care in keeping the machine in repair, or, if they did not, that reasonable care must have been used in supervising them, and the condition in which the machinery was kept. This illustration was not given with reference to the burden of proof, and the only exceptions are "to the instructions given so far as they failed to comply with said requests, or were inconsistent therewith." As the third instruction requested, upon the facts in evidence, ought not to have been given without some modification, and as the attention of the presiding justice was not called to particular phrases, and the general tenor of his charge was not misleading, the entry must be, exceptions overruled.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF ARKANSAS.[1]
SUPREME COURT OF DELAWARE.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME COURT OF IOWA.[4]
SUPREME COURT OF JUDICATURE OF INDIANA.[5]
COURT OF APPEALS OF KENTUCKY.[6]
COURT OF APPEALS OF MARYLAND.[7]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[8]
SUPREME COURT OF MICHIGAN.[9]
SUPREME COURT OF MISSOURI.[10]
COURT OF CHANCERY OF NEW JERSEY.[11]
COURT OF APPEALS OF NEW YORK.[12]
SUPREME COURT OF OREGON.[13]
SUPREME COURT OF SOUTH CAROLINA.[14]
SUPREME COURT OF TEXAS.[15]
SUPREME COURT OF APPEALS OF VIRGINIA.[16]
SUPREME COURT OF WISCONSIN.[17]

ACCRETIONS. See *Waters and Watercourses.*

BANKS AND BANKING.

Action for Deposit—Opinion of Cashier.—In an action to recover the sum of $550, alleged by plaintiff to be the balance due on certain de-

1 To appear in 46 or 47 Ark. Rep.
2 To appear in 6 or 7 Houston.
3 To appear in 118 or 119 Ill. Rep.
4 To appear in 69 or 70 Iowa Rep.
5 To appear in 109 or 110 Ind. Rep.
6 To appear in 83 or 84 Ky. Rep.
7 To appear in 66 or 67 Md. Rep.
8 To appear in 143 or 144 Mass. Rep.
9 To appear in 59 or 60 Mich. Rep.
10 To appear in 88 or 89 Mo. Rep.
11 To appear in 42 or 43 N. J. Eq. Rep.
12 To appear in 103 or 104 N. Y. Rep.
13 To appear in 14 or 15 Or. Rep.
14 To appear in 24 or 25 S. C. Rep.
15 To appear in 65 or 66 Tex. Rep.
16 To appear in 81 or 82 Va. Rep.
17 To appear in 67 or 68 Wis. Rep.

posits made by him with defendant, a bank, the admission of a question and answer put by defendant to its cashier, and answered by him after said cashier had testified to the manner of entering deposits in the bank-books, and on the customer's pass-book, and that it did not appear on the bank-book that a deposit entered on a certain day in plaintiff's pass-book had been entered in the bank-book, as follows: "If plaintiff really made the deposit as he claims, on what theory, if any, can you account for its not appearing on the books of the bank?" Objected to by plaintiff's attorney, and to which witness replied: "Upon no other theory but that the teller put the money in his pocket," is an error on which a judgment for the defendant will be reversed: *Meade* v. *Carolina Nat. Bank of Columbia*, 24 or 25 S. C.

Savings Bank—Voluntary Liquidation—Right to Surplus.—Where a savings institution, whose charter provides that the depositors shall receive as interest their ratable proportions of the profits, after deducting expenses and retaining a reasonable surplus or contingent fund, and that neither the bank nor its managers should receive any benefit from any deposit, or the produce thereof, goes into voluntary liquidation, and, after paying all of its depositors, has a surplus in hand, such surplus belongs to those depositors only who had deposits when the winding-up proceedings were commenced, and to the exclusion of all those who withdrew their deposits prior to that time, and will be distributed among them ratably according to the amount of their respective deposits: *Morristown Inst. for Savings* v. *Roberts*, 42 or 43 N. J. Eq.

Draft Endorsed for Collection—Liability of Collecting Bank.—Where a bank endorses a draft for collection to another bank, which bank, in turn, endorses it also for collection to a third bank, and that bank collects it, *held*, it cannot apply the proceeds to a debt due it by the second or intermediate bank, that bank having become insolvent, but the proceeds belong to the bank first making the endorsement, the restrictive endorsements giving notice of such ownership to the collecting bank. It is not a question of agency as to which bank the collecting bank is agent of, but the rights of the parties are determined by the fact that the collecting bank knowing, from the endorsements, to which bank it belonged, is liable as a trustee, to such owner, for the proceeds: *City Bank of Sherman* v. *Weiss*, 65 or 66 Tex.

