It seems to me, therefore, very clear that these claims must be recognised as properly chargeable upon the trust fund. The complainants and the defendants, trustees under the seven per cent. mortgage of the Chesapeake and Ohio Raiload Company, concur with the receiver in advising the payment of these claims. The holders of bonds secured under the mortgages of the Chesapeake and Ohio Railroad Company, all of whom they represent, are the only parties who can be ultimately affected by such payment, and I am happy to have their assent to the entry of an order which, in despite of all their opposition, must have been entered, authorizing and requiring the receiver, as promptly as practicable, to satisfy these claims.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ILLINOIS.[1]
COURT OF APPEALS OF MARYLAND.[2]
SUPREME COURT OF MICHIGAN.[3]
SUPREME COURT OF PENNSYLVANIA.[4]

ATTORNEY.

Parties in Pari Delicto—Different degrees of Guilt as between the Parties to a Fraudulent Transaction—Relation of Attorney and Client existing between Parties in Pari Delicto.—There may be different degrees of guilt as between the parties to a fraudulent or illegal transaction; an l if one party act under circumstances of oppression, imposition, undue influence, or at great disadvantage with the other party concerned, so that it appears that his guilt is subordinate to that of the defendant, the court, in such case, will relieve: *Roman* v. *Mali*, 42 Md.

Where the parties to a fraudulent or illegal transaction are *in pari delicto*, the simple fact, that at the time of such transaction, the relation of client and attorney exists between them, will give the former no claim to the aid of a court of equity to have restored to him the property of which the latter has become possessed by their joint fraud. Such relation alone will not except the case from the general rule, *in pari delicto potior est conditio possidentis, aut defendentis: Id.*

[1] From Hon. N. L. Freeman, Reporter; to appear in 77 Illinois Reports. The Reporter having determined to publish the latest decisions at once and bring up the others afterwards, there will be a temporary gap from vols. 68 to 76, which will be filled hereafter.

[2] From J. Shaaf Stockett, Esq., Reporter; to appear in 42 Maryland Rep.

[3] From Hoyt Post, Esq., Reporter, and Henry A. Chaney, Esq. Cases decided at January Term 1876. The volume in which they will be reported cannot yet be indicated.

[4] From P. Frazer Smith, Esq., Reporter; to appear in 78 Pa. State Reports.

An attorney is under no actual incapacity to deal with or purchase from his client. All that can be required is, that there has been no abuse of the confidence reposed; no imposition or undue influence practised, nor any unconscionable advantage taken by the attorney of the client. When a transaction between parties occupying such relation to each other is brought in question, the onus of the case is cast upon the attorney of showing that nothing has happened in the course of the dealing which might not have happened had no such connection subsisted, and that the transaction has been fair in all respects. If the court be satisfied that the party holding the relation of client performed the act or entered into the transaction voluntarily, deliberately and advisedly, knowing its nature and effect, and that no concealment or undue means were used to obtain his consent to what was done, the transaction will be maintained: *Id.*

He who comes into equity must come with clean hands; and if a party seek to cancel or set aside an instrument, or be relieved of a transaction, or recover property, on the ground of fraud, and he himself has been guilty of a wilful participation in the fraud, equity will not interpose in his behalf: *Id.*

BANKRUPTCY.

Recording Assignment of Land—Assignee's Sale.—An assignment of a bankrupt's land by a register to an assignee in bankruptcy, not acknowledged or proved as required by the laws of Pennsylvania, cannot be recorded in that state: *Zeigler* v. *Shomo*, 78 Penna.

From the commencement of proceedings in bankruptcy the estate of the bankrupt is in the custody of the District Court of the United States; its jurisdiction is superior and conclusive and its decrees final and absolute: *Id.*

A purchaser at an assignee's sale of a bankrupt's property under an order of the District Court and decree confirming it, is not bound to see that every particular in the appointment and qualification of the assignee has been complied with; he takes whatever title was in the bankrupt: *Id.*

Land was sold as a bankrupt's; in ejectment against him by the purchaser, he defended on the ground that the right of possession was in his wife when the writ was served. If the wife had no title, her possession was that of her husband and the defence could not be sustained: *Id.*

COLLATERAL SECURITY. See *Debtor and Creditor.*

COMMON CARRIER. See *Contract.*

CONSTITUTIONAL LAW.

