delivered to satisfy vendee that contract would be performed. *Held:* vendee's default, accompanied with announcement of intention not to perform upon agreed terms, gave vendor right to rescind. *Johnson Forge Co.* v. *Leonard*, (Del.) 51 Atl. Rep., 305.

The test prescribed by this case for determining whether the right of rescission exists appears to be somewhat unusual. It is stated that if a default by one party is accompanied with an announcement of intention not to perform upon the agreed terms, or is accompanied with a deliberate demand "insisting upon new terms different from the original agreement," the other party may rescind. A majority of the cases seem to warrant rescission upon a default in payment, even where no such intention is expressed or to be gathered from the conduct of the party in default, and upon other and quite different grounds. *Kokomo Strawboard Co.* v. *Inman*, 134 N. Y. 92, 31 N. E. Rep. 248; *Hess Co.* v. *Dawson*, 149 Ill. 188, 36 N. E. Rep. 557. *McGrath* v. *Gegner*, 77 Md. 331, 26 Atl. 502, 39 Am. St. Rep. 415. A few courts, however, in accord with the English rule as stated in *Iron Co.* v. *Naylor*, 9 App. Cases, 434, hold that such a default does not justify rescission unless the acts or conduct of the defaulting party evince an intention no longer to be bound by the contract; (see *Withers* v. *Reynolds* 2 B. & Ad. 882) and the principal case is rather in harmony with those decisions. *Blackburn* v. *OReilly*, 47 N. J. L. 290, 34 Am. Rep. 159; *Myer* v. *Wheeler*, 65 Iowa 390, 21 N. W. 692; *West* v. *Bechtel*, 105 Mich. 204, 84 N. W. 69; *Cycle Co.* v. *Wheel Co*, 105 Fed. 325; *Cherry Valley Iron Works* v. *Iron River Co.*, 12 C. C. A. 306, 64 Fed. 659. (See MECHEM ON SALES, §§ 1140-1148.) The rule seems just and reasonable, and well calculated to protect the interests of both parties to the contract.

TRUSTS—USE OF TRUST FUNDS BY PARENT—REPAYMENT TO FUND—FRAUD ON CREDITORS.—A debtor, acting as trustee under his father's will for his own minor children, supported them out of the trust funds. *Held*, that whether the will be construed as clothing trustee with discretionary power as to the support of the children, or as creating an express trust for that purpose, the debtor is not permitted to restore to the trust estate the sums so expended on the plea that he is able and it is his personal duty to support his children, when by so doing he will evade the payment of his honest debts. *Nat'l Valley Bank* v. *Hancock* (Va.) 40 S. E. Rep. 611.

A father, if of ability, is bound to maintain his infant children, even though they may have property of their own. *Evans* v. *Pearce*, 15 Grat. (Va.) 513; 7 Richardson's Eq. (S. C.) 105; and this, ordinarily, though there is a provision in the trust instrument for their maintenance, *Mundy* v. *Howe*, 4 Br. Ch. 224; PERRY ON TRUSTS, § 612; unless the property is conveyed upon an express trust, one of the conditions of which is such maintenance, when it must be so applied irrespective of the father's ability to support. *Ransome* v. *Burgess*, L. R. 3 Eq. 773. When, however, trustees have discretion as to the application of the trust fund to the support of infant children, the father cannot compel its exercise in his favor, nor will the court interfere if they have exercised their discretion. *Brophy* v. *Bellamy*, 8 Ch. App. 798. It seems that the tendency now is to look to the circumstances of each case, and authorize the income from estates of infants to be applied to their support whenever it appears to be proper. *Andrews* v. *Partington*, 3 Br. Ch. 60, note; *Evans* v. *Pearce*, *supra*. The principal case held that the fund had been rightfully appropriated, and so could not be restored to evade payment of his honest debts by the debtor.

WILLS—REVOCATION BY MUTILATION BY VERMIN.—The statute of North Carolina provides that "no will or testament in writing, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same, by the testator himself, or in his presence and by his direction and consent." The testator executed a will and placed it in a wooden safe where it was mutilated by vermin. The evidence showed that he knew of this mutilation, and declared to various persons that he had revoked the will. *Held*, there is a revocation of a will where it is defaced and mutilated by vermin, and the testator adopts this with intent to revoke the will. *Cutler* v. *Cutler* (N. Car.), 40 S E. Rep. 689.

Similar provisions in the statutes of other states have always been strictly construed and no revocation has been held to have taken place unless the strict requirements as to burning, tearing, cancelling or obliterating have been met. The intent alone does not effect a revocation, unless there has been some act of destruction as prescribed by the statute. AM. & ENG. ENC. OF LAW, WILLS; JARMAN ON WILLS, p. 147. n. This case goes further in a liberal interpretation of the statute than any which has been decided. The evidence showed conclusively that the mutilation was due to vermin. In no sense, conse-

quently, could this result be said to have been brought about in the presence of the testator, or by his direction. The cases of *Steele* v. *Price*, 44 Ky. 58, and *Bethell* v. *Moore*, 19 N. C. 311, cited in the opinion, are authority only for the proposition that destruction in itself is without effect unless done with the intent to revoke. On the contrary, the court in *Steele* v. *Price* declare that to come within the statute the results to which effect is sought to be given must have been brought about by the testator, or have been caused by him to be accomplished in his presence.

RECENT LEGAL LITERATURE

HANDBOOK OF ADMIRALTY LAW. By Robert M. Hughes, M. A., of the Norfolk (Va.) Bar. West Publishing Co., St. Paul, Minn. 1901, pp. xviii. 504, 8vo.

The subject of this work has received but scanty attention at the hands of text-book writers during the past thirty years notwithstanding its importance has been augmented greatly, especially in the last decade, by the growth of our mercantile marine upon the ocean and the Great Lakes, and the expansion of our commercial relations and interests. Indeed, this field in the United States has been left almost fallow for a generation. Not to disparage the valuable treatise of Benedict which will ever rank as standard in its treatment of the pleading, procedure and practice of the admiralty courts, nor those of Henry and of Cohen which were limited in scope and preceded much important legislation affecting maritime interests—the last text-book upon the law of the sea which met with the general acceptance of admiralty practitioners is Parsons on Shipping and Admiralty, published in 1869. It deserves its reputation as a lucid exposition of the principles of its theme and a careful collation of the judicial decisions which have differentiated the admiralty and maritime law of the United States from that of Great Britain and Continental Europe, but its present value is rather historical than practical. Its latest citation from the Supreme Court of the United States is the case of the Siren, 7 Wallace, 152. Since that decision one hundred and seven volumes of the reports of that court have been issued, few of which contain less than two or three important cases bearing upon "the rule of the road at sea," the relations of ship and cargo, and kindred topics. In the same period Benedict, Blatchford, Brown, Bissell, Dillon, Hughes, Lowell, Woods and others have preserved a still greater number of the decisions of the circuit and district courts in admiralty cases. Since 1879 the Federal Reporter has been the depository of the decisions of the latter courts, and since the establishment of the Circuit Court of Appeals the decisions of all these tribunals are to be found in 112 volumes of the Federal Reporter. Those of the Circuit Court of Appeals are also reported in the United States Circuit Court of Appeal Reports. Probably these four hundred volumes, more or less, contain at a low estimate two thousand cases expository of the maritime law. The Limited Liability Act with its amendments, "The International Rules for the Prevention of Collisions at Sea," the "White Law" prescribing the steering and sailing rules for the Great Lakes, the Harter Act regulating and modifying the relations of vessel and cargo and other Congressional enactments have brought to the front questions untouched the older writers, which must be solved by principles unaided by prece-