Trusts—Trustee—Liability for Loss of Funds—Deposit in own Bank—Relation of Bank to Trust Funds.—If a trustee deposits the trust funds in a private bank in which he is a partner, where the funds will draw interest, upon the request of one beneficiary and by the consent of the other, he will not be liable for their loss merely because the bank afterwards fails, the investment being a safe one when made, and there being no evidence that he, at any time, knew the money was unsafe: *Mills* v. *Swearingen*, 65 or 66 Tex.

If trust money is, for the purpose of investment, loaned to or deposited in a bank to the credit of the trustee as such, it is held, as all other money of the bank, upon the relation of debtor and creditor, is not charged with a trust in the bank's hands, and upon the failure of the bank, no preferred claim on account of it arises in favor of the *cestuis que trust*: *Id.*

BILLS AND NOTES. See *Banks and Banking.*

Payment—Draft—Renewal—Intention—Guaranty—On Condition—Bill of Exchange.—A draft given in renewal of another valid and pre-existing draft, in the absence of the mutual intention, express or implied, of the debtor and creditor, to the contrary effect, operates only as a suspension of the debt evidenced by the original draft, and is not a satisfaction of it until paid: *Belleville Sav. Bank* v. *Bornman*, 118 or 119 Ill.

The fact that the holder of the original draft, which was guarantied by three endorsers, marked it "paid and cancelled" on receipt of the renewal draft, which was guarantied by only two of the same endorsers, and subsequently, upon payments being made on account of the debt, credited them on the renewal draft, is not sufficient to show an agreement between the holder and one of the guarantors that the second draft was given in payment of the first, where the guarantor's endorsement of the renewal draft has become inoperative by reason of a breach of the condition subject to which it was made, and where the corporation which was the drawer of both drafts has become insolvent: *Id.*

Where B., being neither a party nor holder, endorses a draft as guarantor on condition that A. will also endorse it as co-guarantor, and A. writes a separate contract providing that he will pay the draft if the drawer and B. do not, the guaranty of B. fails to become operative, and B. is not liable at the suit of the payee, who took the draft with notice of the condition: *Id.*

Promissory Note—Consideration—Production of Note—Burden of Proof.—In an action on a promissory note, where the defendant meets the *prima facie* case established by the production of the note by evidence that the money for which the note was given and delivered to him as a gift from his father, of whose estate the plaintiff was administrator, and that a note was given simply because it was uncertain whether the sum, or a part of it, would not be needed for the payment of his father's debts, the burden of proving a consideration is with the plaintiff: *Perley* v. *Perley*, 143 or 144 Mass.

Usury—Promissory Note for Money Borrowed to Pay Usurious Note.—A promissory note, given for a balance due on previous notes which were usurious, is itself tainted with usury; but a note, given for money to be applied in payment of other notes which where usurious, is not itself usurious: *Cottrell* v. *Southwich*, 69 or 70 Ia.

Promissory Notes—Liability of Officer of Corporation Signing as Maker.—A promissory note, signed, "Independence Mfg. Co., B. I. Brownell, Pres.," purporting to bind both signers, and having nothing on its face to indicate that the last signer was president of the corporation, or had signed the note for it or on its behalf, binds the last signer personally; and the letters "Pres." must be regarded simply as descriptive of the person to whose signature they are appended: *Heffner* v *Brownell*, 69 or 70 Ia.

Promissory Notes—Action on—Plea of Equitable Set-Off—Demurrer.—An action of debt was brought upon a note, dated November 1st 1880, and given for the purchase-money of a quantity of guano. The defend-

ant filed a special plea of equitable set-off, the *gravamen* of which was an alleged breach of contract by the plaintiff in failing to deliver promptly to the railroad company the quantity of fertilizer for which the note was given, to be transported to the defendant on or before the 22d day of September 1880, according to his agreement, to which special plea defendant demurred generally: *Held*, that the defendant had waived the defence pleaded by executing his note for the amount, after the alleged breach, and that the demurrer to the plea should have been sustained; *Reid* v. *Field*, 81 or 82 Va.

CONSTITUTIONAL LAW. See *Railroads.*

CRIMINAL LAW.