Presumption as to Passage of Laws.—Where a law is signed by the speakers of both houses, and approved by the governor, it will be presumed to have been passed in conformity with all the requirements of the Constitution, and to be valid, until the presumption is overcome by legitimate proof, clear and convincing in its character: *Larrison* v. *Peoria, Atlanta & Decatur Railroad Co.*, 77 Ill.

CONTRACT. See *Attorney; Equity; Injunction.*

Construction of Bill of Lading—Liability of Common Carriers limited by Special Contract—However terms may be understood in their

ordinary sense, if the parties have attached other, or unusual, or arbitrary meaning to them to be derived from their fair interpretation in the contract, they have the right so to employ them. But to accomplish such purpose and to vary the common understanding, the meaning ought to be plain and free from reasonable doubt: *McCoy* v. *Erie & Western Transportation Co.*, 42 Md.

The plaintiffs sued the defendants, who were common carriers, for damages sustained by the alleged negligence of the defendants in transporting a cargo of corn, consigned to the plaintiffs, from Chicago to Baltimore. The bill of lading was a printed form with the blanks filled up, in which was stated "Received * * of * * the following packages (contents unknown), in apparent good condition: Marks * * * articles: 25,000 bus. 25,000 bus. No. 2, Corn Pro. Philadelphia. Marked and numbered as per margin, to be transported by the Anchor Line, * * on the following terms and conditions, viz.: * * * It is further agreed that the Anchor Line, and the steamboats, railroads and forwarding lines with which it connects, shall not be held accountable for any damage or deficiency in packages, after the same shall have been receipted for in good order by consignees, or their agents, at or by the next carrier beyond the point to which this bill of lading contracts. * * * It is further stipulated and agreed that in case of any loss, detriment or damage done to or sustained by any of the property herein receipted for, during such transportation, whereby any legal liability or responsibility shall or may be incurred, that company alone shall be held answerable therefor in whose actual custody the same may be at the time of the happening of such loss, detriment or damage. * * * And it is further agreed, that the amount of the loss or damage so accruing, so far as it shall fall upon the carriers above described, shall be computed at the value or cost of said goods or property, at the place and time of shipment under this bill of lading," &c. Evidence was offered at the trial tending to show that the corn was receipted for, "in good order," by the consignees' agents at Baltimore: *Held*,

1. That it was intended by the exemption clause in the bill of lading, to protect the defendant from any damage or deficiency in any package where the contents were unknown, after the same had been receipted for in good order; but that it was not intended to be applied to the "corn" in question, and did not admit of such meaning.

2. That common carriers may by special contract limit their liability as recognised by the common law, where there seems to be reason and justice to sustain their exemption. But where such is the case it ought to be by clear and distinct terms.

3. That if it were the design of the defendant that said clause of exemption should apply to "corn," it was not expressed with sufficient clearness to preclude the plaintiffs from a recovery.

4. That under the clause in the bill of lading—which was the written contract between the parties,—prescribing the mode of estimating any loss or damage which the plaintiffs were entitled to recover by reason of the non-performance of the contract by the defendant,—there was no occasion to resort to parol explanation, or to any course of dealing between the parties to enable the jury to ascertain the extent of the damage: *Id.*

CORPORATION. See *Trust.*

Directors—Liability for Fraud—Bill by Stockholder—Laches—Powers.—Where directors of a corporation have so mismanaged its affairs as to be fraudulent, a bill may be maintained against them personally by a shareholder: *Watts's Appeal*, 78 Penna.

A shareholder, in such case, may, under proper circumstances, interpose for the protection of the corporation: *Id.*

The directors of a corporation for the sale of land rejected offers for the purchase of its land; although this was imprudently done, yet being a matter resting in their discretion, if without fraud, they were not responsible: *Id.*

The power to execute and issue bonds, contracts and other certificates of indebtedness belongs to all corporations, public and private, and is inseparable from their existence. The power to contract necessarily involves the power to create a debt: *Id.*

The charter of a land company gave the directors power to dispose of its land by deed or lease; the power to mortgage land on a proper occasion and for a proper debt is implied: *Id.*

The corporation owning a very large body of lands, had power by their charter "to aid in the development of minerals and other materials, and to promote the clearing and settlement of the country:" *Held*, that the building of saw-mills and an hotel for the accommodation of those having business in connection with carrying out the prime object of the corporation was within its powers: *Id.*

Even if such expenditures were *ultra vires*, stockholders knowing of them, and not objecting until long after their completion, could not compel the directors to account for the moneys expended: *Id.*

