the motion in arrest of judgment upon the grounds stated will be rejected. The second motion to enter up judgment for Defendants *non obstante*, and the third for new Trial, will be considered together; and, to get rid of a little written superabundance, the grounds which require least remark will be taken up first, and these are among the number set out in the third motion, that for a new trial, which object to the rulings of the Judge at the Trial, in his alleged admission of illegal and rejection of legal testimony, misdirections in law, and erroneous instructions upon the evidence and points submitted. Now, of these the 5th and 6th objections are untenable; they refer to the rulings as to the proof of ownership in the Plaintiff by the Customs certificate and other proof adduced. But these do show title and possession both in him; his interest in the subjects insured is satisfied by the proof adduced, and that proof is uncontradicted. The Plaintiff appears, therefore, as the registered owner of the Malakoff under the public document, and as in possession of her at the time the insurance was effected, as well as at the accident. 1st Taylor on evidence, p. 126, says, that, "in "an action on a policy of insurance of a ship and her cargo, the Plaintiff may rely on the mere fact "of possession, without the aid of any documentary proof or title deeds, unless rendered necessary by "the adduction of contrary evidence." The 10th objection of concealment, and its materiality, is likewise untenable. Whether the hull of the Malakoff was or was not that of the North America was unimportant in an insurance against fire: it might have been otherwise in a purely marine risk, inasmuch as in this latter case the unseaworthiness or incapacity to perform the voyage would have given operation to the implicit obligation upon the assured, of not concealing something important within his own knowledge, and any loss or damage would, therefore, have fallen upon the insured himself. The fact in evidence, however, in this respect is satisfactory, inasmuch as the old hull had been almost altogether renewed at the time of the insurance, when indeed the Malakoff was a strong serviceable steamer. Moreover, this implied obligation relieves the insured from volunteering such spontaneous information—1st Arnold, Nos. 567-8—however material it might be under other circumstances, although it is quite true that the insured would have been held to disclose all he knew had the information been particularly demanded of him by the insurers. So far from this being the case the latter waived the inquiry, and forestalled the information about the Malakoff by reference to documents in possession of Defendant's agent. The jury found the fact not to be material, and their verdict in this respect will not be disturbed—1st Arnold, No. 570.—The 11th objection has been already mentioned, and the very general and unimportant ground contained in the 12th, 15th, 16th, 17th, 18th, 19th, 20th, and 21st objections need not be dwelt upon, nor prevent an immediate reference to the really important objections contained in the 1st, 2nd, 3rd, 4th, 7th, 8th, 9th, 13th and 14th grounds. The four first of these have reference to the admission of illegal and the rejection of legal evidence: Nos. 1 and 2 refer to the former; Nos. 3 and 4 to the latter. As to the admission of illegal evidence it appears that Mr. Wood, the Defendants' agent, who had taken the risk, was examined by the Plaintiff as his witness, and with the purpose of negativing the warranty contained in the policy pleaded by the Defendants, the witness was compelled to produce to the Jury certain private letters and reports to his foreign principals from himself as their agent, but written after the loss had occurred. This evidence is not legal, and the requisition to produce it is not warranted by law. The general principle cited arguendo by Plaintiff's counsel, from Paley, on Agency 322, and 1st Taylor, § 539 and page 755, is undoubtedly correct, "that no Agents, however confidentially employed, are privileged from disclosing the secrets of their principal, except Counsel and Attorneys." The limitation of the general principle is also stated by them who echo the unanimous opinions of text writers and of Judicial decisions, that the generality of the rule does not apply to such circumstances as the present. From the leading case of Fairlie vs. Hastings decided by Sir Wm. Grant, Master of the Rolls—Paley 269—to be found in 10 Ves., Jr., p. 123, to the present time no difference of opinion exists. He lays it down as a general proposition of law, that what one man says not upon oath cannot be evidence against another man. The exception must arise out of some peculiarity of situation coupled with the declaration. An agent may undoubtedly, within the scope of his authority, bind his principal by his agreement and in many cases by his acts. What the agent has said may be what constitutes the agreement of his principal, or the representations or statements made may be the foundation of or the inducement to the agreement. Therefore, if writing be not necessary by law, evidence must be admitted to prove that the agent did make that statement or representation. So with regard to acts done, the words with which those are accompanied frequently tend to determine their quality. The party, therefore, to be bound by the act must be affected by the words. But except in one or other of those ways, he observes, I do not know how what is said by an agent can be evidence against his principal. The mere assertion of a fact cannot be proof of it, though it may have some relation to the business in which the person making that assertion was employed as agent. The admission of the agent cannot be assimilated to that of the principal. A party is bound by his own admission and is not permitted to controvert it. But it is impossible to say that a man is precluded from questioning or contradicting any thing any person has asserted as to him, as to his contract or his agreement, merely because that person has been his agent. If any fact rest in the knowledge of an agent, it is to be proved by his testimony, not by his mere assertions. Lord Kenyon carried this so far "in 1 Esp. Cas 375 Masters vs. Abram as to refuse to "permit a letter by an agent to be read to prove an agreement by the principal, holding that the agent "himself must be examined. If the agreement were contained in the letter, I should have thought it