London. This fund, called in the bill "The Secret Service Fund," amounted in 1808 to 80,000*l.*, and in 1816 to 120,000*l.* The existence of this fund was not noticed in the books of the company, nor was it known to any member of the company other than the Staintons and the Dawsons until the year 1852; but after that date its existence was discovered, and it was subsequently paid or accounted for to the company. The case, in addition to the fact of actual fraud, falls within the recognised class where the relation of trustee and *cestui que trust* exists.

We have thus noticed all the cases that have been cited upon the question involved. None of them conflict with that of *Carpenter* v. *Danforth*, *supra*, or with the conclusions at which we have arrived, as hereinbefore stated. They are all cases in which the acts of the directors, in respect to which they were held to be trustees of the stockholders, had relation to the property or to the business of the corporation. Such is not the case here.

The judgment below is affirmed with costs.

DOWNEY, C. J., dissenting.—In my opinion the evidence in the record in this case shows that the appellee was guilty of actual fraud in his purchase of the stock of the county in the railroad of which he was a director and the president.

If this were not so, I am clearly of the opinion that he occupied a relation of trust and confidence towards the county, which, under the circumstances disclosed, make him guilty of constructive fraud.

I regard the contract obtained from the county commissioners by the appellee as hard, unconscionable and fraudulent in either view of it, and am therefore of the opinion that the judgment of the Circuit Court should be reversed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF ALABAMA.[1]

SUPREME COURT OF MICHIGAN.[2]

SUPREME COURT OF NEW JERSEY.[3]

SUPREME COURT OF PENNSYLVANIA.[4]

ACTION.

Waiver of Time.—When a party declines to accept payment or per-

[1] From Hon. Thos. G. Jones, Reporter; to appear in 49 or 50 Ala. Rep.

[2] Abstracts by Henry A. Chaney, Esq., to be reported in full in 27 or 28 Mich.

[3] From G. D. W. Vroom, Esq., Reporter; to appear in 8 Vroom's Rep.

[4] From P. F. Smith, Esq., Reporter; to appear in 73 Penna. State Rep.

formance, except in a way to which he is not entitled, he cannot insist that the action is prematurely brought: *Macky* v. *Dillinger*, 73 Pa.

ADMIRALTY. See *Navigable Waters.*

Suspension of Proceedings—Identity of Issue.—In admiralty, the pendency of proceedings *in personam* cannot suspend proceedings *in rem*, nor will even a judgment, either *in personam* or *in rem* so suspend proceedings, until satisfied: *People ex rel. Granger* v. *Wayne Circuit Judge*, S. C. Mich.

Neither courts of law nor of admiralty can treat suits *in rem* and *in personam* as involving identical issues: *Id.*

ARBITRATION AND AWARD.

Award by two out of three Arbitrators—Presumptions as to validity.—In an action for backing water, all matters in variance were submitted to three referees, "who shall go upon the ground, hear the parties, their proofs," &c., and determine whether the water had been maintained too high. "They shall fix one or more permanent marks": the award of any two of them to be final. The referees reported: that they all met, examined the premises, heard the evidence, &c., and adjourned; that two again met and adjourned: that two again met, the third being sick, and adjourned: that two again met and awarded that the defendant had the right to raise the water to the point named. *Held*, that the award could not be sustained, it appearing on its face that but two heard and deliberated: *Bartolett* v. *Dixon*, 73 Pa.

Exceptions to the award were filed in the court below, they were after argument, overruled and the award was confirmed: the court filed an opinion setting out the facts. *Held*, that the opinion and facts in it were not part of the record and could not be considered in the Supreme Court: *Id.*

It is not necessary where a majority have power to make an award, that it should appear on the face of the award that all the referees heard and deliberated; the presumption is where not made by all, that the minority refused to join: *Id.*

BAILMENT.

Action against Bailee.—An agreement for the sale of property which the vendee promises to hold in his possession is a contract of bailment, and if the bailee sells or otherwise converts the property, the bailor may maintain trover, though his right of possession arises from the wrongful act of conversion itself, being given by the common law: *Johnston* v. *Whittemore*, S. C. Mich.

Liability of Agent or Bailee.—If A. surrenders specific securities delivered to him by B. into C.'s hands, after B.'s death, on an apparently well-founded claim of ownership set up by C., the action to be adopted by B.'s administrator in recovering said securities should be *trover*, or a special action on the case for damages, and not *assumpsit*, as for money had and received. C. would be liable for conversion, or violation of duty as agent or bailee: *Barnum* v. *Stone and Berry*, S. C. Mich.

