Imputation of payments—C. C. 1159—Account rendered yearly during series of years—Acquiescence.

HELD:—1. Where the credits for each year, in an account current, are in excess of the amount of interest charged for the year, it cannot be pretended that compound interest has been charged, inasmuch as (under C. C. 1159) payments made by a debtor on account are imputed first on the interest.

2. (CROSS, J., *diss.*) Where an account current was rendered each year during a long series of years, charging commissions as well as interest, and the debtor, being pressed to close the account, without formally admitting or denying the right to charge such commissions, continued to remit sums on account, which remittances (if commissions should not have been charged) were more than sufficient to pay the claim, it is a fair inference that the debtor acquiesced in the rate of commissions as charged, and he is obliged to settle the balance of the account on that basis. *Dudley & Darling*, May 26, 1886.

Insolvent Trader—Departure after making assignment—Saisie-arrêt—Privilege of commercial traveller.

HELD:—The fact that an insolvent trader has made a voluntary assignment of his estate, does not justify his departure from the country without the consent of his creditors. It is his duty to be present, in order to give such information as may be required for the realization of his assets, and his departure without explanation is ground for the issue of a *saisie-arrêt* before judgment.

The privilege of a commercial traveller for wages, under C. C. 2006, which was maintained by the Court below (M. L. R., 1 S. C. 191) not determined by the Court of Appeal, but doubted. *Heyneman & Harris*, June 30, 1886.

Promissory note — Evidence — Refusal to send the case back to enquête.

In an action on a promissory note for value received, the Court of appeal will not be disposed, unless for some substantial reason, to send the case back to *enquête*. And so where the defendant was in default to proceed, and finally, after the case had been taken *en délibéré*, wished to examine some witnesses, and the Court below rejected the application, the Court of appeal refused to send the case back, on the ground that the defendant had not shown any substantial grievance. *McGreevy & Senécal*, June 30, 1886.

Compensation—Notes received by Bank for Collection—Insolvency.

HELD:—(Reversing the decision of TORRANCE, J., M. L. R., 1 S. C. 225):—Where drafts and notes were placed with a bank by a debtor of the bank, not as collateral security, but for collection; that compensation does not take place until the bank has received the amounts collected by them on such notes; and in the present case, the debtor having become insolvent before any amounts were received on such notes, compensation did not take place between the amount collected by the bank and the debt due to it. *Exchange Bank of Canada & Canadian Bank of Commerce*, May 27, 1886.

NEGLIGENCE OF RAILWAY PASSENGERS IN IMMINENT PERIL.

"If I place a man in such a position that he must adopt a perilous alternative, I am responsible for the consequences." This is the rule laid down by Lord Ellenborough, in the leading English case of *Jones* v. *Boyce*,[1] where it appeared that the plaintiff had been on the top of a coach when, in consequence of the horses becoming unruly and unmanageable, there was a real danger that the coach might be upset, and the plaintiff, therefore, jumped off and was thereby injured. And so, in the leading American case of *Stokes* v. *Salstonall*,[2] where it appeared that a passenger had jumped from a stage-coach, fearing that it would overturn, it was laid down that "it is sufficient, if he was placed, by the misconduct of the defendant, in such a situation as obliged him to adopt one alternative, leap or remain in peril." We find Chief Baron Kelley laying down a like doctrine in *Siner* v. *G. W. Ry. Co.*;[3] and so, in