When directors act honestly for what they esteem the best interests of the corporation, and do not wilfully pervert their powers, but only misjudge them, they will not be held to account for money expended in such case: *Id.*

When an act of directors is in excess of their authority, but done with a *bonâ fide* intent of benefiting the corporation, and a shareholder, knowing of it, does not dissent within a reasonable time, his assent will be presumed, and he cannot gainsay it; and when the act of the directors complained of is to be followed by a large expenditure, the shareholder should not only make his protest within a reasonable time, but should follow it up by active preventive measures: *Id.*

It is against good conscience that one having power to prevent should stand by and see his associates spend money which may result to his benefit, and afterwards charge them with it. His neglect to act at the proper time effectually bars his right: *Id.*

Six years' omission to proceed would be a bar to an action against directors for the misuse of the corporate property: *Id.*

The stockholders directed public sales of their lands, and that payment might be made in cash and in their bonds: *Held*, the payment in bonds was equivalent to cash: *Id.*

Directors bought at the sales at fair prices, and the sales were conducted openly and fairly: *Held*, the sales to them were valid: *Id.*

Fraudulent Issue of Stock.—If the directors of a railway company gratuitously give away certificates of stock, being a major part thereof, to

contractors building the road, for the purpose of giving them a controlling influence in the election of officers and the management of the road, a court of equity will declare the same void, especially where a part of the directors are interested in the contract with the contractors: *Gilman, Clinton & Springfield Railroad Co.* v. *Kelley*, 77 Ill.

Trustee—Railroad Directors.—It is illegal for directors of a railway company to become members of a company with whom they have made a contract to build and equip the road, so as to share in the profits, and if they do, they will in equity be compelled to account for the profits realized: *Gilman, Clinton & Springfield Railroad Co.* v. *Kelley*, 77 Ill.

Criminal Law.

Self defence—If a party be assaulted in such a way as to induce in him a reasonable and well-grounded belief that he is actually in danger of losing his life, or suffering great bodily harm, he will, when acting under such apprehension, be justified in defending himself, whether the danger be real or only apparent: *Roach* v. *The People*, 77 Ill.

Debtor and Creditor.

Collateral Security—Lien.—The assignment of a collateral security to a creditor to hold for the security of his debt, establishes a privity of contract, which invests him with the ownership of the collateral for all purposes of dominion of the debt assigned: *Hanna* v. *Holton*, 78 Penna.

When the collateral is lost by the insolvency of the debtor in it, through the supine negligence of the creditor, he must account for the loss to his own debtor: *Id.*

Plaintiff assigned to defendant a judgment against Jackson, the lien of which expired September 1863, as collateral for money lent to plaintiff; defendant neglected to revive the lien; Jackson sold his land July 1866 and the judgment against him was lost: *Held*, that defendant was liable to plaintiff on the ground of negligence: *Id.*

Jackson, at the sale of his land, was solvent, and the judgment was collectible. He afterwards died insolvent: *Held*, that the Statute of Limitations began to run from the time of the sale, not from the time when the lien expired: *Id.*

Deed.

What is Essential to the Delivery.—To constitute a delivery of a deed, the grantor must do some act putting it beyond his power to revoke. There can be no delivery so long as the deed is within his control and subject to his authority: *Duer* v *James*, 42 Md.

The delivery need not be to the grantee, but may be to a third party authorized to receive it, or even to a stranger for the use of the grantee: *Id.*

It is not necessary to prove a formal delivery; this may be inferred from the acts of the party without words, or from words without acts, or from both combined: *Id.*

Equity. See *Attorney; Corporation; Water and Water-courses.*

Enforcing Performance of Condition.—Where a father made a conveyance of all his lands to his five sons, upon the consideration that he

was to have the use and control of the same during life, for his support and maintenance, and that the sons should pay their sister $1000 as her share of the estate, and the sons took possession of the land and refused to give their father a life lease of the same: *Held*, that a court of equity would enforce the contract as made: *Yoakum* v. *Yoakum*, 77 Ill.