BILLS AND NOTES. See *Evidence.*

BOOM. See *Navigable Waters.*

COMMON CARRIER. See *Contract.*

COMPROMISE. See *Contract.*

CONSTITUTIONAL LAW. See *Roads.*

Taxation.—Penalty for Non-payment—Repeal of Statute—Penalty cannot be reimposed by another Statute.—After a tax and the penalties which have accrued by reason of its non-payment have been swept away, before they are collected, by the repeal of the law which authorized their assessment and collection, the tax itself may be re-imposed by subsequent legislation, but the penalties for the past omission cannot be revived: *The State, Dixon, pros., The Mayor, &c., of Jersey City*, 8 Vroom.

Penalties may be prescribed for future delinquencies in the payment of taxes as part of the machinery by which government is enabled to collect them. The power to impose the forfeiture attaches as a necessary incident to the right to levy and collect taxes, and on no other ground can it be supported. The penalty thus provided is not taxation, it is merely the method of enforcing the payment of a tax. The imposition of penalties for past omissions would be confiscation, not taxation: *Id.*

Delegation of Legislative power—Taking of Private Property—Assessing cost of Municipal Improvements.—The legislature cannot leave it to a board of commissioners to determine in what proportion the expense of laying out and opening a public avenue shall be imposed on the townships of a county or wards of a city: *State, Gaines, pros.*, v. *Hudson County Avenue Commissioners*, 8 Vroom.

Such act of taxation must itself distribute the burthen or prescribe the standard by which such distribution is to be made: *Id.*

An act authorizing the making of a public avenue, and directing the commissioners to have a map made of such avenue, and which then provides a specified mode by which the moneys to pay for the expense of the project are to be raised, will not be sustained with respect to the making of the map, if the plan for providing such moneys turns out to be illegal: *Id.*

A landowner is so far injured by the mapping out of such avenue that he is entitled to have the judgment of the law on the project, without waiting until his property is attempted to be appropriated in point of fact: *Id.*

CONTRACT.

Illegal Consideration—Public Policy.—A promissory note given by a clerk in the post-office to the postmaster at such office, who employs such clerk, for the payment of the amount of embezzlement, made by such clerk, and for which said postmaster was liable to the government of the United States, is not founded on a consideration illegal and void as against the public policy, though it appears that the postmaster agreed with such clerk that if he would give such note with security, he would not prosecute him criminally for the embezzlement: *Bibb* v. *Hitchcock*, 49 or 50 Ala.

Common Carrier—Contract to give exclusive Rights to Individuals void as against Public Policy—Recognition as valid by Courts of another

State will not avail—Offer of Compromise—Damages.—A contract between a railroad company operating a railroad in this state under acts of the legislature of this state, and certain individuals, the effect of which is to give to the latter the exclusive right of transporting certain kinds of freight over their railroad, is void from considerations of public policy: *Union Locomotive and Express Co.* v. *Erie Railway Co.*, 8 Vroom.

A contract which has been recognised as valid by the courts of another state, will not be enforced by the courts of this state, if it is in violation of the public policy of this state: *Id.*

The defendants intending to put an end to a contract with the plaintiffs, proposed to pay a certain sum for a release from the contract. In an action by the plaintiffs for the breach of the original contract: *Held*,

1. That the proposition was an offer of a compromise which was not binding unless accepted.

2. That if accepted, the consideration which gave it validity as an agreement was the release and extinguishment of the former contract.

3. That if the plaintiffs intended to hold the defendants to the terms of the offer, they should have sued on the agreement of compromise, if an agreement was concluded; and that they could not sue on the original contract, and use the offer of the defendants as a liquidation of the damages they had sustained by a breach of the original contract: *Id.*

Evidence dehors the Writing.—The general rule is, that where any doubt arises upon the true sense and meaning of the words of a written contract, or any difficulty as to their application under the surrounding circumstances, the sense of the language may be ascertained by evidence *dehors* the instrument itself: *Newark and Hudson Railroad* v. *Sanford and Wright*, 8 Vroom.

A written contract entered into to build a bridge, which was not designated: *Held*, that it might be shown by parol that at the time of the contract the parties referred to a plan or draft of a bridge then in existence: *Id.*

Damages.

