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ADMIRALTY—SALVAGE—VESSEL ON FIRE IN DRY DOCK.—SIMMONS v. THE STEAMSHIP JEFFERSON, 30 SUP. CT. 54.—*Held,* that a court of admiralty has jurisdiction of a libel claiming salvage for services rendered by tugs in subduing a fire communicated from the shore to a vessel undergoing repairs in a dry dock from which all the water had been emptied.

Jurisdiction attaches in the case of a maritime contract as a general rule, irrespective of the question whether it is to be performed on land or water. *Dailey v. City of New York,* 128 Fed. 796; *The Vida Sala,* 12 Fed. 207; *The Ella,* 48 Fed. 569. In this country the rule has been modified, so that courts of admiralty do not have jurisdiction over contracts to build ships. *Edwards v. Elliott,* 21 Wall. 532; *Roach v. Chapman,* 22 How. 129; *The J. C. Rich,* 46 Fed. 136. But this exception does not apply to supplies for, or repairs to a vessel, as all the later cases hold that this is a maritime contract, even though performed on land. *Wortman v. Griffith,* 3 Blatchf. 528; *The Iris,* 106 Fed. 104; *The Electron,* 48 Fed. 689. And it is a well settled rule that unless the *res* is engaged in, or in some sense related to commerce and navigation, admiralty will not have jurisdiction. *In re Hydraulic Steam Dredge, No.* 1, 80 Fed. 545; *Lawrence v. The W. F. Brown,* 46 Fed. 290; *Trainor v. The Superior,* Gilpin 514; *The Rock Island Bridge,* 6 Wall. 213.

CARRIERS—PASSENGERS—TIME OF DELIVERY—CAUSES OF DELAY—ACT OF GOD.—CORMACK v. N. Y., N. H. & H. R. R. Co., 90 N. E. 56 (N. Y.).—*Held,* that while a carrier of passengers must transport with all reasonable diligence, in order to reach destination on the time advertised in its time tables, and exercise reasonable foresight in anticipating and removing obstructions, it is not an insurer as to the time of arrival, and is only liable for delay caused by its negligence.

It is a part of the contract of a common carrier with the public, that its published schedules shall be substantially adhered to, and a failure to do so renders it liable. *Heirn v. McCaughan,* 32 Miss. 17; *Miller v. Southern R. R. Co.,* 69 S. C. 116; *Sears v. Eastern R. R. Co.,* 14 Allen, 433. So a common carrier will be liable for delay occasioned by the fault or negligence of its servants. *Van Buskirk v. Roberts,* 31 N. Y. 66; even though it be wilful. *Milwaukee & Miss. R. R. Co. v. Finney,* 10 Wis. 388. The doctrine of liability for delay is carried to an extreme in *Turner v. Great Northern R. R. Co.,* 15 Wash. 213, where the plaintiff holding a ticket reading over the defendant road, owing to the inability of the defendant company to complete its contract because of a washout, was compelled to take passage over the road of a rival company, the first company was held liable for a delay on the road of the second company. And in the English case of *Hawcroft v. Great Northern R. R. Co.,* 8 Eng. L. & Eq. 362, it was held that if a train is advertised to depart at a given

time, it amounts to an unconditional contract between the carrier and a passenger, that he will be given passage at that time. However, the reasonableness of the delay is generally taken into consideration, and as a rule it is held that there is no liability, therefore, for a delay caused by the elements, without negligence by the carrier. *Van Horn v. Templeton & Underhill,* 11 La. Ann. 52. To defeat responsibility for delay caused by a wreck, the carrier must show that it was in no way responsible, and that it used due diligence to resume operations. *International & G. N. R. R. Co. v. Harder,* 36 Tex. Civ. App. 151.

CONTRACTS—DURESS—FORCING EXECUTION OF CONTRACT.—SNYDER V. ROSENBAUM, 30 SUP. CT. REP. 73.—*Held,* that refusal by the purchaser in possession of personal property to pay for it, to satisfy a mortgage lien on it, or release it, unless the seller will execute a contract, a contract which, if persisted in, both parties understand will lead to an immediate foreclosure and the ruin of the seller, amounts to duress which will avoid the contract.

