

A NEW POINT IN COMMERCIAL LAW.

THE vigorous application of the principle that a prior endorser cannot sue a subsequent endorser of a bill or note, has from time to time been mitigated so as to give effect to the real agreement between the parties. The reason of the rule is, that to prevent circuity of action the courts will not allow a party to sue for a claim on payment of which he in return may be sued by the party paying; the custom of merchants, if at all permitted as formerly to regulate mercantile contracts, supports the rule with a reason better than the legal one, namely: that such a course would be contrary to the custom of trade. It is evident that the mercantile reason has a deeper foundation than the merely technical and legal one. It is always understood that a second endorser is the guarantor of the validity and surety for the payment of the first endorser, and so on through a series of endorsements. The refining of the courts has, however, led to well founded doubts, not as to the justice of this view, but of its legality. Following an American decision, the Court of Common Pleas in Upper Canada has held that the first endorser may recover against the second or any subsequent endorser, if there be any agreement that the latter shall stand in the relation of surety to the former. The American decision went so far as to assert that the first endorser could destroy his liability to the second endorser by writing the words "without recourse" after his name, and this at any time after the maturity of the note. The Canadian court named, in a late case, held that it was necessary to have the consent of the second endorser before doing so, but in a later case, carried up on appeal from the County Court, they decided that the endorsement of the words "without recourse" was unnecessary to give title to the first endorser to sue. Apart from the peculiar injustice of the latter case, the spirit of the decision destroys that stable character which negotiable notes, as the written contracts of the mercantile world, have been thought hitherto to possess. The vulgar notion that specialty contracts cannot be varied by parol evidence was thought to extend in a great degree to promissory notes, for instance, they import a consideration co-extensive with the terms of the note, without a seal. They go through a fixed course in the process of negotiation, and this course or custom, rather than the wisdom of lawyers, has made them the most important element in commercial transactions. It is easy to see what an immense amount of injury might be done by fraudulent and designing people, if the judgment referred to were allowed to control the well understood laws and usages of trade; and it is to be hoped that the disposition of some jurists to recognize a principle at the expense of the law may receive a check from Parliament, and thereby secure to the mercantile community some safe "base of operations."

The last cited judgment may be illustrated by a bare statement of the facts of the case. A, the maker of a note, asks B to endorse it, B refuses, but says, if you bring me a note with one good name upon it, if it is any accommodation to you, I will endorse it. Here, it is plain, B understood his liability to third parties, and desired to protect himself by having recourse against a prior endorser. A accordingly makes a note payable to C, endorses to B, who endorses it also, and hands it to C. No conversation passed, no agreement was entered into between B and C; they did not even know each other, any further than this, that B knew from repute that C was a man of means. The note was not negotiated, but held by C, who, on its maturity, presented it to B, when payment was refused. He then sues A and B, recovers judgment against A; but finding he cannot succeed against B, abandons the case against him. He then writes "without recourse" after his name, and hands it to D to sue, and D accordingly sues B. At the trial it appears that C believed that B was surety to him, but he did not know this from B, but from A, between whom and B there was no business transacted, and but a mere friendly acquaintance. An appeal to the jury obtained a verdict against B, who moved for a new trial, and was allowed it. C appeals, and the judges—though the evidence that as between B and C there was no agreement whatever; indeed so far from it, that B did not know until C presented the note for endorsement who he had been requested to endorse for—though the evidence was all this, the judges allowed the appeal inferring an agreement in favour of the verdict.

There can be but little doubt that the maker left the payee to infer that the second endorser was really to be surety to the first, contrary to the intimation of

that second endorser; but that the courts should hold he had the power so to bind another, contrary to the arrangement or instructions in the matter, seems to show a desire on the part of the courts to "rob Peter to pay Paul." A criticism so free as this is warranted by the authority of John Stuart Mill, than whom one cannot need a better endorsement to the readers of the *Trade Review*.—

"In England the people are tolerably well protected, both by institutions and manners, against the agents of government; but for the security they enjoy against other evil-doers they are very little indebted to their institutions. The law cannot be said to afford protection to property, when they afford it only at such a cost as renders submission to injury in general the better calculation. The security of property in England is owing (except as regards open violence) to opinion and the fear of exposure, much more than to the direct operation of the law and the courts of justice."

THE DRY GOODS TRADE.