Penalty or Liquidated.—Where, in an agreement for the sale of property, it is provided that if there should be default in performing the conditions of the agreement, the property may be retaken wherever found, and the payment that shall have been made may be retained to apply as damages, the law would not enforce the clause as to damages, as for stipulated damages, as it is not based upon any idea of just and adequate compensation: *Johnston* v. *Whittemore et al.*, S. C. Mich.

Property wrongfully taken.—Where property is tortiously taken, the owner is not only entitled to an action but to full compensation in damages, and a subsequent sale on legal process in favor of the trespasser cannot, according to *Otis* v. *Jones*, 21 Wend. 394, be shown to reduce the damages, though it would be otherwise according to *Higgins* v. *Whitney*, 24 Wend. 379, if the subsequent legal proceedings should appear to have been in favor of some one other than the trespasser: *Dalton and Crudder* v. *Landahn*, S. C. Mich.

Equity. See *Mortgage.*

Estoppel.

Laches in applying for Relief.—The court will not set aside the proceedings under which an improvement has been made, where the prose-

cutors had full knowledge of the progress of the work, and of the contract under which it was being done, and did not apply for their writ until after the work was done, accepted and paid for by the city: *The State, Bald et al. pros.*, v. *City of Elizabeth*, 8 Vroom.

EVIDENCE. See *Contract; Rebellion.*

The late War—Of what the Courts will take Judicial Notice—Resumption of Mail Service after the War.—The courts of this state will take notice that the late rebellion in Alabama and in Louisiana was *suppressed* as early as the 18th of December 1865, and that the United States mail service was restored and in operation between Huntsville, Ala., and New Orleans, La., at that date. They will also take notice that at the date above last named no superior force, or political or other impediment interrupted or prevented the usual unrestrained social and commercial intercourse between said city of Huntsville and said city of New Orleans, after said 18th day of December, 1865, to the 20th day of February, 1866, inclusive (President Johnson's Message, Dec. 18th 1865): *Clay, Administrator*, v. *Potton*, 49 or 50 Ala.

The courts of this state will not judicially notice that bills of exchange drawn in Huntsville, Alabama, payable in New Orleans, Louisiana, which bore date in 1860 and 1861, and matured in 13 and 12 months after date, were protested and notice of protest sent by mail with reasonable diligence on February 20th 1866, so as to bind an endorser on such bills. Without proof other than the history of the late war of the rebellion, which is known to the courts, it will not be inferred that such a protest and notice were excused or justified by the interposition of said war, which prevented an earlier protest and notice to the endorser. The mere fact of the existence of the war of the Rebellion from 1861 to 1865, is not a sufficient excuse or justification for such delay of protest and notice to the endorser: *Id.*

The records of the Post-Office Department afford evidence of the restoration of the United States mail service in the late seceding states after the suppression of the late Rebellion, and when the date of such restoration is important it is safest to rely on these records for evidence of such restoration: *Id.*

Without other proof, the courts will take notice that the regular mail service was restored between Huntsville, Ala., and New Orleans, La., at least as early as Dec. 1865: *Id.*

FRAUD. See *Laches.*

GOLD. See *Shipping.*

HUSBAND AND WIFE.

Promissory Note and Mortgage of Married Woman for Money borrowed to purchase Land.—A married woman purchasing land, made the cash payments with money loaned to her for that purpose and took the conveyance in her own name. Afterwards she executed personally, and without the concurrence of her husband, a promissory note for the money borrowed with a mortgage on the land to secure its payment. *Held*, that the note and mortgage imposed no liability on herself personally or on the property; and that no trust upon the land resulted in favor of the lender. He was only a simple contract creditor of a person not *sui juris*: *Riley et al.* v. *Pierce*, 49 or 50 Ala.

Marriage—Reputation and Cohabitation.—Richard cohabited with a woman as his wife for many years; they addressed each other as husband and wife; spoke of each other, and executed deeds with acknowledgments as such; she made a will calling herself his wife and devising to him as her husband. In ejectment against him by a devisee under a subsequent will, he, claiming by the curtesy, testified: "the marriage ceremony never was performed only by mutual consent, we lived as man and wife. I promised to marry her." *Held*, to be evidence of marriage as between themselves as well as to third persons: *Richard* v. *Brehm*, 73 Pa.

