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DECISIONS IN COMMERCIAL LAW.

NIAGARA DISTRICT FRUIT GROWERS' ASSOCIATION V. WALKER.—An agent was engaged by the plaintiffs from year to year for four years to sell fruit on their behalf on commission, one of the terms of the engagement being that all moneys received by him on behalf of the plaintiffs should be paid in from day to day to their credit in a named bank. The agent made default in this respect, and a large balance was due by him to the plaintiffs at the end of each of the first three years, and the plaintiffs at the end of each year took his note for the amount due, payable in the next year. In each year he gave a bond to the plaintiffs to secure the faithful performance of his duties, and the prompt payment of moneys received. The defendants were the sureties in the bond given in the fourth and previous years, and entered into the contract of suretyship without making any enquiries from the plaintiffs. This action was brought against them to recover the balance due. A Divisional Court decided that the plaintiffs should have informed the sureties of the previous defaults, and not having done so could not enforce the bond.

WOLFF V. MCGUIRE.—The plaintiff rented premises to the defendant for a month, giving the following receipt for the rent: "October 20, 1894. Received from A. G. McGuire the sum of \$9, in full payment for rent of stable from the 25th October, 1894, to November 25, 1894," and the defendant took possession. During the month the premises, being uninsured, were destroyed by fire. In an action by the landlord against the tenant for damages, a Divisional Court held that the receipt was a lease and not an agreement for a lease, and that possession being taken under it, the only covenant to be implied was that the tenant would use the premises in a tenant-like manner and would not commit voluntary waste; and that the tenant was not liable for permissive waste; and that an accidental fire without negligence is permissive, not voluntary waste.

ROBINSON V. DUN.—In an action of libel brought by a trader against the conductors of a mercantile agency, it appeared that the libelous matter was sent to a few subscribers on their personal application. The information on which the statement complained of was founded in reality related to another trader of the same name as the plaintiff. It was held by a Divisional Court that the publishing of the information was a matter of qualified privilege, but that the want of reasonable care in collection of the information was evidence of malice, which destroyed the privilege.

MOOREHOUSE V. KIDD.—The plaintiff and defendant were co-sureties for payment of a debt, which the plaintiff paid, and claimed contribution from the defendant. At the time the sureties became bound, the debtor gave them as indemnity a second mortgage on lands in Manitoba. When the plaintiff paid the debt, the mortgage deed passed into his custody. The defendant, when called upon for contribution, instead of paying, insisted that the plaintiff should realize upon the security or hand it over to the defendant to proceed upon; but the plaintiff refused to take either course. At this time the mortgaged property was sufficient to cover the first mortgage and the sum paid by the plaintiff, but when this action was begun it had become so depreciated in value as to be insufficient to cover the first mortgage. The Court of Appeal decided that the defendant was not relieved from liability by the plaintiff's neglect or refusal to sell the mortgaged property. The plaintiff having paid the debt, stood in the creditor's place as a creditor of the defendant.

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