

at the office of the defendant, and produced the acknowledgment in writing, to the defendant's clerk, and offered it to him on condition that he would give him a cheque for the price of the oil: the plaintiff's clerk not intending to deliver the acknowledgment, without receiving a cheque. The defendant's clerk seized the acknowledgment, and refused to return it or to give a cheque. The plaintiff's clerk thereupon proceeded to H.'s wharf, and requested H.'s clerk not to deliver the oil to the defendant, but to continue to hold it as agent for the plaintiff, which he promised to do. From some cause, however, the oil was afterwards delivered to the defendant.

*Held*, that the plaintiff might maintain trover against the defendant for the oil, as nothing had been done to take the property out of the plaintiff, and vest it in the defendant.

**C. B.** TOMLINSON AND ANOTHER v. STATE. Jan. 21.  
*17th Section of the Statute of Frauds.*

In order to take a case out of the 17th section of the Statute of Frauds, it is only necessary to prove the broad fact of acceptance to enable the vendor to lay the terms of the contract before the Jury, and it is not necessary to prove upon what terms the goods were accepted.

The plaintiff stated that he sold a piano to the defendant for above £10, upon the terms of payment upon delivery: he proved a delivery, and that the defendant kept the piano. It also appeared that at the time of delivery the defendant said he would keep the piano as a security for the payment of a bill endorsed to him by the plaintiff, but that the plaintiff refused to allow him to do so, and demanded the piano back. The defendant, however, kept possession of the piano. The jury found a verdict for the plaintiff.

*Held*, that this was a sufficient acceptance to enable the plaintiff to prove the contract of sale, and that the Jury having found for the plaintiff, the defendant could not be heard to say that he accepted the piano upon different terms.

**C. C. R.** REGINA v. HUGH JOSEPH SMITH. Nov. 21.  
*Larceny—7 & 8 Geo. 4, chap. 29, sec. 5—Foreign Railway Scrip—"Valuable Security."*

Certificates treated and dealt with on the London Stock Exchange, as scrip of a foreign railway, are "valuable security" within 7 & 8 Geo. 4, cap. 29, sec. 5, and the subject of larceny.

**C. P.** STRONG (P. O. OF THE NORTHAMPTON UNION BANK) v. FOSTER. Nov. 22, 23.

*Principal and surety—Doctrine of, at law and in equity—Giving time to debtor—Discharge of surety—Payment—Balance on account.*

The bare taking of an accommodation promissory note means that the creditor takes the maker as a principal debtor.

Mere lying by on the part of a creditor and not proceeding to enforce payment from his debtor is not such a "giving time" as will discharge the debtor's surety. The fact that a few days after a promissory note becomes payable, there is for a few days a balance in favour of the maker of the note in an account between him and the payee, of which account the sum due on the note forms no part, does not amount to a payment, or discharge of the debtor's surety.

**EX.** THATCHER v. D'AGUILAR. Nov. 26.  
*Practice—Attorney and Client—Staying proceedings.*

The Court will not, in the absence of the plaintiff, make absolute a rule calling on the plaintiff's Attorney to show cause why proceedings should not be stayed on the ground that they are being continued against the instructions of his client.

**C. P.** UNDERWOOD v. NICHOLLS. Nov. 26.  
*Payment—Principal and Agent.*

The plaintiff had by his agent supplied goods to the defendant, and the defendant having in his hands a cheque drawn by the agent, and endorsed by the defendant for the agent, returned the cheque to the agent as and for payment of the price of the goods.

*Held*, to be no payment as against the plaintiff.

Per JENKINS C. J.—The rule must be absolute. This is nothing more or less than a debtor setting off the debt of an agent which he has no authority to do.

**EX.** LOWNDES v. FOUNTAIN. Dec. 1.  
*Landlord and Tenant—Farming lease—Covenant to expend hay and straw on land.*

A farming lease contained the following covenant:—"No hay or straw to be sold off the said land without the consent of the landlord or his agent, except the value of the straw so sold off be returned in manure."

*Held*, per POLLOCK C. B., and PARKE B., that the tenant was bound only to return upon the land a quantity of manure equal to what would have been produced by straw sold off the land if it had been made into manure.

Per ALDERSON B., and MARTIN B., that he was bound to expend the whole of the price of straw so sold in purchase of manure to be laid on the land.

**Q. B.** THOMPSON v. HOPPER. Nov. 13, Feb. 23.  
*Marine Insurance—Time policy on outward-bound ship in home port—Warranty of seaworthiness—Loss from wrongful act of the assured.*

In the time policy on an outward-bound ship lying in a home port in which the assured resides, there is (per LORD CAMPBELL, C. J., COLERIDGE, J., and WIGHTMAN J.; *dissentiente* ERLE J.) no implied warranty of seaworthiness, and the assured may recover for a loss from the perils of the sea, even although he knowingly and wilfully sent the ship to sea in an unseaworthy state.

But (*per totam Curiam*) he cannot recover if the loss had occurred in consequence of his wrongful act in so sending the ship to sea.

CHANCERY.

Before the Lords Justices.

**C. of A.** HORE v. CORPORATION OF GLOUCESTER. Nov. 7 & 8, and Dec. 9.  
*Perpetuity—perpetual covenant to renew a lease.*

In a deed dated in 1539, and being a grant to a corporation for charitable uses of lands, subject to a ninety-nine year's lease, the corporation covenanted with the grantor, that if, on the expiration of the existing or any future lease, any one of the heirs of the body of M. should claim a new lease of the lands, they would grant him a new lease at a certain rent.

*Held*, that no inheritance or transmissible estate or interest was vested by force of this covenant in M., or in the heirs of the body of M.

*And held*, that inasmuch as the right to a lease under the covenant would vest in the persons answering the description, at the time of the expiration of every lease, the covenant was void as intending a perpetuity.