Practice—Separation of Jury—Murder—New Trial—Newly-Discovered Evidence.—On a trial for murder a separation of the jury, by which some of them remain in the dining-room of a hotel, while others go out of their sight into a saloon, with the sheriff, during the progress of the trial, and after the jury were put in charge of the sheriff, is ground for reversal. NORTON, C. J., and RAY, J., dissenting: *State* v. *Murray*, 88 or 89 Mo.

Where, on an indictment for murder, a main ground upon which a verdict of guilty is arrived at on circumstantial evidence is the identification of a knife as belonging to defendant by a principal witness, an affidavit by a member of a grand jury to the effect that such witness had made very different statements as to the character and description of the knife outside of the court-room to those made by him on the witness stand, is newly-discovered evidence, sufficient to form grounds for a new trial: *Id.*

COLLEGES AND UNIVERSITIES. See *Corporations.*

CORPORATIONS.

Turnpike Company—Forfeiture of Charter—Quo Warranto—Ferry—Revocation of Charter of Turnpike.—It is a tacit condition, annexed to the creation of every corporation, that it is subject to dissolution by forfeiture of its franchise for wilful misuser or non-user in regard to matters which go to the essence of the contract between it and the state, and a proceeding upon an information in the nature of *quo warranto*, filed by the attorney-general on behalf of the state, is the proper mode of trying the issue: *Darnell* v. *State*, 46 or 47 Ark.

Where it was the intention of the charter of a turnpike company to establish a ferry merely as an incident to the turnpike, in order to render travel over it feasible, the privilege of maintaining the ferry falls in that event with the revocation of the turnpike franchise: *Id.*

Municipal—Acts of Agents—Keeping Highways in Repair.—If a city or town, instead of leaving the duty of keeping the highways in repair to be performed by the officers and in the methods provided by the general laws, assumes to perform it by means of agents whom it may direct and control, it may be held responsible for the acts of those agents: *Wuldron* v. *City of Haverhill*, 143 or 144 Mass.

Treasurer Improperly Loaning Funds—Ratification.—Where the treasurer of a corporation improperly loaned its funds to another corporation, of which he was also treasurer, and the former sued the latter for the amount, and in good faith effected a settlement for a percentage, after notifying the treasurer and his sureties of their intention so to do, and offering to assign the claim to them provided they would pay the amount due from the treasurer on account of such improper loan, which was refused, and a receipt was given by plaintiff, reserving its rights against the treasurer and his sureties, *held*, that the bringing of such suit did not amount to a ratification of the treasurer's act in making the loan, and that he was still liable for the balance after deducting such percentage: *Goodyear Dental Vulcanite Co.* v. *Cadue*, 143 or 144 Mass.

Colleges and Universities—Employment of Professor—Action for Salary.—Where, in an action by a professor against the trustees of a university for a salary, the plaintiff shows that he has performed the services; that the corporation had the benefit of them, and its officers should have known that he expected to be paid therefor; and that he was advertised as a professor in their catalogue, a sufficient cause of action is shown, though the board passed no formal resolution authorizing his employment: *Tyler* v. *Trustees of the Tualtin Academy and Pacific University*, 14 or 15 Or.

Municipal—Street Improvements—Abutting Property Owners—Liability of Town.—Where a town made a contract for the improvement of its streets, by which the contractor was to look to the abutting property owners for compensation, and in no event to the town, except for the cost of making intersections where the streets crossed, each party supposing at the time that the town had power to bind the property owner by such contract, but, the work being completed, and some of the property owners refusing to pay, it was decided, in a suit brought against them, that the town had no power to make the contract, and they were not liable. The town also refusing to pay, the contractor brought this suit against it, asking that he be allowed to remove all the improvements made. *Held*, if he had tendered back the money paid by the city for the street intersections, and the sums paid by the property owners who had paid, he might have recovered, as a municipal corporation obtaining property under a contract which it had no power to make cannot refuse compensation, and yet retain the property; *Hahn* v. *Trustees of Town of Bellevue*, 83 or 84 Ky.

Municipal—Lot Owner—Blasting Rock causing Injury to Passer-by.—Where the owner of a town lot was engaged in blasting stone thereon in such manner that a piece of stone was thrown over into the street, so as to injure one who was passing by, *held*, the person so injured could not recover of the city for the injury, on the ground that it had permitted the owner to carry on his blasting operations. Although a city may have full power to pass an ordinance to abate nuisances, yet its failure to exercise such power gives no cause of action against the city: *James' Adm'x* v. *Trustees of Harrodsburg*, 83 or 84 Ky.

