# Legal.

## RECENT COMMERCIAL CASES

Collected specially for this Journal by a Reporter to the Supreme Court.

It may be well to commence our first article on Current Commercial Cases with a few introductory remarks. It is our purpose to acquaint our readers systematically with such decisions of the Canadian, English, and American Courts as are of special interest to practical business men. The decisions of the English courts are, as our readers are doubtless aware, as binding and authoritative in our courts as are those of our own judges. But the American decisions are scarcely less worthy of attention. When there is no precedent to be found on the point in question in our own or the English reports, American decisions carry great weight, as, indeed, they do also in England. It has often been remarked that the Americans exhibit a very special legal talent, while the close similarity in circumstances between our country and the United States, naturally shows itself in the character of the questions that come before the legal tribunals. On questions of Patent law, Insurance law, and Corporation law generally, the American reports are quite as much resorted to for information and guidance by Canadian judges and Canadian lawyers, as are the English reports.

### *Cornering—Option Deals.*

In a recent American case (11 Fed. R. 193) it has been decided, and the same has been held before now in England, that contracts for the sale of property to be delivered at a future time at the option of the seller, where it is not the intention of the parties that the property shall be in fact delivered in fulfilment of the contract of sale, but that the seller may, at his election, deliver, or not deliver, and pay "differences"—are void. Speaking of such dealing, the American judge says:—"Corners, and black Fridays and sudden fluctuations in values are its illegitimate progeny." But we may add that both in England and in America, it is held that where the vendor contemplates *bona fide* delivery, the contract is not vitiated by the fact that he does not have the goods on hand at the time of sale (5 M. & W. 462; 6 M. & W. 58).

### *Customs—Colored Fashion Plates.*

It has been decided in one of the courts of New York State, that colored fashion plates are not liable to duty under the laws of the United States (11 Fed. R. 289.

### *Goodwill.*

The Court of Appeal in England have recently held that where two partners dissolve partnership, and one transfers the goodwill of the business to the other, this implies that he will not solicit the old customers of the firm, and so practically destroy the goodwill which he has agreed to leave with the surviving partner; and if he persists in doing so, the court will grant an injunction at the suit of his co-partner to restrain him doing so. At the same time they held that there was no objection to the partner, who has assigned over the goodwill, continuing to deal with the old customers, so long as they came to him of their own accord, and without his soliciting them (51 L. J. N. S. 90).

### *Insurance.*

A recent case in our Court of Queen's Bench (46 U. C. R. 611) holds,—pursuant to a recent decision of the Privy Council in England,—that where a fire policy has not got the statutory conditions required by the Ontario Act (R. S. O. c. 162) endorsed upon it, but has only the special conditions imposed by the Insurance Company issuing it—it will be held to be a policy subject to the statutory conditions only, and no attention will be paid by the courts to the special conditions of the company endorsed upon it.

### *Partnership.*

In another recent English case (L.R., 18 Ch. D. 698.) it is laid down that an agreement to share profit and loss is quite conclusive of the relation of partnership between the parties to such agreement. That is to say if A and B enter into any agreement whatever to carry on business together, and if part of this agreement is that each of them shall be answerable for a part of the loss, as well as share in the profits, it is no use for them to try and make out that they are not partners. Of course everyone knows that every partner is liable jointly with his co-partners for all debts and obligations incurred in the usual course of the partnership business by or on behalf of the firm, as well as for the misconduct of a fellow partner, if the misconduct has relation to the ordinary partnership business. Hence it is often a very serious matter whether a partnership exists or not, and this case affords one simple test which may be a useful guide to our readers. On the other hand, it is well settled law now that in many cases there may be a sharing of the *profits* alone, and yet no partnership. We may add that in one of the latest reported cases in our Court of Appeal (6 App. 411.), an opinion is expressed by the judges that the implied power of a partner does not extend to giving the partnership name to secure the debt of a third person; and without distinct evidence that there was an assent, authority, or recognition of such an action by the other member of the partnership, he will not be bound.

### *Patents.*

The following patents have recently been before the courts in the United States. The patent granted to Nelson W. Green for an improvement in the method of constructing artesian wells, popularly known as "The Driven-Well Patent," has been decided to be a valid patent, the invention not having been anticipated by others: (11 Fed. R., 591). So also it has been held that the letters patent granted to Alonzo T. Cross for "an improvement in fountain pens," the principal distinctive feature of which is a spring working between the vibrating pen and the air-tube, are not void for want of novelty; and are illegally infringed by a pen having the spring inside, instead of outside, the air-tube (31 Fed. R. 601).

The Loud Pump patent, granted in the United States to Messrs. Loud and Ells, has also been before the courts in Massachusetts. The invention in question is one for the improvemcnt of ship-pumps, and contains a new combination of puppet or poppet valves, easily adjusted and removed by hand, with the diaphragm pump. Messrs. Loud and Ells place their diaphragm at one side, in order to obtain free access to their straight uptake and their puppet valves, for convenient cleansing and sounding; and the question before the court was the difficult one whether the invention was infringed by a Mr. Edson, in which the diaphragm is placed over the uptake instead of at one side. The Court held that the Edson pump being otherwise similar, was an infringement of the Lond patent.

There have been several other late cases of interest in connection with patents. Our readers are probably aware that under our Patent Act (Dom. 32-33 V. c. 11.) as under the American, you can only get patents for inventions—"not previously used by others", and not being, at the time of application for the patent—"in public use" in any province of the Dominion. In Maine it has been recently held (11 Fed. R. 597) that "public use", in the sense of the patent law, is proved by a single use by any person not the inventor, or by the inventor in an open way, provided the use is not experimental.

In England, again, they have recently decided (L. R. & O. B. D. 268) that the prior public use in a British colony, having power to grant its own letters patent, does not invalidate letters patent granted in England licensing the use of the same invention in the United Kingdom.