Injunction—Remedy for Violation of Contract.—The defendant agreed with a theatrical company to give them his services as an actor for a specified time, and agreed not to give his services elsewhere without their written permission. The agreement contained a stipulation to the effect that if he should break his engagement, he obligated himself to pay to the company a conventional fine of $200, to be forfeited by any violation of the contract; and then provides as follows: "This sum of $200 is already forfeited by any violation of the contract, and requires no particular legal proceedings for its execution." On a bill for an injunction, filed by the company against the defendant to restrain him from performing at another theatre, it was *Held*, that the complainants having fixed by their own estimate the extent of injury they would suffer from a non-observance of this condition in the contract, and having indicated that the only form in which they could seek redress and recover the stipulated penalty or forfeiture was a court of law, were precluded from resorting to a court of equity for relief by way of injunction, on the ground that a violation of this part of the contract would result in irreparable damage and injury to them: *Hahn* v. *Concordia Society*, 42 Md.

Escape.

Permissive — Subsequent Discharge of Debtor under the Insolvent Laws.—A defendant arrested under a ca. sa. was permitted by the sheriff's deputies, for a compensation, upon presenting himself at the sheriff's office every morning, to go at large from day to day until he was discharged upon giving bond to take the benefit of the insolvent laws: *Held*, that this was a permissive escape, for which the sheriff was liable: *Hopkinson et al.* v. *Leeds*, 78 Penna.

It is the duty of a sheriff to keep a defendant under a ca. sa. in safe and strict custody; if the sheriff allows him to go at large for the shortest time, either before or after the return-day of the writ, he is liable for an escape: *Id.*

It is not a defence that the prisoner voluntarily returned and surrendered himself to the sheriff, or that he was subsequently discharged under the insolvent laws: *Id.*

The attorney of the plaintiff in a ca. sa. has authority to consent to defendant's discharge from arrest; if he does, the sheriff is not responsible for an escape. To discharge the sheriff, the evidence of the consent should be clear, direct and positive: *Id.*

A prisoner under a ca. sa. having been permitted by the sheriff to go at large, a subsequent assent of the plaintiff's attorney to his remaining at large would not relieve the sheriff: *Id.*

Estoppel. See *Corporation; Insurance.*

Collection of Money without Authority.—This was an application for a mandamus on respondents to pay over certain moneys collected in the village under the liquor tax law. The assessment was made by the

township assessor instead of the village assessor, and the taxes had been paid over to the township by the parties assessed: *Held*, that the right of the relator to the tax is clear; that the village assessor might and should have made the assessment, and the tax should have been collected for and paid over to the village; but that his failure to do so can work no estoppel against the village in favor of the township; that the mere receipt of money by a party not entitled cannot of itself create any equity in his favor; that the township assessor in making an assessment he had no right to make was not the agent of the township, and not entitled to compensation for it; that though it is possible the village assessor might have disregarded what was done, and made a lawful assessment himself, yet it is manifestly wiser and more proper for the village to sanction the collection and claim the money than to excite litigation by new proceedings; that there are no disputed questions of fact involved requiring a formal trial, but the question is purely one of law, and that it would therefore be idle to send the case to a jury; that the fact that the township has used the money will excuse the present payment in money, but that the village is entitled to a township order Writ granted: *The People, ex rel. the Village of Decatur*, v. *The Township Board of Decatur*, S. C. Mich.

Evidence.

Stamp.—A note was drawn by a firm to their own order, endorsed by them to one of the firm and by him endorsed to Cottrell. Before maturity Cottrell died, and the note was found amongst his papers unstamped: *Held*, that the want of a stamp was not evidence that Cottrell had received the note without consideration: *Long, Adm'r*, v. *Spencer & Co*, 78 Penna

The Internal Revenue Act merely made the want of a stamp a disqualification of the instrument as evidence: *Id.*

After the death of Cottrell his administrator procured the collector to stamp the note: *Held*, that the note was to be treated as if stamped when made: *Id*

Testimony by two of the defendants that the note was unstamped when passed to Cottrell, being as to a matter before his death, was inadmissible under the proviso of the Act of April 15th 1869: *Id.*

Declarations by the administrator of Cottrell that there was nothing in his books and papers to show that any consideration had been given for the note, were irrelevant: *Id.*

Forged Instruments. See *Negligence.*

Frauds, Statute of

Promise to pay Debt of Another—Evidence.—Evidence to change a contract relation between plaintiff and a third party and to prove a promise to pay the debt of another as a new and original undertaking and not a contract of suretyship, must be clear and satisfactory; otherwise it will fall within the Statute of Frauds: *Haverly* v. *Mercur*, 78 Penna.