Almost all the authorities hold that if circumstances of especial hardship exist, a promise made to obtain property unlawfully withheld is voidable for duress. *Spaids v. Barrett,* 57 Ill. 289. But the decisions as to what constitutes duress of property where no circumstances of especial hardship exist are not harmonious. Some courts hold that duress of property cannot exist where either replevin or trover is an adequate remedy for the party who has been forced to enter into a contract by the wrongful detention of his goods. *Kingsbury v. Sargent,* 83 Me. 230. Others hold that duress does exist even if the party could recover by replevin or trover. *Wilkerson v. Hood,* 65 Mo. App. 491. It is usually held that an actual or threatened breach of contract is not duress. *Goebel v. Linn,* 47 Mich. 489. But if oppressive circumstances exist the opposite is held. *Pantor v. Duluth, Etc., Co.,* 50 Minn. 175. Moreover, the mere refusal to pay a debt when due unless some demand is fulfilled does not amount to duress. *Doyle v. Rector,* 133 N. Y. 372. But if the debtor has reduced his creditor to financial difficulties by his wrongful conduct and then by withholding payment forces the creditor to make some contract, it is generally held that such a contract is voidable for duress. *Fitzgerald v. Construction Co.,* 44 Neb. 463. There can be no duress of property where the act done or threatened is one that the party had a legal right to do. *York v. Hinkle,* 80 Wis. 624.

CORPORATIONS—LIABILITY ON ULTRA VIRES CONTRACT SUBSCRIPTION TO STOCK OF ANOTHER CORPORATION.—CONVERSE V. GARDNER GOVERNOR CO., 174 FED. 30 (ILL.).—*Held,* that a manufacturing corporation, organized under the law of Illinois, having no power under its charter to invest in the capital stock of another corporation, cannot be held liable as a stockholder in a corporation of another state, although it acquired the stock in payment of a pre-existing debt for merchandise sold by it in the course of its regular business.

Ordinarily one corporation cannot subscribe to the capital stock of another corporation. *Denny Hotel Co. v. Schram,* 6 Wash. 134. Though

a corporation may, if authorized by statute, subscribe to the capital stock of another. *Railway Co. v. Iron Co.*, 46 Ohio St. 44. And it may subscribe to the stock of another if such a contract is the necessary or proper means of accomplishing the purpose for which it was created. *L. & N. R. R. Co. v. Society of St. Rose*, 91 Ky. 395. Where dealing in stocks is not expressly prohibited, it is well settled that one corporation may take the stock of another to adjust a claim with the honest intention of turning them into money under favorable circumstances. *First Nat'l Bank v. Nat'l Exchange Bank*, 92 U. S. 122. And even a corporation organized under a statute expressly making it unlawful to use its funds in the purchase of stock of another may take such stock in payment of a debt. *H. & G. M. Co. v. H. & W. M. Co.*, 127 N. Y. 252. It has been held, however, that a corporation taking stock of another for a debt would not be entitled to recognition as a stockholder. *Franklin Bank v. Commercial Bank*, 36 Ohio St. 350. As regards liability on the stock some courts have decided that a corporation may be estopped to set up the fact that the subscription was *ultra vires*. *Bowman v. Hardware Co.*, 94 Fed. 592. Though others adopt the doctrine that a contract made by a corporation beyond the scope of its authority cannot be enforced or rendered enforceable by the application of the doctrine of estoppel. *R. R. v. R. R.*, 163 U. S. 564. However, in some states the defense of *ultra vires* is not open to a corporation subscribing to the stock of another against liability when the contract has been fully executed by the other corporation, and is not *malum in se* or *malum prohibitum*. *Goodland v. Bank*, 74 Mo. App. 365.

EVIDENCE—LETTERS—ATTEMPT TO COMPROMISE.—WALKER V. APPLEMAN, 90 N. E. 35 (IND.).—*Held*, that letters written between the parties solely to effect a compromise and containing no admission of an independent fact as a fact, were inadmissible.

