DECISIONS IN COMMERCIAL LAW.

WRIGHT V. YUENGLING.—A patentee, having described a feature in his specifications and declared it to be an essential feature of his invention, and having made it an element of his claims, is not at liberty to say that it is immaterial, or that a device which dispenses with it is an infringement, though it accomplish the same purpose, in, perhaps, an equally effective manner. Where the novelty of the invention is at least open to doubt, the patentee should be held to a rigid construction of his claims. A mere difference, a carrying forward of an old idea, a result, though more perfect than had heretofore been attained, does not arise to the dignity of an invention according to the Supreme Court of the United States.

THE "MARY THOMAS."—Two policies of insurance were effected by the owners on ship and freight respectively. Each policy provided that general average should be payable according to foreign statement, if in accordance with contract of affreightment, and incorporated the ordinary sue and labor clause. On a voyage from Nicholaieff to Rotterdam the vessel stranded on the island of Malta. The cargo was discharged into lighters and the ship towed into Malta, repaired, re-loaded, and subsequently reached her destination. A general average statement was prepared in Holland, and the proportions due according to the law of Holland in respect of ship, cargo and freight were allocated. The underwriters paid their proportions in respect of ship and freight, but the shipowners failed to recover the cargo's proportion from the owners of the cargo, the courts in Holland having decided that the latter were not liable to contribute inasmuch as the stranding had been occasioned by the negligence of the master, notwithstanding that the policy on the ship covered loss from such negligence. The Court of Appeal in England decided that the shipowners were not entitled to recover from the insurers either as a partial loss or under the sue and labor clause, the portion debited according to foreign statement to cargo in respect of the expenses incurred in the operations at Malta and in warehousing and re-shipping the cargo.

IN RE HESS MANUFACTURING COMPANY (SLOAN'S CASE).—Two brothers named H. being desirous of purchasing a site for erecting a building in which to carry on the manufacture of furniture, and not having the means to do so, applied to S., father-in-law of one of them, for aid in the undertaking. S. obtained from the owners a conveyance of a site, the consideration being the erection of the building and running of the factory within a certain time, or, failing that, the sum of $3,000. The building was erected within the limited time, and a company having been formed the manufacturing business was started. S. was one of the provisional directors of the company, having subscribed for shares to the amount of $7,500, and, subsequently, the son of S. and the two brothers were appointed directors, through whom S. transferred the property to the company, having previously mortgaged it for $7,000, it having cost $7,300, besides which some $5,000 had been expended on it, the money being supplied by the wives of the two brothers. On the property being transferred to the company, 360 shares of the capital stock of the value of $50 each was allotted to S. as fully paid-up shares, and to include his former subscription. Of these shares 234 were afterwards transferred by S. to his son and daughter. The company having failed, the liquidator appointed under the Winding-up Act applied to the Master to have S. placed on the list of contributories for the 360 shares. The Master complied with this request of 126 shares standing in the name of S. when the winding-up proceedings were commenced, holding that S. purchased the property as trustee for the company, and so gave no value for the shares assigned to him. Held by the Supreme Court of Canada, affirming the decision of the Court of Appeal, that the circumstances disclosed in the proceedings showed that S. did not purchase the property as trustee for the company, but could have dealt with it as he chose, and having conveyed it to the company as consideration for the shares allotted to him, such shares must be regarded as being fully paid up, the Master having no authority to enquire into the adequacy of the consideration. Also that S. was a promoter, and as such occupied a fiduciary relation to the company, and having sold his property to the company through the medium of a board of directors who were not independent of him, the contract might have been rescinded if an action had been brought for that purpose. Where a promoter buys property for his company from a vendor who is to be paid by the company when formed, and, by a secret arrangement with the vendor, part of the price comes, when the agreement is carried out, into the promoter's hands, that is a secret profit which the latter cannot retain; and if any part of such secret profit consists of paid-up shares issued as consideration for the property so purchased, they may be treated, while held by the promoter, as unpaid shares for which the promoter is liable as a contributory.