On a judgment of nonsuit the court below being better able to judge of the force of the evidence, the necessity of a clear and preponderating weight of evidence in favor of an absolute, original and personal promise, is greater where the court of error is called upon to reverse the

judment of the lower court; it should plainly appear that the plaintiff had a case that should have gone to the jury: *Id.*

INJUNCTION. See *Equity; Waters and Water-courses.*

Specific Performance—Uncertainty of Contract.—A bill was filed to restrain defendant from violating the following contract:

"Whereas, Caswell & Breinig have heretofore released Gibbs & Maxim from a contract for towing and delivering logs, now, in consideration thereof, I, Chancy Gibbs, do hereby agree that I will never tow vessels in competition with said Caswell & Breinig, or either of them. Dated Ludington, Michigan, this 19th day of May 1873.

(Signed) CHANCY GIBBS.

"I agree to same as above

(Signed) A. A. MAXIM."

The bill prayed that the defendants be enjoined from towing vessels at the port of Ludington in competition with complainants, and from towing vessels into or out of said port so long as complainants were engaged in the same business and "furnished sufficient facilities for, and faithfully performed or offered to perform all such towing business at said port:" *Held*, that the question not only as to whether there was in fact any competition, but also whether complainants at the time were furnishing "sufficient facilities," and what would be considered sufficient facilities, must arise in every case of an alleged violation; that the difficulties in the way of enforcing an agreement of this uncertain and indefinite character were fully discussed in *Blanchard* v. *D. L. & L. M. Railroad Co.*, 31 Mich. 43, which was referred to as decisive of this case, and an injunction was refused: *Caswell et al.* v. *Gibbs*, S. C Mich.

INSURANCE.

Recital of Payment of Premium—Estoppel.—Where a policy of insurance of a person's life recites the payment of the first quarterly premium, the insurance company will not be permitted to disprove such recital: *Teutonia Life Ins Co.* v *Mueller*, 77 Ill.

INTERPLEADER.

Holder cannot claim part of the Money.—Where a party owes a debt, or has a fund in his hands, and files a bill of interpleader against different claimants of the same, he will have no right to enter into a contest for a portion of the fund, as belonging to himself: *Coyswell* v. *Armstrong*, 77 Ill.

INTOXICATING LIQUORS.

Foreign Contract—Illegal Payment—Set-off—Notice.—Roethke was sued for beer furnished by defendant in error, a corporation located in Milwaukee. The beer was sold after verbal negotiations with an agent, carried on at Roethke's store in Saginaw City. The jury found the transactions were sales and not agency. Part of the beer was sent under the Saginaw City negotiations, and the sale was held by the court below to have been void under the Michigan liquor law. The remainder was sent from Milwaukee on separate orders, held to be valid foreign contracts: *Held*, that as the verbal agreement made in this state was not

sufficient under the Statute of Frauds to cover future orders, and as those therefore stood on their own merits, and the sales and shipments were in Milwaukee, the rulings on these were correct—as there was a contract made there which would have been valid at common law, and which must be presumed to be valid, under which these latter sales were made: *Roethke* v. *Brewing Company*, S. C. Mich.

The court below refused to allow the money paid for the unlawful purchases to be set off against the demand in suit for the rest: *Held*, that this was error; that the statute providing for the recovery back of moneys paid for liquors sold in violence of law, as moneys received without consideration, places the liability for such money on the same footing as for any other money had and received, and that it was therefore as legitimate ground of set-off as if the plaintiff had collected it for defendant and failed to pay it over: *Id.*

Judicial Sales.

Fairness.—The greatest fairness is required of those intrusted by law to conduct judicial sales, and of those purchasing at such sales; and any agreement, contract or arrangement entered into on the part of the bidders, calculated to prevent competition at the sale, being contrary to public policy and a fraud upon the law, will vitiate the sale: *Wilson* v. *Kellogg*, 77 Ill.

Laches. See *Corporation.*

Limitations, Statute of. See *Debtor and Creditor.*

Malicious Prosecution.

Probable Cause—Malice.—Probable cause is such a state of facts in the mind of the prosecutor as would lead a man of ordinary caution and prudence to believe or entertain an honest and strong suspicion that the person arrested is guilty. It does not depend on the actual state of the case in point of fact, but upon the honest and reasonable belief of the party commencing the prosecution: *Harpham* v. *Whitney*, 77 Ill.