The consent of the parties is all that is required for a valid marriage: *Id.*

If the contract be made *per verba de futuro* and be followed by consummation, it is a valid marriage: *Id.*

Marriage may be proved by reputation, declarations, and conduct of the parties: and other circumstances usually accompanying the relation: *Id.*

Cohabitation *and* reputation are necessary to establish a presumption of marriage where there is no proof of actual marriage: *Id.*

Insurance.

Executory Contract—Insolvency of Company—Cancellation of Policy and claim for return of unearned Premiums.—The contract between an insurance company and its policy holders is executory until the expiration of the term of insurance; and if the company becomes insolvent the insured may put an end to the contract: *U. S. Fire and Marine Insurance Company of Baltimore* v. *Tardy*, 49 or 50 Ala.

In such case the request of the company, by circular, to the insured to return their policies for cancellation, and receive a certificate for unearned premiums which they can present to its assignee for settlement on *pro rata* distribution to the creditors is an admission of the right of the insured to be refunded the portion of the premiums not covered by the risk, whether the right is founded on usage or agreement: *Id.*

When the unearned premiums are to be refunded in consequence of the insolvency of the company, the amount to be returned is the portion applicable to the time not covered by risk with interest from the termination of the contract: *Id.*

The demand for unearned premiums is a *chose in action* which the policy-holder may sell to the resident agent of the non-resident corporation without writing, the sale carrying with it any security held for its payment: *Id.*

Representations—Insurable Interests.—Where a party applying for insurance, without fraud, made an inaccurate representation (not a warranty), which he believed to be true, this would not defeat his action on the policy: *Imperial Fire Insurance Co.* v. *Murray et al.*, 73 Pa.

An insurance was effected on a coal-breaker, &c., by the lessee of a colliery, being the "working interest;" the lessee having the right to renew his lease, and being bound to return the property in good order at the end of the lease. The slope fell in and afterwards the breaker, &c., were burned. The insured could recover the value of the property although by the falling in of the slope his working interest was of less value than the amount insured: *Id.*

The insurable interest of the lessee was the value of the property which he was bound to replace: *Id.*

LACHES. See *Estoppel.*

Waiver of Fraud by Delay.—Plaintiffs sued defendants for the price of oil-stock, alleging that it had been bought on false representations as to the cost of the land; there was evidence that plaintiffs knew the cost in November and afterwards paid an assessment; subsequently the project failed; in March plaintiffs tendered the stock and offered to rescind. The court charged that if the jury found these facts and any unfavorable circumstances occurred between plaintiffs' knowledge and tender which left defendants in a worse condition than if the tender and rescission had been at the time of knowledge, the verdict should be for defendants. *Held*, to be correct: *Leaming et al. v. Wise et al.*, 73 Pa.

If there had been fraud, the plaintiffs could rescind and recover back the price; but the tender should be in a reasonable time after discovery of the fraud: *Id.*

By an undue delay in tender and rescission the contract would be affirmed: *Id.*

When the facts are undisputed, what is reasonable time or undue delay is for the court: *Id.*

LANDLORD AND TENANT.

Entry by Landlord—Justification in Trespass.—If a landlord removes his tenant during the term, by entering and holding possession, because the house is used as a place of prostitution, and kept in a disorderly manner, he cannot plead nor prove these facts in justification of his trespass in an action brought against him by the tenant: *Miller* v. *Forman*, 8 Vroom.

LIS PENDENS. See *Admiralty.*

MALICIOUS PROSECUTION.

Action taken on Legal Advice.—The advice of counsel who have been fully informed of the facts is allowed to be complete justification of honest action taken in accordance with it, but it is not safe in important matters to trust to the legal opinions of any but recognised lawyers, and advice from any but qualified lawyers, however honestly followed, cannot be held as of itself an answer to the charge of malicious prosecution: *Stanton* v. *Hart*, S. C. Mich.

MARRIED WOMAN. See *Husband and Wife.*

MASTER AND SERVANT. See *Negligence.*

MORTGAGE.

Conveyance as Security for Loan—Equity—Disregard of inappropriate Terms in Bill.—The plaintiff being embarrassed, upon defendant's advice conveyed to him real estate, on defendant's parol promise that he would obtain from a building association, on the security of the real estate, a loan, with which he would pay plaintiff's liabilities, repay the loan from the rents and reconvey to plaintiff when the loan should be repaid. *Held*, that the transaction was a mortgage: *Danzeisen's Appeal*, 73 Pa.

The purpose not being to sell, but convey as security, it is immaterial that defendant was to procure the money at a future time and from a third person: *Id.*

The defendant received the deed without consideration, except his

promise to raise the money for plaintiff; if it was not intended to be raised it would be a fraud and the defendant a trustee *ex maleficio*: *Id.*

The plaintiff's bill charged that defendant held in trust for him; did not allege that he was mortgagee, and prayed for account and reconveyance; it was dismissed below on the ground that there was no trust. The facts set out showing it to be a mortgage, the Supreme Court sustained the bill, to reach the justice of the case, disregarding the use in the bill of inappropriate terms: *Id.*

Equities between Mortgagor and Assignees of Mortgage—Estoppel.—The assignee of a mortgage, unless the mortgagor has estopped himself, holds it subject to all the equities to which it was liable in the hands of the assignor: *Ashton's Appeal*, 73 Pa.

The mortgagor having given a certificate that he has no defence, is estopped from setting up a defence against an assignee: *Id.*

Any subsequent assignee may avail himself of a certificate of "no defence," given to the first, if he shows that he or a prior one under whom he claims was an assignee for value without notice: *Id.*

A purchaser with notice of fraud or trust may protect himself under a prior purchaser without notice: *Id.*

A creditor taking a chose in action as collateral security for a pre-existing indebtedness is not a purchaser for value: *Id.*

MUNICIPAL CORPORATION. See *Constitutional Law; Estoppel.*

Assessments for Improvements—Rights of Landowners in Contracts.—The contractor under proposals for street improvements must be held to his bid, not allowed to underbid others and afterwards receive more. The excess will be an illegal charge against the landowners: *State, John M. Board et al., pros.* v. *City of Hoboken*, 8 Vroom.

Assessments for Improvements.—The assessments of commissioners for benefits in street improvements, where they have been on the ground, examined the premises and made their report of estimates according to the principle prescribed in the charter, will not be set aside upon conflicting evidence of the justice or sufficiency of such assessment. It must clearly appear that injustice has been done before an assessment will be set aside upon the facts: *State, John B. Pudney, et al., pros.* v. *The Village of Passaic*, 8 Vroom.

Assessments for benefits by the lineal feet along the frontage is not necessarily wrong. There is no rule that condemns such method, without proof of its injustice either apparent on the papers, or shown satisfactorily by independent testimony: *Id.*

NAVIGABLE WATERS.

Boom—Nuisance.—The right of navigation is not so far paramount as to make booming facilities a nuisance wherever they encroach on navigable waters, and in any case the question of nuisance must depend on the particular facts. The necessity and convenience of the floatage of lumber in the Manistee river, in the region of which the manufacture of lumber is the prime industry, must be considered in any rules laid down for the public use of the stream: *Brig City of Erie* v. *Canfields*, S. C. Mich.

Boom-breaking not a Maritime Tort.—A boom that extends no farther

into the water, than the landowner, with due regard to navigation, might extend it, is a structure pertaining to the adjacent land as much as any wharf or building erected thereon, and a wrongful injury to it is not a marine injury, and the tort cannot therefore be redressed in admiralty: *Id.*

NEGLIGENCE.

Railroad—Sparks from Engine.—A party is not answerable in damages for the reasonable exercise of a right, unless upon proof of negligence, unskilfulness or malice: *The Philadelphia and Reading Railroad Co.* v. *Yerger et al.*, 73 Pa.

Buildings were burned by sparks, from a locomotive engine used in the ordinary way on a railroad; in a suit against the company by the owner, *Held*, there being no evidence to justify an inference of negligence, that the jury should have been instructed to find for defendants: *Id.*

Master and Servant—Action against Servant for wilful neglect of orders.—Forsyth, the owner of a strip of woodland through which a railroad ran, having procured the wood to be cut, employed Horner to haul it. Horner, in order to reach said woodland, obtained permission from Lamb, the owner of an adjoining field, where the hogs of Lawrence were being pastured, to pass through the field and to open a gap in the fence at a certain place, with directions to close it up after he went in and after he came out, as the hogs and cattle in the field might get through on the railroad and get killed; Horner passed through with his teams, leaving the gap open while the wagons were being loaded, but closing it when he went out; the hogs escaped through the gap and one was killed, and the other injured on the railroad; *Held*, that the leaving down the bars by Horner was an intentional and wilful violation of his authority, and a misfeasance for which, as a servant or agent of Forsyth, he cannot claim exemption against the party injured: *Horner* v. *Lawrence*, 8 Vroom.

