she was held liable to condemnation. The rule of *blockade permits an egress to ships innocently in the port, before the restriction was imposed, and even with cargoes, if previously laden; but in the case of ingress, there is not the same reason for indulgence; there can be no surprise upon the parties, and therefore, nothing short of a physical necessity is admitted as an adequate excuse for making the attempt of entry. The Comet, Edw. 32. A maritime blockade is not violated, by sending goods to the blockaded port, nor by bringing them from the same, through the interior canal navigation of the country. A mere maritime blockade, effected by a force operating only at sea, can have no operation upon the interior communications of the port. The Ocean, 3 Rob. 297; The Stert, 4 Id. 65. But goods shipped in a river, having been previously sent in lighters, along the coast, from the blockaded port, and under charter-party with the ship, proceeding also from the blockaded port, in ballast, to take them on board, were held liable to confiscation. The Maria, 6 Rob. 201. The penalty for a breach of blockade is remitted, by the raising of the blockade, between the time of sailing from the port and the capture. When the blockade is raised, a veil is thrown over everything that has been done, and the vessel is no longer taken *in delicto*. The *delictum* completed at one period is, by subsequent events, entirely done away. The Lisette, 6 Rob. 387. A neutral ship, coming out of a blockaded port, in consequence of a rumor that hostilities were likely to take place between the enemy and the country to which the ship belongs, is not liable to condemnation, though laden with a cargo, where the regulations of the enemy would not permit a departure in ballast. The Drie Vrienden, 1 Dods. 269. But the danger of seizure and confiscation by the enemy, must be immediate and pressing. The mere apprehension of possible and remote danger, will not justify bringing a cargo out of a blockaded port. The Wasser Hundt, Id. 270, note.

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*200] *SHEPHERD *et al. v.* HAMPTON.

Measure of damages.

In an action by the vendee, for the breach of a contract of sale by the vendor, in not delivering the article, the measure of damages is the price of the article, at the time of the breach of the contract, and not at any subsequent period.[1]

Quære? How far this rule applies to a case, where advances of money have been made by the purchaser, under the contract?

ERROR to the District Court of Louisiana. The plaintiffs filed their petition or libel in the court below, stating, that on the 12th day of December 1814, they entered into a contract with the defendant for the purchase of 100,000 pounds weight of cotton, to be delivered by the defendant to the plaintiffs, on or before the 15th day of February ensuing the date of said contract, the said cotton to be of prime quality, and in good order, and for which the plaintiffs stipulated to pay at the rate of ten cents per French pound; and in case the price of cotton, at the time of delivery, should exceed the above limited price, then the petitioners were to allow the common market price on 50,000 pounds of said cotton: and alleging a breach of the agreement on the part of the defendant in not delivering the cotton, &c.

The case agreed, stated the contract as set forth in the petition, and that 49,108 pounds of cotton were delivered by the defendant, under the con-
*201] tract, about the time mentioned therein, to wit, on the 15th day *of February 1815, when the highest market price of cotton at New Orleans was 12 cents per pound; that the defendant refused to deliver the

[1] Blydenburgh *v.* Welsh, Bald. 331; Halsey *v.* Dunlop, 5 N. Y. 537; Edgar *v.* Boies, 11 *v.* Hind, 6 McLean 102; Clarke *v.* Pinney, 5 S. & R. 445; Smethhurst *v.* Woolston, 5 W. Cow. 681; Dey *v.* Dix, 9 Wend. 129; McKnight & S. 106.

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remaining 50,892 pounds of cotton; that for some days after the said 15th day of February 1815, the price of cotton remained stationary at about 12 cents; that it then began to rise, and continued gradually to rise, until the commencement of this suit, when the market price was 30 cents per pound, and that the plaintiffs frequently called upon and demanded of the defendant the execution of said contract, between the said 15th day of February 1815, and the time of bringing the present suit, and were ready and offered to comply with all the stipulations on their part, which was refused by the defendant.

Upon this state of the case, the defendant contended, that the rule of damages for the breach of the contract must be the market price of cotton, on the day the contract ought to have been executed. The plaintiffs contended, that they were entitled to the difference between the price stipulated, and the highest market price up to the rendition of the judgment.

It was agreed, that if the court should be of opinion, that the law is with the defendant, then judgment should be entered for the plaintiffs for the sum of $100 damages; but if the court should be of opinion, that the law was with the plaintiffs, then judgment should be entered for the plaintiffs, for the difference between ten cents, the stipulated price, and thirty cents per pound, the present market price on the said *50,892 pounds of cotton, amounting to $10,178.40. [*202

The cause was heard, according to the practice in the state of Louisiana, by the court below, on the case agreed, neither party demanding a jury.(*a*)