The term malice in a suit for malicious prosecution is not to be considered in the sense of spite or hatred against an individual, but of *malus animus*, as denoting that the party is actuated by improper and indirect motives: *Id.*

Master and Servant.

Negligence.—Where a servant of a mining company was killed by the falling of a rock from the roof of a common gangway in a coal mine, and it was sought to charge the company with negligence in not keeping the roof in a safe condition, it was *Held*, that notice to the superintendent of the dangerous situation of the roof was notice to the company; and if this was long enough before the accident to have given time to repair, the same was sufficient to fix negligence upon the company: *Quincy Coal Co.* v. *Hood*, 77 Ill.

Negligence. See *Master and Servant.*

Railroad—Fire—Defective Engine.—In an action against a railroad company for burning a house, it was alleged that the fire was communicated by engine No. 458, which was not in a proper condition: *Held*, that the condition of that engine and its management were all that was to be considered: *Erie Railway Co.* v. *Decker*, 78 Penna.

If that engine was properly constructed, the company would not be liable, although the burning was occasioned by fire accidentally issuing from it: *Id.*

Evidence to prove defects in other engines of the company was irrelevant, and should have been excluded: *Id.*

On cross-examination, the inspector, who had been examined only as to 458, testified that he had sometimes found broken grates, but none within three years: *Held*, this answer was irrelevant; that the plaintiff was bound by it and could not contradict it by showing that broken grates had been found within that time: *Id.*

Rights and Liabilities growing out of a Forged Assignment of Certificates of Stock.—B. L. & Co., as private bankers, made a loan upon certain forged assignments of certificates of stock of the H. F. Ins Co. to the agent of the firm of D. & Q., of which the real owner of the certificates was a member, in ignorance of the forgery. These certificates were presented to the insurance company and cancelled, and a new certificate in lieu thereof issued in the name of and delivered to B. L. & Co About a month afterwards the firm of D. & Q. failed, and notice was given to B. L. & Co. and to the H. F. Ins. Co. that the assignments were forged. On a bill filed by the assignee in bankruptcy of D. & Q against B. L. & Co. and the H. F. Ins. Co., to compel the former to deliver up the certificate issued to them, and the latter to issue a new certificate to the complainant, it was *Held*, 1. That B. L. & Co. must sustain the loss occasioned by the forgery, and had no right to throw it upon the insurance company; 2. That if the insurance company were guilty of negligence in issuing the new certificate without detecting the forgery, unless that was the occasion of the loss to B. L. & Co., it would not be sufficient to shift the loss upon it; 3 That negligence, to operate as an estoppel must be the proximate cause of the loss; 4. That the insurance company having issued the stock upon the forged name to B. L. & Co., who had before treated it as a genuine paper, and to that extent misled the insurance company, B. L. & Co. ought not to hold them accountable for the loss incurred by their own error, unless they could make it appear that they might have avoided the loss but for the negligence or oversight of the insurance company; 5. That any negligence on its part would not render it answerable unless that were the proximate cause of the loss: *Brown, Lancaster & Co.* v. *Howard Fire Insurance Company et al.*, 42 Md.

POWER. See *Corporation.*

As a general rule a power to sell and convey does not confer a power to mortgage. Questions of this sort must depend on the peculiar circumstances of the trust, and the intention of the parties as shown by the instrument: *Tyson* v. *Latrobe*, 42 Md.

RAILROAD. See *Negligence.*

Municipal Subscriptions.—Counties having no power to contract with a railway company to subscribe to its capital stock, except when authorized by a vote of the people, it follows that the county authorities cannot hold out any offer to such a company, prior to any vote, upon which the company has a right to rely: *The People* v. *Car Co.*, 77 Ill.

SET-OFF. See *Intoxicating Liquors.*

STAMP. See *Evidence.*

STATUTE.

Construction—Penal Acts.—Whilst a statute is not to be followed according to its literal terms, if it can be discovered that such was not the intention, yet the meaning must be ascertained by a reasonable construction to be given to the provisions of the act, and not one founded on mere arbitrary conjecture: *Cearfoss* v *The State*, 42 Md.

