

the one or the other: (*In re School Trustees and Corporation of Sandwich*, 24 U. C. B. 639.)

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

[The notes of cases under this division will relate chiefly to mercantile law, contracts of the ordinary kind in the general business of the country, and to questions of a general character (whether arising upon a contract, or upon a wrong committed), which are constantly presenting themselves in the contact of every day life. This head will be found interesting and valuable to all, but especially to business men.]

ACCIDENT — COMPENSATION FOR. — A custom house officer was in the docks in discharge of his duty, when, in passing a warehouse, a bag of sugar which was being lowered fell and injured him, but there was no evidence to show how the accident happened. It was held by the Court that the accident was in itself sufficient *prima facie* evidence of negligence to throw on the defendant the burden of proof that it did not arise from negligence: (*Scott v. London Dock Company*, 11 L. T. Rep. N.S. 383.)

WARRANTY OF A HORSE. — A. sold a horse to B. Before the sale, A. had pointed out to B. a splint on the horse. Afterwards, he gave a written warranty that the horse was sound. The horse subsequently fell lame from the splint. The Court held that A. was liable on his warranty, notwithstanding his communication to B. before the sale: (*Smith v. O'Bryan*, 11 L. T. Rep. N.S. 346.)

CONTRACT—WARRANTY. — B. having inspected at E.'s warehouse some soap frames, not put together, subsequently ordered them by a letter, thus, "Sir,—Please send to the above address the six new iron frames which were seen yesterday, on the following conditions, viz, they are to be warranted new frames, with all nuts and bolts complete, and to be delivered, &c." They were sent with this invoice, "Received six new iron soap frames, with nuts and bolts complete and perfect." When put together they were found to leak, and to be useless for the purpose of making soap. In an action on the alleged warranty, it was held, that the frames were to be fit and proper for the purpose of soap making, and that the facts proved a warranty to that effect: (*Mallam v. Rodloff*, 11 L. T. Rep. N.S. 381. C.P.)

INFANT—NECESSARIES. — The plaintiff, a tailor, sued defendant, a young man under age, for a bill, including hunting coat and cap, racing jacket and breeches, &c., supplied to him. The question left to the jury was whether the articles were necessities, and they found for the plaintiff. A new trial was applied for, and on the argument it was contended on behalf of the plaintiff that as defendant was wealthy and had been sent to a farmer to learn agriculture, hunting was a natural and legitimate recreation for him, and that the equipments for hunting were similar to *pads* now used in playing cricket, an amusement allowed by every body as proper for young men. The Court, however, did not see it in that light, and said that unless plaintiff would consent to reduce his verdict by the price of the articles, a new trial would be granted: (*Foster v. Gammon*, 9 S. J. 102.)

STEAMBOAT OWNERS — PASSENGER. — A steamboat owner who departs from the ordinary and proper method of landing passengers, is responsible for the increased danger of the method he adopts: (*Cameron v. Milloy*, 14 U. C. C. P. 340.)

UPPER CANADA REPORTS.

COMMON PLEAS.

(Reported by S. J. VANCOUGHNET, Esq., M.A., Barrister-at-Law, and Reporter to the Court.)

MUNSIE V. MCKINLEY ET AL.

Division court—Jurisdiction—Interpleader—Title to land—Jury—Prohibition.

The judge of a division court may, notwithstanding Con. Stats. U. C. ch. 19, s.c. 54, subsec. 4, entertain an *interpleader* application to try the question of property in goods, even though the enquiry may involve the title to land. The judge himself must decide such application without the aid of a jury.

[C. P., M. T., 1864.]

In Trinity Term last, O'Connor had obtained a rule, calling upon the plaintiff and John Boyd, Esquire, junior judge of the county court of the united counties of York and Peel, to shew cause why a writ of prohibition should not issue to prohibit the said John Boyd, or other person authorized to hold the Sixth Division Court of the said united counties, from proceeding to try and determine, or from further proceeding in a certain interpleader summons issued out of the last mentioned court, whereby one Francis McKinley and the said William Munsie were called before the said division court, in order that the claim of the said Francis McKinley to certain property seized by one of the bailiffs of the said division court, under process issued by the said William Munsie, out of the said division court, against the goods of William McKinley and Sidney McKinley, might be adjudicated upon, upon the ground that the title to corporeal hereditaments came in question, and the said court had no jurisdiction; and why the sum of £20 18s. 2d., which the said Francis McKinley