In an equity case in this court I am not prepared to hold that a pleader may take such apparently antagonistic positions. He may allege a sale to be simulated and fraudulent, for it may be both; but a sale cannot be both *real* and simulated. To allege that a sale is simulated, and, if not simulated, is fraudulent, meaning thereby that it is a sham sale, and, if not a sham, then a real sale, but fraudulent, may be consistent, but it is not certain; and certainty is a requisite in equity pleading as well as consistency.

It seems to me that, if there is doubt as to the nature of the transaction, the creditor, who has "to strike in the dark," should charge a fraudulent simulation, and, on discovery, amend if necessary. In this case there is no uncertainty except what may arise from the clause above quoted, and as that clause was unnecessary, and adds nothing to the force of the bill, I will direct that it be expunged from the bill, but the demurrer should be overruled.

LACROIX FILS *v.* SARRAZIN.*

(Circuit Court, E. D. Louisiana. January, 1883.)

PUBLIC TREATIES—PLEADING.

The court takes judicial notice of the public treaties between the United States and foreign countries, and a citizen of such a foreign country, in bringing a bill against a citizen of Louisiana, need not allege that there is such a treaty in force.

In Equity. On demurrer.

R. King Cutler, for complainants.

Andrew J. Murphy, for defendant.

PARDEE, J. This court takes judicial notice of the public treaties between the United States and foreign countries. Where a citizen of France has, in compliance with the trade-mark laws of the United States, duly registered a trade-mark, he need not, in bringing an action against a citizen of Louisiana for violation of his rights in such trade-mark, allege that there is in force a treaty between the United States and France affording privileges in France to citizens of the United States similar to those given by the trade-mark laws of the United States.

Let demurrer be overruled.

*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

BIERBACH *v.* GOODYEAR RUBBER CO.

(*Circuit Court, E. D. Wisconsin.* January 17, 1883.)

1. NEGLIGENCE—PERSONAL INJURIES—COLLISION ON HIGHWAY.
Where teams have a right in the ordinary course of business to follow each other, turn about, pass and repass, that degree of care and caution must be exercised by parties using such highways, when in proximity to each other, to avoid doing each other injury, as might be expected of a person of ordinary care and prudence; and it is not enough to exonerate one from a charge of negligence, that after a collision had become inevitable he did all that he could to avoid it, when it appears that if he had exercised the proper degree of care and prudence in keeping at a safe distance behind the plaintiff's vehicle the accident never would have happened.

2. SAME—CONTRIBUTORY NEGLIGENCE.
The law does not impose upon the driver of a vehicle in a crowded city thoroughfare the duty of giving a signal to the vehicles behind him of his intention to turn; it is the duty of the driver in the rear of such vehicle to be on the lookout for such a deviation from the course by the driver in the advance. Although both parties are bound to use ordinary prudence and care, yet ordinary care on the part of a driver of a team following another team in the streets of a city may mean, in the circumstances in which the parties are placed, a higher degree of care then would be exacted from the driver of the team in advance.

3. SAME—EXCESSIVE DAMAGES—PRACTICE IN THE FEDERAL COURTS.
The court will not, as a rule, disturb a verdict in an action for damages resulting from negligence, unless it is apparent that the verdict was the result of passion, or prejudice, or partiality on the part of the jury. It is the practice of the federal courts, where excessive damages are believed to have been awarded, to give to the recovering party an option to remit a part of the verdict, and, if a remission is made, then to refuse a new trial.

At Law.

Austin & Runkel and *Geo. B. Goodwin*, for plaintiff.

E. P. Smith, *N. Pereles & Sons*, and *Jas. G. Jenkins*, for defendant.

DYER, J. This action, to recover damages for personal injury occasioned by a collision between a vehicle owned by the plaintiff and in which he was riding, and a vehicle in charge of the defendant's servant, was tried at the last term of this court,* the trial resulting in a verdict for the plaintiff of $4,500. A motion to set aside the verdict was duly made, has since been argued, and is now to be decided. The motion is based on three grounds: *First*, that sufficient proof was not made of the alleged negligence of the defendant's driver; *second*, that the evidence showed contributory negligence on

*See 14 FED. REP. 826.