In general an offer or attempt to compromise or settle a matter in dispute cannot be given in evidence against the party by whom such offer or attempt was made. *Higgins v. Shepard*, 182 Mass. 364; *Roos v. Decker*, 68 N. Y. Sup. 790. It must be noted, however, that admissibility of evidence of an alleged offer of compromise depends upon the intention of the parties seeking it: if intended as a compromising settlement it is inadmissible, but if intended as an admission of liability coupled with an endeavor to settle, it is admissible to prove such liability. *Finn v. New England Telephone & Telegraph Co.*, 101 Me. 279. Thus a letter of a life insurance company sent for the purpose merely of obtaining a compromise of the amount due under a policy and which is to prevent litigation is inadmissible against it. *Southwest Ins. Co. v. Woods National Bank*, 107 S. W. 114 (Tex.). Again, in an action by a servant for injuries received through negligence of his master, a letter written by the servant to the master, constituting an offer of compromise, was held to be inadmissible. *Louisville, Albany & Chicago R. R. v. Wright*, 115 Ind. 378. Likewise a letter written by a plaintiff prior to the commencement of his action, and containing admissions made simply to open the way to a compromise or as a part of an attempted compromise is not admitted

against him. *Louisville, Albany & Chicago R. R. v. Wright,* 115 Ind. 378. Adversely as to the compromise admitting liability and endeavoring to settle, an offer of compromise is inadmissible in evidence, but an incidental and independent admission of fact, such as the handwriting of the party, is admissible. *Whitney v. Cleveland,* 13 Idaho 538. However, a letter written by the defendant to the plaintiff, proposing to settle for trespass, is proper evidence to go to the jury that they may determine whether it is an admission of the trespass or only a proposition to buy the plaintiff's peace. *Trussel v. Knowles,* 5 Miss. 90.

INJUNCTION—NUISANCE—SUNDAY BASEBALL.—MCMILLAN V. KUEHNLE, 73 ATL. 1054 (N. J.).—*Held,* that the playing of baseball on Sunday will be enjoined if it be made to appear that the noise and disorderly conduct attendant upon the games amounts to a nuisance in the neighborhood, whereby the peace and quiet of Sunday is disturbed, and the rest which the complainants are entitled to enjoy on that day is appreciably affected.

The general ruling has been that the public has the right of enjoying Sunday as a day of rest, free and clear of all disturbance from unnecessary and unallowed worldly employment. *Commonwealth v. Scully,* 35 Pa. (11 Casey) 511; *Clough v. Shepherd,* 31 N. H. 490. So that in cases of public nuisances a petition for an injunction can be maintained by an individual because of special damage peculiar to himself and distinct from that done to the public at large. *Allen v. Board of Chosen Freeholders of the County of Monmouth,* 13 N. J. Eq. 68. To warrant the allowance of an injunction, however, it must clearly appear that some act has been done which will produce irreparable injury to the party asking an injunction. *Vaughan v. Bowie,* 30 Ark. 278. And an injury is considered irreparable when the party injured cannot be adequately compensated, or when the damages resulting cannot be measured by any certain pecuniary standard. *Kerlin v. West,* 4 N. J. Eq. 449. Hence, owners of land adjoining an inclosed ground, to which admission is charged to see baseball games, which are a detriment to the peace of the Sabbath, may obtain an injunction, though several years, before the ground was fenced off, persons had played ball there on Sunday. *Seastream v. New Jersey Exposition Co.,* 67 N. J. Eq. 178. Also the noise caused by the shouts, cheers and stamping of feet of spectators at Sunday ball games, even though constituting a public nuisance, will be enjoined at the suit of individuals living in the neighborhood, it being such as to appreciably disturb their rest and quiet. *Gilbough v. West Side Amusement Co.,* 64 N. J. Eq. 27. Again a court of equity has jurisdiction to protect by injunction a dwelling house against a nuisance occasioned by the playing of Sunday baseball, which renders the house uncomfortable, though the existence of such a nuisance is disputed at law. *Cronin v. Bloemecke,* 58 N. J. Eq. 313.

