Q. B. OGDEN v. GRAHAM. *Nov.* 27.

Charter party—Construction—Safe port—Meaning of term.

By the terms of a charter party a ship was to proceed to a certain place, and thence to a safe port, to be named by the defendant. The defendant named a port at a place where, there being a rebellion, the ship could not enter without a permit, which could not be obtained.

Held, that the place named was not a safe port.

Ex. CASWELL v. GROATT. *Nov.* 22.

Arbitration—Award—Setting aside.

Where an arbitrator has awarded less than £20 to the plaintiff, and has certified under the County Court Acts that the case was fit to be tried in the Superior Courts, but has omitted to certify to give the plaintiff costs on the superior scale, under the rules as to taxation of costs, the Court will not send back the award to him merely on an affidavit of belief that he intended to give the latter a certificate; nor will the Court look at any statement on his part as to what his intention was.

Ex. POTTER v. FAULKNER. *Nov.* 26, 27.

Master and servant—Volunteer service—Injury by fellow-servant—Negligence.

B's servants were occupied in loading bales of cotton out of B's warehouse into B's waggon. A voluntarily assisted B's servants. By the negligence of B's servants A was injured.

Held, affirming the judgment of the Queen's Bench, that A had no cause of action against B.

Under the circumstances above mentioned, a volunteer servant is in no better position than if he were the regular hired servant of the master.

Ex. ROSE v. REDFERN. *Nov.* 22.

Arbitration—Award—Setting aside—Direction as to costs.

It is no ground for setting aside, or sending back, an award, that the arbitrator has fixed the cost of his own award (the amount not being shown to be excessive), nor that he has said nothing as to the plaintiff's costs, the plain inference being that he meant the plaintiff to pay his own costs.

Ex. BISSILL v. WILLIAMSON. *Nov.* 11.

County court, action in—Pendency of action in superior court on the same question—Staying of proceedings.

Plaintiff commenced an action of ejectment in one of the superior courts, and, while it was pending, entered a plaint in respect of the same matter in the county court. Defendant pleaded in defence, the action in the superior court, whereupon the Judge called for and obtained an undertaking from plaintiff to discontinue the action in the court above; and notwithstanding that the undertaking was objected to by defendant, disallowed the plea, and ordered the defendant to give up possession.

Held, on appeal to this court, that the Judge was right in so doing.

C. P. FRASER AND OTHERS v. PENDLEBURY. *Nov.* 7.

Money had and received—Involuntary payment—Duress—Estoppel.

A mortgagee agreed to assign her interest on payment of principal, interest and costs.

An excessive claim being made for costs by the mortgagee, who refused to execute the transfer unless the sum was paid, the assignee, with the sanction of the mortgagor, paid the sum claimed under protest.

Held, that the mortgagor might recover the excess in an action for money had and received as a payment made involuntarily under undue pressure.

Held, also, that the mortgagor was not estopped from setting up his claim by the recital in the assignment, that the whole sum paid was due for principal, interest and costs; because a recital, although an estoppel to the parties to the deed, where the matter of the deed itself is in dispute, is not so in a matter which is collateral to the deed.

Ex. *Nov.* 18.

THE LONDON AND NORTH-WESTERN RAILWAY COMPANY, *Appellants*, v. BARTLETT, *Respondent.*

Consignor and consignee—Acceptance of goods by consignee—Liability.

The consignee of goods may, at any time, dispense with the mode of delivery adopted by the consignor; and the contract between the consignor and the carriers is to deliver at the consignee's, unless the consignee shall otherwise order. Therefore, where a railway company, instead of delivering wheat to a consignee, kept it at one of their stations at the request of the consignee, and injury resulted from the wheat remaining too long tied up in bags.

Held, that the company were not liable in an action by the consignor for the loss sustained.

Ex. MADEN AND WIFE v. CATANACH. *Nov.* 11.

Trial—Witness—Incompetence—Absence of religious belief.

A plaintiff offering to give evidence, was sworn on the *voir dire*, and stated that she did not believe in God, or in a future state of rewards and punishments, nor in the religious obligation of an oath, but that she was bound by her own conscience to speak the truth.

Held, that her evidence was rightly rejected.

Quere, whether there was any authority to interrogate the witness as to her religious belief?

Ex. ALLSOP AND OTHERS v. DAY AND OTHERS. *Nov.* 11.

Bills of Sale Act (17 & 18 *Vic. c.* 36)—*Registration under—Receipt and inventory not a bill of sale.*

The trustees of a married woman purchased, under the terms of the settlement, the household furniture and effects belonging to her husband. The receipt was in these terms: "Received of J. D. and C. J., the trustees under the deed of settlement, for the benefit of my wife, the sum of £93 6s. 6d. for the purchase of my household goods and effects contained in the enclosed inventory and valuation as purchased this day by J. D. and C. J. as trustees named in the deed of settlement, and empowered so to purchase by such deed: the date of such deed is Nov. 5, 1858. G. French."

The goods remained in the house of French, and he and his wife continued to live together. The goods were afterwards seized under a writ of *fi. fa.*, at the suit of the plaintiffs, when the defendants, who were the trustees under the settlement, claimed them.

Held, that the receipt and inventory together did not amount to a bill of sale; that the document did not require to be registered under the Bill of Sales Act; and that therefore the defendants were entitled to the goods at the time of the seizure.

APPOINTMENTS TO OFFICE, &c.

NOTARIES PUBLIC.

HERBERT STONE McDONALD, of Gananoque, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted June 14, 1862.)

JOHN TEMPLETON, of London, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted June 14, 1862.)

GEORGE DUNSFORD, of the Town of Peterboro', Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted June 14, 1862.)

WILLIAM PATRICK, of Clifton, Esquire, to be a Notary Public in Upper Canada.—(Gazetted June 21, 1862.)

AUGUSTUS ROCHE, of Port Hope, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted June 21, 1862.)

CLERKS OF COUNTY COURTS.

CHARLES RICE, Esquire, to be Clerk of the County Court in and for the United Counties of Lanark and Renfrew.—(Gazetted June 14, 1862.)

CORONERS.

GEORGE L. PATTS, Esquire, Associate Coroner County of Victoria.—(Gazetted June 21, 1862.)