(*a*) Louisiana, being a French colony, was originally governed by the custom of Paris, and such royal ordinances as were applicable. In August 1769, when Louisiana passed under the dominion of Spain, the Spanish governor, O'Reilly, published a collection, or rather, an abstract of the administrative regulations adopted in the Spanish colonies, and a few leading principles contained in the Spanish laws, referring for further elucidations to the text in the Partidas, the Recopolacion of the Indies, &c., but at the same time, retaining in full force, until further orders (which have never been given), the French laws, such as they were, at the time Spain took possession of the country. In the meantime, the administration of justice being chiefly in the hands of Frenchmen (except in the city of New Orleans), they continued to be governed altogether by the French laws, save only in cases where the few rules contained *verbatim* in O'Reilly's ordinance, positively applied. Things remained in this situation, until the government of the United States took possession of the province, in 1803, when the increasing commerce of New Orleans brought into action the whole body of the Spanish laws, and especially the laws of Toro, and the ordinance of Bilboa, which last is regarded as the text law in commercial matters. Everything in the ancient laws, repugnant to the constitution of the United States, was taken away, and all other subsisting laws were confirmed, by the act of congress of the 26th of March 1804, ch. 391; which also gave the right of trial by jury, in all criminal cases of a capital nature, and in all civil and criminal cases, if required by either of the parties. In 1808, the civil code was adopted, which is principally a transcript of the Code Napoleon, or civil code of France. Where that is silent, its omissions are supplied by a resort to principles derived from the Roman law, and the codes founded on it, including the laws of Spain, France, and the commentaries upon them. The works of elementary writers, and the English and American reporters are cited in the courts, not as binding authority, but as the opinions of learned men, entitled to respect and attention. A regular series of reports of the decisions of the supreme court of the state is published by Mr. Martin, one of the judges. A civil suit is commenced by a petition or libel setting forth briefly the nature of the demand, to which the defendant answers; and the cause

Whereupon, *after argument, judgment was entered up for the plaintiff for the sum of $100 damages, with costs, and the cause was brought by writ of error to this court.

February 16th. *Winder*, for the plaintiffs, contended, that they were entitled to recover the difference between the stipulated price of the cotton and the highest market price, at any time after the contract was made, up to the rendition of the judgment; citing *Bussey* v. *Donaldson*, 4 Dall. 306; *Douglas* v. *McAllister*, 9 Cranch 298; *Nelson* v. *Morgan*, 2 New Orleans T. R. 256; *Cortelyou* v. *Lansing*, 2 Caines Cas. 215; *Shepherd* v. *Johnson*, 2 East 211; *Fisher* v. *Prince*, 3 Burr. 1363; *Whitten* v. *Fuller*, 2 W. Bl. 902.

No counsel appeared to argue the cause on the other side.

*204] *February 19th, 1818. MARSHALL, Ch. J., delivered the opinion of the court.—The only question is, whether the price of the article, at the time of the breach of the contract, or at any subsequent time, before suit brought, constitutes the proper rule of damages in this case. The unanimous opinion of the court is, that the price of the article, at the time it was to be delivered, is the measure of damages. For myself only, I can say, that I should not think the rule would apply to a case where advances of money had been made by the purchaser, under the contract; but I am not aware, what would be the opinion of the court, in such a case.

Judgment affirmed.

PATTON *v.* NICHOLSON.

Illegal contract.

One citizen of the United States has no right to purchase of, or sell to, another, a license or pass from the public enemy, to be used or board an American vessel.[1]

ERROR to the Circuit Court of the district of Columbia for the county of Alexandria. The plaintiff in error declared in *assumpsit*, for that the

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is set down for hearing, without any special or dilatory pleadings. The trial is by jury, only when required by either of the parties.

[1] A contract founded upon a transact on which is either *malum prohibition*, or *malum in se*, cannot be enforced by an action of any kind. Everman *v.* Reitzel, 1 W. & S. 181; Rhodes *v.* Sparks, 6 Penn. St. 473. As, a contract founded upon a furnishing of aid to the public enemy. Clements *v.* Yturria, 14 How. 151. A contract founded upon a consideration, in violation of the navigation laws. Maybin *v.* Coulon, 4 Dall. 298; s. c. 4 Yeates 24. A contract made with a public enemy, during a state of war. Phillips *v.* Nutch, 1 Dill. 571. For the price of smuggled goods. Condon *v.* Walker, 1 Yeates 483. For the wages of a marker at an illicit billiard-table. Badgley *v.* Beale, 3 Watts 263. For the services of an engineer on board an unlicensed steamboat. The Pioneer, 1 Deady 72; The Maria, Id. 89. Or a note, the consideration of which is a gambling transaction in stocks. Fariera *v.* Gabell, 89 Penn. St. 89. The test, whether a demand connected with an illegal transaction can be enforced at law, is, whether the plaintiff requires the aid of the illegal transaction to establish his case. Swan *v.* Scott, 11 S. & R. 155; Hipple *v.* Rice, 28 Penn. St. 406; Barker *v.* Hoff, 7 Hun 284. And though an illegal contract will not be enforced, yet, if executed, the court will not inquire into the consideration. Planters' Bank *v.* Union Bank, 16 Wall. 483. S. P. Town of Verona *v.* Peckham, 66 Barb. 103; Smith *v.* Rowley, Id. 502; Woodworth *v.* Bennett, 43 N. Y. 273.