INTOXICATING LIQUORS—SALES ON SUNDAY—LIABILITY—SALE BY AGENT—EVIDENCE OF AUTHORITY—LIABILITY OF PRINCIPAL FOR SALE BY AGENT.—OLLRE *v.* STATE, 123 S. W. 1116 (TEX.)—*Held,* that under Act 30th Leg., p. 266, c. 138, sect. 19, punishing every liquor dealer knowingly

selling intoxicating liquor to any minor, or suffering the same to be done, and section 20, providing that any sale made to any minor or on Sunday by any agent or other person acting for any retailer, when considered together and made to harmonize, proof of a sale by an agent does not make a liquor dealer criminally liable when the sale is made at his place of business by one assuming to act as his agent, where he shows, either that such person was not his agent, or that the sale was made in violation of his orders. Ramsey, J., *dissenting.*

The defense may be that the servant made the unlawful sale unauthorized, giving rise to a presumption of innocence even in cases of illegal liquor selling. *Commonwealth v. Briant,* 142 Mass. 463. So where the defendant kept a general store and in his absence the clerk sold liquor, the proprietor was not held liable. *Grosch v. City of Centralia,* 6 Ill. App. 107. If against the express instructions of the employer, the latter is not to be held. *Lathrope v. State,* 51 Ind. 192. But in some jurisdictions where the clerk sells to minors, there is no defense even though the defendant gave instructions against it. *Mogler v. State,* 47 Ark. 109. The employer is not liable for sales made on Sunday without proof of authority express or implied, if the agent is employed only to work on week days. *State v. Burke,* 15 R. I. 324.

MASTER AND SERVANT—DEATH OF SERVANT—"FELLOW SERVANTS"—SECTION HAND WITH ENGINEER.—DEGONIA V. ST. LOUIS, I. M. & S. RY., 123 S. W. 807 (Mo.).—*Held,* that a section hand working on a railroad track is not a fellow servant of the engineer of a passenger train by which he was killed. Valliant, Lamm, J. J., *dissenting.*

In determining who are fellow servants it is generally held that where a servant is employed in a department of a general service which is separate and distinct from that of the servant or servants whose negligence caused injury, the fellow servant rule does not apply and the master is liable. *Sullivan v. Mo. Pac. Ry.,* 97 Mo. 113. However, in *H. & T. C. Ry. Co. v. Rider,* 62 Tex. 267, it was held where several serve the same employer, work under the same control, deriving their authority and compensation from the same common source, they are fellow servants, though their labor may be performed in different departments of the same common service. One servant can not maintain an action against the common master for injury caused by carelessness or negligence of another engaged in same service, where competent servants have been employed. *Ill. Cent. Ry. v. Cox,* 21 Ill. 29. But the fact that the negligence of a fellow servant concurs with the negligence of the master in causing the injury to the servant does not exempt the master from liability for his neglect. *Merril v. Oregon Short Line Ry. Co.,* 29 Utah, 264. In a similar case, *Connally v. Minneapolis Eastern Ry. Co.,* 38 Minn. 80, it was held that a section hand was a fellow servant of an engineer and that a railway company was not liable for negligence of engineer or brakeman of the train.

MUNICIPAL CORPORATIONS—DEFECTS IN STREET—REASONABLY SAFE FOR PUBLIC TRAVEL.—NORTHRUP V. CITY OF PONTIAC, 123 N. W. REP. 1107

(MICH.)—*Held*, that a grating projecting only two inches or less above a sidewalk is not as a matter of law an obstruction which will render the sidewalk not reasonably safe for public travel.

A city is liable not only for accidents occasioned by negligently constructing sidewalks, but also for negligently permitting the defects to continue. *City of Atchison v. King*, 9 Kas. 550; 2 *Dill. Mun. Corps.*, Sect. 1025. Thus where a defect in a street had been allowed to continue for ten months, it was held that the city was liable for an injury caused thereby. *Lyon v. City of Logansport*, 9 Ind. App. 21. But it has been held that when the defect has continued for several years prior to a complaint, danger was not reasonably to be anticipated and the city was freed from the charge of negligence. *Beltz v. City of Yonkers*, 148 N. Y. 67. As for the manner in which the defect exists in the street, it makes no difference whether the defect is a part of, or attached to, the sidewalk or not. *Pittenger v. Town of Hamilton*, 85 Wis. 356. For it is well settled that if the defect is so near the traveled portion of the walk as to endanger travel thereon, the town is liable. *Fitzgerald v. Berlin*, 64 Wis. 203. But in any case the plaintiff must have used due care in order to recover. *Glantz v. City of South Bend*, 106 Ind. 305; 2 *Dill. Mun. Corps.*, Sects. 1020. And such due care has not been used and the plaintiff cannot recover, if, in broad daylight, he chooses to cross a street where there is a projection which has necessarily been put there, when he could just as well have used another part of the street for his purpose. *Raymond v. City of Lowell*, 60 Mass. 524.

MUNICIPAL CORPORATIONS—LIABILITY FOR NEGLIGENCE—RESPONDEAT SUPERIOR.—SCHWALK'S ADM'R. V. CITY OF LOUISVILLE, 122 S. W. REP. 860 (KY.).—*Held*, that persons employed in a city hall in managing and conducting the affairs of the municipality are public officers, charged with the performance of public duties; and the doctrine of *respondeat superior* does not apply to such employment. Nunn, C. J., *dissenting*.

The distinction between public and private powers conferred upon municipal corporations seems to be that when the power conferred has relation to public purposes and is for the public good, it is to be classified as governmental in its nature and appertains to the corporation in its political character. But when it relates to the accomplishment of private corporate purposes, in which the public is only incidentally concerned, it is private in its nature and the corporation is regarded as a legal individual. In the former case, the corporation is exempt from all liability, whether for non-use or misuse; while in the latter case, it may be held to that degree of responsibility which would attach to an ordinary private corporation. *Springfield F. & M. Ins. Co. v. Keesville*, 148 N. J. 46. Therefore, in the absence of a statutory provision, a municipal corporation, acting in furtherance of public purposes and for the public good, is not liable for damages caused by the torts of its officers. *Parks v. City Council of Greenville*, 44 S. C. 168. For the officers of such corporation are *quasi* civil officers of the government, and are personally liable for malfeasance or non-feasance in office; but the corporation is responsible

for neither. *Prather v. City of Lexington,* 52 Ky. 559. Thus, for example, in the case of a teamster's hauling stone for the public purpose of repairing the public highway, and a person was injured through the carelessness of such teamster, the doctrine of *respondeat superior* did not apply. *Barney v. City of Lowell,* 98 Mass. 570. However, in New York it has been held that the doctrine does apply in the case of injuries resulting from the negligence of persons employed by municipal officers in repairing the public sewers. *Lloyd v. City of New York,* 5 N. Y. 369. And, also, in *Stephani v. City of Manitowac,* 89 Wis. 467, the facts of which seem to be somewhat similar to those in the case under discussion—the city was held liable for injuries sustained by reason of a defective drawbridge and failure of manipulation of said bridge by its tender. But with respect to property used for its private purposes and profits, a municipal corporation is subject to the same responsibility as an individual or private corporation under the same circumstances. 2 *Dill. Mun. Corp.,* Sect. 985 *et seq.* Thus, for example, where a city was having work done in a cemetery conducted by a superintendent, it was held liable for injuries to an employee under the superintendent, by reason of the negligence of the latter. *City of Toledo v. Cone,* 41 Ohio St. 149. This doctrine of *respondeat superior* in the case of municipal corporations applies in the same manner and to the same extent with respect to injuries to the property as it does to personal injuries. *Deane v. Inhabitants of Randolph,* 132 Mass. 475.

MUNICIPAL CORPORATIONS—NEGLIGENT ACTS OF OFFICERS—LIABILITY.—JACKSON V. CITY OF OWINGSVILLE, 121 S. W. (KY.).—*Held,* that a city is not liable for injuries sustained by one while breaking rock on the municipal stone pile to pay a fine, in consequence of a splinter of the hammer—used by another engaged in a like occupation—flying off and striking him in the eye, though the accident was caused by the negligence of its officers.

