

## EDITORIAL NOTES—LOSS OF BUILDINGS BY FIRE, PENDING CONTRACT OF SALE.

their thanks to the Hon. Mr. Walkem, for the very able and satisfactory manner in which he has accomplished the difficult undertaking of compiling a new code of Supreme Court Procedure, and their appreciation of the immense amount of labor which, in spite of the grave and arduous duties of the Attorney-General, has been bestowed upon the Code—a work which will form the basis of all future civil practice in the Province.”

JUDGE TOURJEE in his “Fool’s Errand” with quiet humor adverts to his hero as having a good home “undistinguished by mortgage or incumbrance of any sort.” We fear that this distinction obtains in the case of a great many farms in a great many townships in a great many counties of “this Canada of Ours.” Let us trust that the Building Societies and Loan Companies may not ultimately become the proprietors of all this property, and oust the bold yeomanry, “their country’s pride.”

WE are indebted to Mr. Alpheus Todd, Librarian of Parliament, for an interesting and instructive contribution to the law on the much vexed question of Marriage with a deceased wife’s sister, which, however, we are compelled, from want of space, to hold over until next number. All will not agree with Mr. Todd’s views, but whatever he writes for publication is well written and worth reading. His argument is, of course, based on the construction to be placed on the greatest of written codes, on which, indeed, all argument on this subject is founded.

LOSS OF BUILDINGS BY FIRE,  
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The power of Case-law has been very pointedly illustrated of late by two decisions; one in this Province and one in England.

When property is contracted to be sold and the buildings upon it are consumed by fire before the completion of the transaction, upon whom, the vendor or the purchaser, does the loss fall? The law for no particular, or no sufficient reason, that we can see, has settled the matter differently, according as the sale has been by private contract, or by order of Court. In the case of private contracts the equitable rights of the parties are fixed when the agreement is signed. The estate is considered as belonging to the purchaser from the date of the contract, and the price as belonging from that time to the seller. So far back as 1801 Lord Eldon held, in *Paine v. Meller*, 6 Ves, 349, that when in such a case the building is burnt, the loss falls upon the purchaser. Last April the point was again presented before the Master of the Rolls, in *Rayner v. Preston*, 28 W. R. 808, who said if the matter was *res integra* that he might have found some means of relieving the purchaser. But being concluded by the cases, he held that where premises contracted to be sold was damaged by fire before the completion of the purchase, the purchaser had no right to money received by the vendor from an insurance office, and had no right to require the vendor to lay it out in restoring the premises.

But in the case of sale under judicial proceedings in the Court of Chancery, a diverse conclusion has been reached, by virtue of a decision of the same judge, in 1805,—the “cloud-compelling Lord Eldon,” as he has been irreverently called. In *Ex parte Minor*, 11 Ves. 559, he held that a purchase before the Master was not complete until the confirmation of the report of sale. This was at variance with many decisions, among the rest *Saville v. Saville*, 1 P. Wms 748, when it was said that the purchase after the report was called a contract between the purchaser and the Court. However, Lord Eldon decided that a loss by fire after the report, but before its confirmation, fell upon the vendor. The same matter came up last