Tax Collector's Receipt—Use for purpose for which not intended.—A collector of taxes gave a receipt, upon receipt of check, for the taxes due on a certain lot; such receipt was exhibited to a purchaser of the lot to show its discharge from the tax at the time of the sale. The check being unpaid, the city enforced the tax against the property in the hands of the purchaser; *held*, such purchaser could not maintain a suit for the loss sustained by him against the collector. It was further *held*, that the position was not changed by the knowledge of the collector that his receipt was sometimes used as a certificate that property was clear of tax: *Kohl* v. *Love*, 8 Vroom.

A tax collector is neither authorized nor required to give certificates that property is discharged from taxes, and his receipts, given in the ordinary course of business, if used for such purpose, must be so used at the peril of those who rely upon them: *Id.*

Actionable negligence exists only when the party whose negligence occasions the loss owes a duty, arising from contract or otherwise, to the person sustaining such loss: *Id.*

NUISANCE. See *Navigable Waters.*

PARTY-WALL.

Projection beyond Party-lines.—A party-wall erected by Simpson pro-

jected unintentionally in several places, slightly beyond the proper line, over land of Mayer, who was erecting a building at the same time, by contract with a builder who was to pay for the party-wall. He knew the wall was projecting, but went on and paid for it; Simpson completed his building without correcting the projection. The court under the circumstances refused a decree to take down the wall: *Mayer's Appeal*, 73 Pa.

This occupation of part of plaintiff's lot did not give defendant any title to it nor affect plaintiff's right to damages: *Id.*

PENALTY. See *Constitutional Law.*

PRESCRIPTION See *Roads.*

RAILROAD. See *Negligence.*

Occupation of Public Roads.—An act gave a railroad company power to construct its railroad on a public road, and provided that if in its construction it should be necessary to change a public road, &c., they should "cause the same to be reconstructed in the most favorable location and in as perfect a manner as the original road." This does not require that the *making* of the new road shall precede the occupying of the old road: *Danville, Hazleton and Wilkesbarre Railroad Co.* v. *The Commonwealth*, 73 Pa.

The legislature may authorize building a railroad on a public road. *Id.*

A railroad company occupying a portion of a public road not exceeding the extent allowed by law, and obstructing public travel on such portion, is not guilty of nuisance: *Id.*

REBELLION. See *Evidence.*

Judicial proceedings in the Seceding States—Proof of by Records.—Judicial proceedings had in this state during the war are not void: *Copeland, adm'r.*, v. *Winston, adm'rx.*, 49 or 50 Ala.

A suit instituted and with reasonable diligence prosecuted to judgment in the courts of this state during the war against the maker of paper not commercial, is a compliance with the statutory requisition of suit, as a condition on which to fix the liability of the assignor: *Id.*

The records of the courts existing in this state during the war, having passed into the keeping of corresponding officers of the present legal courts, are provable in the same manner as the records of the present courts: *Id.*

ROADS. See *Railroad.*

Vacation of Private Road—Prescription.—The Act of April 21st 1846, vacating private roads by prescription, is constitutional: *Krier's Private Road*, 73 Pa.

Roads by prescription rest upon uninterrupted adverse user for twenty-one years, in analogy to the Statute of Limitations and not on the fiction of a grant: *Id.*

An owner divided his land into lots and laid out a road for their use; the road was used for more than twenty-one years by an adjoining owner; all the lots afterwards vested in one person, upon whose petition the road was vacated under the Act of 1846. *Held*, that the adjoiner had

no easement secured by grant taken from him, it was one originating in a wrongful use of another's land: *Id.*

Shipping.

General Average—Gold.—General average is a contribution by all the parties in a sea adventure to make good the loss of one of them for voluntary sacrifices of part of the cargo to save the residue and the lives of those on board from an impending peril, or for extraordinary expenses necessarily incurred by one or more for the general benefit of all the interests in the enterprise: *McLoon's Administrator* v. *Cummings*, 73 Pa.