No man incurs a penalty unless the act which subjects him to it is clearly within both the spirit and letter of the statute. Things which do not come within the words are not to be brought within them by construction; the law does not allow of constructive offences or of arbitrary punishment: *Id.*

Statutes should be interpreted according to the most natural and obvious intent of their language, without resorting to subtle or forced construction, for the purpose of either limiting or extending their operation: *Id.*

It is only in case the meaning of a statute is doubtful, that the courts are authorized to indulge in conjecture as to the intention of the legislature, or to look to consequences in the construction of the law. Where the meaning is plain, the act must be carried into effect according to its language, or the courts would be assuming legislative authority: *Id.*

STREAM. See *Water and Water-courses.*

TRUST AND TRUSTEE. See *Corporation.*

Trustee and Cestui que Trust—Principal and Agent—Corporations—Transactions between a Corporation and its Directors governed by the Rule applicable to Transactions between Principal and Agent, &c.—Burden of Proof as to a Transaction between Parties, where one bears a Fiduciary relation to the other.—As between trustee and *cestui que trust*, or agent and principal, the rule is inflexible that the trustee or agent cannot take the benefit of a transaction entered into in violation of his duty; or where the benefit claimed and the duty to be performed are inconsistent: *Cumberland Coal and Iron Co* v. *Parish*, 42 Md.

Directors and managers or corporations and other companies are within the rule which governs the dealings of trustee and *cestui que trust*, and agent and principal; such directors and managers are in fact trustees and agents of the bodies represented by them: *Id.*

In the case of directors of a corporation, there is an inherent obligation, implied in the acceptance of such trust, not only that they will use their best efforts to promote the interest of the shareholders, but that they will in no manner use their positions to advance their individual interest as distinguished from that of the corporation, or acquire interests that may conflict with the fair and proper discharge of their duty: *Id.*

The burden of proof is upon a party holding a confidential or fiduciary relation to establish the perfect fairness, adequacy and equity of a transaction with the party with whom he holds such relation; and that too by proof entirely independent of the instrument under which he may claim: *Id.*

WATER AND WATER-COURSES.

Rights of Riparian Proprietors—Case of the Introduction of an Artificial Supply of Water into a stream running through the land of

another—Jurisdiction in Equity—Injunction —The right of every riparian owner to the enjoyment of a stream of running water in its natural state, in flow, quantity and quality, is incident and appurtenant to the ownership of the land itself, and being a *common right*, it follows that every proprietor is bound so to use the common right as not to intertere with an equally beneficial enjoyment of it by others: *Mayor of Baltimore* v. *Appold*, 42 Md.

As such owner he has the right to insist that the stream shall continue to run as it was accustomed to run; that it shall continue to flow through his land in its usual quantity, at its natural place, and at its usual height: *Id.*

But there must be allowed to all a reasonable use of that which is common; and such a use, although it may to some extent diminish the quantity, or affect in a measure the flow of the stream, is perfectly consistent with the common right: *Id.*

It is impossible to lay down a precise rule defining the limits which separate the lawful from the unlawful use of a stream, to cover all cases; and the question must be determined in each case by taking into consideration the size of the stream, the velocity of the current, the nature of the banks, the character of the soil, and a variety of other facts; the true test being whether the use is of such a character as to affect materially the equally beneficial use of the stream by others: *Id.*

An attempt to empty into a stream an artificial supply of water to the extent of 10,000,000 gallons in every twenty-four hours, is a user inconsistent with the common enjoyment of the stream by all other riparian owners: *Id.*

And being an unreasonable and unauthorized use of the stream, an action will lie by the party whose rights are so invaded, even though he may not have suffered any actual damage: *Id.*

The jurisdiction of the courts of equity in cases affecting the rights of riparian owners, is well established both in this country and in England; and rests upon the necessity of granting relief to prevent permanent and lasting injury, or where full and adequate relief cannot be had at law, or where it is necessary to prevent a multiplicity of suits and vexatious litigation: *Id.*

The complainant's bill for an injunction to prevent the introduction of an artificial supply of water into a stream flowing through his land, alleged, that he was credibly informed and verily believed that the introduction of the proposed additional quantity of water would cause the stream to overflow its banks, render valueless his land, and cause great, continual and irreparable damages, &c.: *Held*, 1. That the averment that "he was credibly informed and verily believed," together with the statement of facts upon which his belief was founded, was sufficient; 2. That he was not obliged to wait until actual damage was sustained, nor was he bound to obtain the opinion of scientific persons as to the probable consequences resulting from this artificial addition of water; 3. That it would not be enough that the injunction should merely enjoin the introduction of the proposed additional supply of water in such a way, or to such an extent, as would cause the stream to overflow its banks, or would interfere with the ordinary use of the stream by the complainants: *Id.*