James Baldu & Co.
Bankage, Bank & Co.
Wm. Benjamin & Co.
James B. Clark
John Douglass & Co.
Foulds & Hodgson.
Gilmour, White & Co.
S. Greenhalgh, Son & Co.
James Hingston & Co.
Levir, Kay & Co.
Joseph May.

Thomas May & Co.
McIntyre, D. Smith & Co.
J. Myer & Co.
Mundrich & Steenken.
Ogilvy & Co.
Rhingland, Ewart & Co.
A. Robertson & Co.
Sittingham, McCall & Co.
W. Allan Stephen & Co.
Thomson, Claxton & Co.
Alexander Walker.
George Winks & Co.

THE business transacted since our last report has been very limited in extent. The stocks spoken of have arrived, and some few transactions have been made in cotton staples. Now that the turn of the year has taken place, we may anticipate an improved activity. According to the latest advices received from Manchester, an advance is reported to have taken place, and instead of the demand becoming less active on this account, it is increasing. So that we may reasonably suppose cottons to have already reached the lowest point at which they can be sold for some months to come.

Cottons can now be had at more reasonable prices than they can be bought for when trade opens in the spring. In consequence of this further advancing tendency, apparent in the English market, the Canadian buyers are now placing their orders for the spring trade. The business of the week in our local market has been almost entirely in orders—very few of the western buyers being in town.

LINENS.—All flax goods have experienced a considerable advance in price since our last report, two advances having been made during the past few weeks. These goods may be expected therefore to bring pretty high prices.

THE HARDWARE TRADE.

Brush, George.
Buchanan, I., & Co.
Charlebois, A. & Co.
Crathern & Cawthell
Currie, W. & F. I., & Co.
Evans, J. H.
Evans & Evans.
Ferner & Co.
Fraser F.
Frithingham & Workman.

Gilbert, E. E.
Hall, Joseph N.
Hall, Kay & Co.
Irvin, W. H.
Kendall & Edwards.
Law, Young & Co.
Morland, Watson & Co.
Mulholland, & Baker.
Stains F. H.
Winn & Holland.

WE have very little of interest to report in this trade at present, there being very few transactions. Upon the whole, however, the week has been better than the few immediately preceding, in which the business was exceedingly dull.

Pig Iron.—Gartsherrie is very difficult to get. Market quiet, bare of either sort, and prices very stiff.

BAR IRON.—An advance has taken place in this article of \$2 per ton. Some slight receipts have lately added to the stock, which may be represented as generally well assorted.

CUT NAILS.—Large orders have been received for these. Very heavy contracts have been entered into by the Montreal manufacturers, and they have now quite sufficient to keep them busily engaged for a considerable time. The rates therefore at which these articles can now be had are somewhat stiffer than those we last reported.

The other various articles of the trade have undergone no material change, and with the generally dull condition of business, may be considered inactive.

In Britain the hardware trade maintains its usual comparative activity. The following résumé will be useful—clipped from *Ryland's Iron Trade Circular*.—

"The Hardware Trade of Birmingham continues active, though there are evident signs of coming slackness in the orders now reaching our manufacturers through the merchants and factors. This, of course, refers more particularly to the country trade, which is generally growing quieter—the shopkeepers, more es-

pecially in the Agricultural Districts, continuing their purchases to a more sorting up of stocks, and in any case to their customers' present requirements. At the same time, the industrial activity of this locality will not be seriously interfered with, the orders now in hand in all the leading staples being quite sufficient to keep the works going for some weeks to come when it is expected the demand for the New Year's trade will have set in. The Foreign Shipping trade does not seem quite so busy. There have been some fair orders lately given out on colonial account, and the trade with America is now very large. The manufacturers of some of the lighter kinds of Birmingham hardware are getting good orders once more for the latter market, though, of course, business in this department has not yet assumed the extent and importance which characterized it before the war. We are beginning to receive orders from Canada for the next season, but the bulk of the orders cannot be expected for some little time longer. As regards other foreign markets there is no change to notice, beyond the fact that there is a brisk demand for HOLLING STOCK and Railway Material generally for India and the East, and that a very large share of this trade is likely to find its way into this district in the course of the ensuing Spring. The dispute between Spain and Chili has seriously affected several branches of our local trade, and in the uncertainty which hangs over the Copper Market, orders for goods in that line are for the present held back."

THE GROCERY TRADE.

James Austin & Co.
L. Buchanan & Co.
Bacon, Clarke & Co.
H. Chapman & