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## REVIEW OF RECENT DECISIONS

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### ADMIRALTY—COLLISION OF STEAMERS—LIABILITY OF UNITED STATES UPON COUNTER CLAIM.

*Luckenbach Steamship Co. and the United States vs. Norwegian Barque Thekla*, U. S. Sup. Ct. Adv. Ops., Jan. 1, 1925.

Appeal from circuit court of appeals of second circuit. The Luckenbach Steamship Co. on behalf of itself and other owners, libelled the barque Thekla in admiralty for a collision with the steamship Luckenbach. The United States was made a party libellant after it filed a claim alleging possession and ownership at the time when the libel was filed, because the Luckenbach was used in war service under charter to the United States.

At the trial it appeared that the Luckenbach was alone at fault in the collision, and a decree for damages was rendered against the libellants and the United States. Counsel for the United States contended that a claim that would not constitute a cause of action against a sovereign could not be asserted as a counterclaim. It was held that when the United States comes into court to assert a claim, it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter. A libel in such a case is like a bill for an account, which imparts an offer to pay the balance if it should turn out against the party bringing the bill.

### CONTEMPT—CONVEYANCE IN VIOLATION OF DECREE AS BOTH CIVIL AND CRIMINAL CONTEMPT.—ATTORNEY ADVISING ACTION RESULTING IN CLIENT'S CONTEMPT, LIKEWISE GUILTY.

*McVoy v. Baumann*. 125 Atl. (N. J.) 486.

Defendant by a court decree was ordered to convey certain lands to plaintiff. Despite the decree, defendant conveyed the lands in question to one Ruth Naugle. She was informed of the decree by her counsel, but notwithstanding this, she accepted the deed from the defendant.

The Court held that defendant's disobedience of the decree constituted both a civil and a criminal contempt, and that her attorney who advised her, was also guilty of contempt. An attorney is privileged to state to his client

his opinion that a certain course of conduct would be proper, but if the attorney advises his client to do an illegal act, and if the client be guilty of contempt, the attorney is likewise guilty.

#### CONTRACTS—FRAUDULENT REPRESENTATIONS.

*Holcomb & Jones Mfg. Co. v. Jones.* Supreme Court of Oklahoma, September 1924. 228 Pacific Reporter 968.

Plaintiffs sue on a note given by defendant in payment for one pop-corn machine of plaintiff's manufacture. The defense is that the vendor in violation of agreement to sell defendant the only machine in Homing, Okla., made another sale the same day, and that the town of Homing is too small to support two pop-corn machines. No proof of plaintiff's bad faith is given, nor does the defendant offer to restore the machine, nor expressly to abide by the terms of the contract and sue for damages.

The court held, that the party defrauded must elect between recession or affirmance—if the former, the statutes require restoration of everything, and his failure so to do is fatal to his cause of action.

Either one, but not both recession and affirmance can be available to a defrauded party.

Such an alleged fraudulent representation as here presented cannot be treated as part of the contract but only grounds for awarding liability thereunder. A recognition of the terms of the contract amounts to a waiver of the right of recession, but not of the right to damages for the fraud. The making of a new agreement was held to amount to a waiver of the fraud involved in the original one.

Unless obvious, the question of a waiver is one for the jury.

Judgment was here given for the plaintiff on the note.

#### EVIDENCE—CARE REQUIRED OF A DENTIST IN EXTRACTING TEETH —ADMISSABILITY OF PATIENT'S TESTIMONY REGARDING HER DISLOCATED JAW.

*Hill vs. Jackson*, 265 S. W. 859.

This is a malpractice suit in which plaintiff alleges that defendant, a dentist, while treating her for pyorrhea negligently dislocated her jaw. The lower court had held that expert testimony was necessary to show that plaintiff's jaw was dislocated. This was reversed on appeal, the appellate