Turnpikes—New Toll-Gates—Rights of Land Owners—Right to erect Gates—Location of Gates.—A turnpike company has the right to aban-

don a toll-gate established at a particular point on its road, and erect a new gate at a different point; and although the new gate is set up between appellee's entrance to his farm and the neighboring town, so that he must now pay toll both in going to or coming from the town, or open a new entrance to his farm, *held*, he cannot recover damages of the turnpike company on this account: *Maysville and Mt. Sterling Turnpike Road Co.* v. *Ratliff*, 83 or 84 Ky.

A turnpike company, being authorized by its charter to acquire land for its road forty-five feet wide, sixteen feet of which was to be covered with stone, and used for travel, *held*, it may erect a toll-gate within the forty-five feet without rendering itself liable for obstructing the highway, provided it leaves sixteen feet covered with stone free for travel: *Id.*

The charter of a turnpike company authorizing it to erect a toll-gate upon the completion of five miles of road, with the proviso that no one should be erected nearer than one mile from any town on said road, *held*, there was nothing requiring the gates to be precisely five miles apart: *Id.*

DAMAGES. See *Waters and Watercourses.*

DEDICATION. See *Streets.*

EMINENT DOMAIN. See *Railroads.*

ESTOPPEL. See *Railroads.*

EVIDENCE. See *Criminal Law.*

FRANCHISE.

Tolls—Freight—City of Corpus Christi—Conditions.—A franchise of collecting tolls on all freight passing over a certain channel was granted to the city of Corpus Christi, which was transferred by the city to M. & C. upon certain considerations, among them that of keeping the channel of the depth of eight feet, and of the width of 100 feet, throughout its entire length, as required by the laws of the state. There was evidence to show that during the entire month of May 1881, the channel was not eight feet deep, or 100 feet wide, for its whole length; and that the city council, after having given notice to M. & C. to restore it to its contract dimensions, passed an ordinance suspending the collection of tolls till the channel should be restored, and that the order was in force during that month. *Held*, in a suit by M. & C. to recover tolls on freight transported during the month of May 1881, that, as they had failed to keep the channel of the depth and width required by the state and their contract with the city, they were not entitled to maintain the suit: *Morris* v. *The Schooner Leona*, 65 or 66 Tex.

LIQUIDATION. See *Banks and Banking.*

MASTER AND SERVANT. See *Railroads.*

Negligence—Falling of Building—Risks of Employment—Storm—Evidence—Ordinance.—The owner of a building in process of construction is liable to a carpenter working on the roof, who is injured by the falling of the building caused by the walls being negligently made of insufficient thickness: *Giles* v. *Diamond State Iron Co.*, 6 or 7 Houston.

A carpenter working on the roof of a building in process of construction is not bound to inspect the condition of the walls, and does not take the risk of the building falling in consequence of their insufficiency: *Id.*

If a building is constructed so as to withstand any ordinary storm, the fact that it is not capable of withstanding an extraordinary one does not show negligence: *Id.*

The falling of a building is *prima facie* evidence of defective construction, and, if the owner claims that it was produced by causes beyond his control, the burden of proof is on him to show this: *Id.*

A city ordinance regulating the thickness of the walls of buildings, violation of such ordinance in the construction of a building is *prima facie* evidence of negligence: *Id.*

A city ordinance regulating the thickness of walls of "buildings having truss roofs, such as churches, public halls, theatres, restaurants, and the like," includes a factory: *Id.*

NEGLIGENCE. See *Master and Servant; Railroads.*

PRACTICE. See *Criminal Law.*

PERSONAL PROPERTY.

Possession is Evidence of Ownership.—In an action by an administratrix against the intestate's father to determine the ownership of a team of horses, evidence that the intestate used the team as his own for over a year justified the instruction to the jury that "the possession of the team under a claim of ownership was presumptive evidence of the ownership, not conclusive, but sufficient until proof was introduced to the contrary," although it also appeared from the evidence that the father had originally bought and paid for the team: *Trevorrow* v. *Trevorrow*, 59 or 60 Mich.

QUO WARRANTO. See *Corporations.*

RAILROADS.

