannot be made by the master unless he has means or credit; and if he has neither, and his situation is such that he cannot communicate with the owners, he may sell a part of the cargo for that purpose if it is necessary for him to do so in order to raise the means to make the repairs. Sacrifices made to raise such means are the subject of general average, and the rule is the same whether the sacrifice was made by a sale of the part of a cargo or by the payment of marine interest: *Id.*