A municipality in exercising police power is acting as the agent of the state, and therefore it has almost invariably been held that it is not liable for the tortious or negligent acts of its officers while so engaged. *Brown v. Town of Guyandotte,* 34 W. Va. 299; *Gullikson v. McDonald,* 62 Minn. 278; *La Cleft v. City of Concordia,* 41 Kan. 323; *McAuliff v. City of Victor,* 15 Colo. App. 337. In some jurisdictions, however, it has been held that where in this respect a municipal corporation is voluntarily assuming a part of the sovereignty of the state, for the purposes of local self government, it was liable for the negligence of its officers. *Edwards v. Town of Pocahontas,* 47 Fed. 268. But it has been held that there is no liability unless the negligent acts are known to the governing officers of the town. *Moffitt v. City of Asheville,* 103 N. C. 237. And it is immaterial that the municipality derives a revenue from the work of the prisoners. *Curran v. City of Boston,* 151 Mass. 505. On the other hand it is well settled that if the police officers are negligent while engaged in some matter outside of their public duties, but connected with the corporate affairs of the city, the municipality will be liable. *City of Hillsboro v. Ivey,* 1 Tex. Civ. App. 653; *Carrington v.*

City of St. Louis, 89 Mo. 208; *Twist v. City of Rochester,* 165 N. Y. 619 (affirming 37 App. Div. 307).

MUNICIPAL CORPORATIONS—USE OF STREETS—GRANT AND EXTENT OF RIGHTS.—GRAND TRUNK & W. RY. CO. v. CITY OF SOUTH BEND, 89 N. E. REP. 885 (IND.).—*Held,* that an ordinance permitting the use of streets upon certain conditions is not a purely private contract when accepted, and becomes a binding contract only so far as it affects business interests or administrative functions of the city, but is not binding upon it to the extent that it surrenders its police powers.

A franchise given to a railroad to operate its road in the streets of a city is derived from the legislature, through the charter of the city, and not from the municipal corporation, though its consent may be required, and the latter has no power to revoke. *Africa v. Board,* 70 Fed. 729. This grant by the state through the consent of the municipal corporation, when accepted by the company, gives the latter a legal and contractual right in the franchise, which under the Constitution of the United States is irrevocable and inviolable. *Hazen v. Bank,* 1 Sneed, 115. And the only method by which such a franchise may be revoked or altered is by a legislative enactment of a statute authorizing it. *Africa v. Board,* 70 Fed. 729; *Elizabethtown Gas Light Co. v. Green,* 46 N. J. Eq. 118. However, contrary to this, it has been held that a city council is merely a trustee for not only the city but for the whole people of the state. *Logansport Ry. Co. v. City of Logansport,* 114 Fed. 688. And by a franchise to a company, the city does not bargain away its right under police power to protect public health, morals and safety. *City of Indianapolis v. Consumers' Gas Trust Company,* 140 Ind. 107. This right to exercise such police power on the part of the city is a continuing right. *Indiana Ry. Co. v. Calvert,* 168 Ind. 321. And such regulations may be made by the city council although they will cause expense to the company; and the company will not be entitled to reimbursement. *In re Deering,* 93 N. Y. 361. But in all cases the regulations must be reasonable. *Appeal of Pittsburg,* 115 Pa. 4. In *Baltimore Co. v. Baltimore,* 166 U. S. 673, it was held that where a franchise to lay a double track had been given, it was not an unreasonable exercise of police power to restrict the company to only one track. Also it has been held that where an ordinance has authorized the laying of one track and the company has not availed itself of this power with respect to one certain street, the forbidding of the laying of that one track in that particular street was not an unreasonable regulation under exercise of police power, because the city council is a trustee for the public and cannot abridge their legislative power. *Snouffer v. Chicago Co.,* 118 Iowa, 287.