Negligence—Crossing not Public Highway—Whether Ringing Bell Sufficient—Conflicting Evidence—Instruction.—At a place on the line of a railroad where, although not a public highway, there is a crossing constantly and notoriously used as such by the public, without objection on the part of the company, the company is bound to give some reasonable notice and warning of the approach of trains, although not absolutely bound to ring a bell or blow a whistle: *Byrne* v. *N. Y. Cent. & H. Ry.*, 103 or 104 N. Y.

In an action against a railroad company by a person who was injured at a crossing which, though commonly used, was not a public highway, by a train which was backing over the crossing, there was a dispute as to whether a bell was rung or other warning given. *Held.* that the court was not bound to charge, as requested by defendant, that if the bell was rung that was a sufficient warning, but that it was a question for the jury whether such notice or warning was given as was proper and reasonable under the circumstances: *Id.*

Fire Rightfully Started—Liability.—Where a railroad company sets fire to dry grass and combustibles, negligently allowed to accumulate on

its right of way, and, without fault on the part of an adjoining owner, permits such fire to escape to his lands, and destroy his property, it is liable therefor, whether the fire was negligently started in the first instance or not: *Indiana, B. & W. Ry.* v. *Overman*, 109 or 110 Ind.

Municipal Aid—Consolidation, Foreclosure and Lease—Station at County-Seat.—The lessees of the purchasers of consolidated railroads at a foreclosure sale are not bound by the stipulations in a contract, between a county and the companies, binding them to stop all trains at the depot at the county-seat, although the consideration of the contract was the gift by the county to the companies of large sums of money, and the vote of the money by the people of the county was conditioned upon such passenger and freight accommodations: *People* v. *Louisville & N. Rd.*, 118 or 119 Ill.

The fact that the railroads were authorized by their charters to receive such aid and to make such contracts, does not add to the liability of such lessees: *Id.*

A railroad company, with a terminus at a county-seat, is vested with discretion as to the points of location of its track and stations in that town; but when it has once exercised such discretion by locating the track and stations, and maintaining them as located for thirteen years, it cannot remove them, or refuse to stop its regular passenger trains at such stations. Its duty at common law, as well as under 2 Starr & C. St. Ill. c. 114, par. 88, providing that "all regular passenger trains shall stop * * * at the railroad stations of county seats," &c., is to stop a sufficient number of trains there to meet the demands of public convenience and business necessities; and this duty may be enforced by mandamus: *Id.*

Carriers—Of Passengers—Contract between Railroad and Sleeping Car Company—Ejecting Passenger.—A contract between a railroad and a sleeping-car company provided that the latter should furnish cars for the transportation of passengers, and that its employees should be governed by the rules and regulations of the former. One of these regulations was that, on certain trains, passengers should not be entitled to purchase sleeping-car accommodations unless they held "through tickets." A passenger, holding a "split ticket," having applied for a sleeping car ticket, and the railroad company's agent having refused to sell him one, he was expelled from the sleeping car, its conductor assisting the train conductor in leading him from that car to one of the other passenger cars on the train, no special force being used or bodily harm done him. *Held*, that he could not recover damages of the sleeping-car company: *Lawrence* v. *Pullman's Palace Car Co.*, 143 or 144 Mass.

Elevated Railroads—Constitutional Law—Eminent Domain—Right of Abutters on Street—Lease or Grant by Original Corporation—Damages.—Abutters upon public streets in cities are entitled to damages sustained by them by reason of a diversion of the street from the use for which it was originally taken, and its appropriation to other and inconsistent uses: *Lord* v. *Metropolitan Elevated Rd.*, 103 or 104 N. Y.

An elevated steam railroad in the streets of a city, as usually constructed, is a perversion of the use of the street from the purpose originally designed for it, and is a use which neither the city authorities nor

the legislature can legalize or sanction without providing for compensation for the injury inflicted upon the property of abutting owners: *Id.*

In an action to recover for injury to an abutter's premises, caused by the building and operation of an elevated railroad in front of them, if it is agreed that a recovery may be had, if at all, as for a permanent appropriation, the fact that after the road was first built it was leased or conveyed to another corporation, which operated it, is immaterial, except as bearing upon the character of the road, and the nature of the injury inflicted: *Id.*

In an action by an abutter to recover for the injury to his premises, caused by an elevated railroad built in front of them, damages can be recovered on account of the gas, smoke, steam, dust, cinders, ashes, and other unwholesome substances emitted from the locomotives: *Id.*

Horse Railroads—Negligence—Passenger must Use due Care.—Plaintiff, while standing up between the seats of an open horse car, there being no unoccupied seats therein, was thrown down and injured, in consequence of the rapid driving of the car around a curve. *Held*, that an instruction that plaintiff must prove that, under all the circumstances in the case, she was in the use of due care, was proper and sufficient: *Lapointe* v. *Middlesex Ry.*, 148 or 144 Mass.