General average extends to the loss of the ship when the cargo is saved; and the loss of the cargo when the ship is saved: *Id.*

When after abandonment of the vessel the cargo is sent to the port of destination, as a general principle the parties are bound by an adjustment fairly made by an adjuster at that port, according to the rules, &c., there: *Id.*

This rule does not obtain in case of fraud or gross mistake; or when a voyage is broken up and ended, where a final separation between the vessel and cargo has taken place and the relations of the parties have terminated: then the port of disaster would generally become the place of adjustment: *Id.*

Where the cargo is sent from the port of disaster to the port of destination by another vessel at a higher rate of freight than under the original contract, the contribution is to be on the basis of the value of the cargo at the port of destination: *Id.*

Where the deviation is justified, in case of disaster by a peril of the sea, disabling the vessel from proceeding, the master becomes the agent of all the parties in interest; the subject of the interests are the vessel, the cargo and the freight: *Id.*

If the vessel cannot proceed, it is the duty of the master to reship the cargo if he can, to the port of destination, to protect all interests, doing what he fairly and conscientiously believes is for the interest of all: *Id.*

If the master can save part of the freight to the owner, he will be considered his as well as the shipper's agent; if he can save nothing for the owner he will be agent of the shipper alone: *Id.*

A vessel was chartered at Baltimore to carry coal to San Francisco; having met with disasters at sea, she bore away to Rio, where after the proper proceedings she was abandoned and the master shipped the cargo to San Francisco by another vessel at higher freight, by the bill of lading "to be delivered * * * unto order or ———, assignees, he or they paying freight," &c. The bill was endorsed to Wright, who endorsed it deliverable to Cummings, San Francisco. The master of second vessel would not deliver the coal except on payment of freight, &c., and Cummings would not so receive it; the coal was sold for less than the freight and expenses. The acts of the master were ratified by the owner of the ship. *Held*, that under the circumstances, the separation of interests was not completed at Rio, but continued until the arrival at San Francisco, and the sale of the cargo there: *Id.*

The freight and charges at San Francisco having consumed the value of the cargo, in a suit by the owner against the shipper, it was *Held*,

that there was nothing upon which the general average could be charged; and the recovery was confined to the special charges on the coal: *Id.*

The master paid a premium for gold drafts at Rio to pay the expenses there; *Held*, that verdict should be for the amount found in gold, not for the premium paid: *Id.*

TAXATION. See *Constitutional Law.*

TIME. See *Action; Laches.*

Computation of.—A debt was due October 6th 1862, suit was brought October 6th 1868; *Held*, not barred by the statute: *Menges* v. *Frick*, 73 Pa.

When suit is brought within six years after the day on which the cause of action arose that day is to be excluded from the computation: *Id.*

When a thing is to be done within a certain time from a prior date and the party is deprived of a right by its omission, the day from which the count is to be made is excluded from the computation: *Id.*

TRESPASS. See *Landlord and Tenant.*

TROVER. See *Bailment.*

VOLUNTARY PAYMENT.

Payment on a Writ is compulsory.—Payment to an officer presenting a writ is made under legal compulsion, for one may assume that the officer will enforce a process under which he makes a demand. When therefore a joint obligee pays a note to secure his own liability on the recognisance, he cannot, on the ground of voluntary payment, be presumed to waive indemnity from his co-surety: *McKee* v. *Campbell*, S. C. Mich.

WAR. See *Evidence; Rebellion.*

WAY.

Grant of—Obstruction of.—Hatcher being owner of two lots used a lane from the back lot over the other to a turnpike with a gate there. In 1858 he conveyed the back lot, the gate remaining, "with the free use, right and privilege of a passageway * * * extending from the * * * turnpike to the hereby granted premises with free ingress and regress at all times for ever." Through divers conveyances, all reciting the grant of the passage, Brooke became the owner of the back lot in 1867, and Connery of the front lot in 1869; the gate had been used in common by the owners of both lots till 1870, when Brooke took it down and Connery put it up. In an action against Connery for obstructing the passage, *Held*, that the grant of the privilege did not *per se* make the gate a wrongful obstruction; it was a question for the jury in connection with the circumstances: *Connery* v. *Brooke*, 73 Pa.

If the gate was not a practical hindrance and an unreasonable obstruction to plaintiff's use of the passage, it was not illegal: *Id.*

Generally a grant is to be taken in its natural and ordinary sense; and if there be doubt, most strongly against the grantor: *Id.*

A grant is to receive a reasonable construction which will accord with