NUISANCE—POLLUTION OF WATERS—PRESCRIPTIVE RIGHTS.—WEEKS-THORN PAPER CO. V. GLENSIDE WOOLEN MILLS, 118 N. Y. SUPP. 1027.—*Held,* that where the very act declared illegal by Pen. Code, Sect. 390, prohibiting the discharge of any noxious, offensive, or poisonous substances into public waters or streams running into such waters, is the act that damages plaintiff, no continuance thereof could create a prescriptive right.

A public nuisance is one that obstructs the public in the enjoyment of a common right or that injuriously affects the community at large, or some considerable portion of it. Whereas a private nuisance is one which obstructs a person in the enjoyment of a private right or which affects one or more as private citizens and as part of the public. *Cooley on Torts,* Sect. 291. It has been held that the rule that a right to maintain a nuisance cannot be acquired by prescription applies only to public and not to private nuisances. *Drew v. Hicks,* 35 Pac. 563 (Cal.). But it was held that if an individual is injured by a public nuisance, it is regarded as a private nuisance, also, for the reason that being a public nuisance from its inception, it is unlawful and can never become lawful by any length of exercise against an individual. *Rhodes v. Whitehead, 27* Tex. 304; *Woodruff v. North Bloomfield Gravel Min. Co.,* 18 Fed. 753. And this is the doctrine which is supported by authority and is recognized in the courts of this country. *Wood Nuis.* 792. Nor does it make any difference that the business was carried on in a reasonable and prudent manner and that nothing was done which was not a reasonable and necessary incident of the business. It still is subject to abatement. *People v. Detroit White Lead Works,* 82 Mich. 471. But the rule seems to be that in order to be abated by the act or at the suit of a private party, some private and special injury must be shown. *Walker v. Shepardson,* 2 Wis. 384. However, against the weight of authority it has been held that when a public nuisance has been continuous, exclusive, known to and acquiesced in by the owner of rights affected thereby, and the use has been extended twenty years or more, the prescription becomes absolute. *Perley v. Hilton,* 55 N. H. 444; 1 *Wood Nuis.* 418-419. And in *Borden v. Vincent, 24* Pick. 301, although the court did not decide whether the nuisance was public or private, the facts seemed to show that it was a public nuisance, and the prescription was held to have been acquired by the defendant.

TIME—JUDICIAL DAYS.—PEEBLES v. CHARLESTON & W. C. RY. Co., 66 S. E. 953 (GA.).—*Held,* that the general rule that a day in law is an indivisible point, and that fractions thereof will not be regarded in the computation of time, is not applicable where the exact time is necessary to the existence of a right, and cannot be invoked to prevent an abatement of a suit *ex delicto* filed in the name of the plaintiff who, at the exact hour of filing, had been dead for three hours.

The doctrine that in law there is no fraction of a day is a legal fiction and is true only in respect to cases where it will promote right and justice. *Matter of Richardson,* 2 Story (U. S.), 571. It is never adhered to whenever it would work mischief or injustice, or where the time is important or material, or where it becomes necessary to inquire into the exact hour or minute of the day to settle conflicting claims. *Louisville v. Savings Bank,* 104 U. S. 469; *Levy v. Chicago Nat. Bank,* 158 Ill. 88. Hence where time is material to a contract the exact hour of performance may be shown. *Grosvenor v. Magill,* 37 Ill. 239. And in order to show priority of liens or conveyances the law will take notice of fractions of a day and will inquire into the precise time when a

judgment is entered or a conveyance executed. *Bates v. Hinsdale,* 65 N. C. 423; *Naylor v. Throckmorton,* 7 Leigh (Va.), 98. Whether the general rule applies to the time when a statute becomes operative there is much conflict, some states holding that a statute takes effect from the earliest portion of the day of its approval, *Mallory v. Hiles,* 61 Ky. 53, and others holding that the statute takes effect from the time of its approval, and that when the rights of people are affected by it the precise time of its approval may be shown. *Leavenworth Coal Co. v. Barber,* 47 Kan. 29. It has also been held that a statute does not go into force until the day after its approval. *In re Foley,* 28 N. Y. Supp. 608.