Master and Servant—Who are Servants—Driver of Horse Car.—A driver of a horse railroad car is none the less a servant of the company after yielding up the reins to the substitute who ordinarily takes his place, to allow him to go to his meals. So held on indictment against the company, where the driver, having given up the reins to the substitute, in leaving the car knocked a passenger off the platform, who fell under the car and was killed: *Commonwealth* v. *Brocton Street Ry.*, 143 or 144 Mass.

Sale.

Timber Standing on Land—Defect in Quantity—Abatement of Price.—A vendor advertised for sale in a newspaper a tract of land, as 300 or 400 acres of timber land, and afterwards advertised the land again as 400 acres of timber land. The land having been offered at auction, and no bid having been made for it, the timber was then offered for sale, and was purchased by one C. As to the quantity of land embraced in the tract, it in fact contained only 218¾ acres; but there was no proof of any fraudulent representations having been made by the vendor to C. on the subject. Before C., who was an experienced lumberman, purchased the timber, he went on the land, and was shown through the woods, until he expressed himself satisfied: *Held*, that the purchase by C. was a contract of hazard, and that he was not entitled to an abatement of the price of the timber, because the land from which the timber was cut did not contain 400 acres: *Shoemaker* v. *Cake*, 81 or 82 Va.

Set-Off. See *Bills and Notes.*

Streets. See *Corporation.*

Dedication—Intention—Question for Jury.—The question of the fact, form and extent of dedication of land to public use is one of intention, and is for the jury; and where a plan of land bordering on a river,

platted into streets and lots, shows one of the streets extended to the bank of the river, and then, spanning the river in a direct line with the street, lines marked "Bridge," the question whether or not the owner intended that the street should extend to the middle of the stream, and the further question whether he intended that the lines of the street should run directly over the river, or, anticipating accretions to the bank, intended that the dedication should be in the direction of a line drawn at right angles with the then bank, so as to deflect the original course of the street, are questions for the jury: *City of Elgin* v. *Beckwith,* 118 or 119 Ill.

TRUSTS. See *Bank and Banking.*

TURNPIKES. See *Corporation.*

USURY. See *Bills and Notes.*

VENDOR AND VENDEE.

Limitations—Adverse Possession does not Benefit Vendee.—Where a party purchases a lot 25 feet wide, and erects a building, which extends several inches on the adjoining lot, and subsequently deeds his land to plaintiff by a deed describing the lot as 25 feet, plaintiff thereby acquires no right to claim the benefit of the adverse possession of his vendor: *Graeven* v. *Devies,* 67 or 68 Wis.

WATERS AND WATERCOURSES.

Accretion—Division—Rule—Exceptions.—The rule that accretions are to be divided by extending the lines of riparian owners at right angles with the middle thread of so much of the river as lies opposite the shore line, is subject to modification by special circumstances, and an instruction which fails to adapt the rule to the conditions of the case at bar is erroneous: *City of Elgin* v. *Beckwith,* 118 or 119 Ill.

Water Rights—Spring on Land Conveyed—Measure of Damages.—One having sold and conveyed to another land having a spring located on it, the grantee engaged to convey "the water from the spring at the foot of the hill, by a pipe under the bed of the railroad, to the south line of the railroad, so as to be accessible for watering stock on that part of grantor's farm lying south of said railroad;" but the grantee, by quarrying for stone, sapped the sources of supply of the water, and destroyed the former site of the spring, causing it to spring up in a different spot: *Held,* the grantee was not bound to maintain the spring in the exact spot in which it first existed; and, if the water was supplied to grantor from another spot, it could not be said that grantee had destroyed the spring in the sense of the contract, and in violation of it: *Chamberlain* v. *B. & O. Ry.,* 66 or 67 Md.

The measure of damages in such a case (if any damage were done) would be the loss to grantor from the change of location in not having a supply of water for his stock, and not the value of the water for all purposes as affecting the value of the farm: *Id.*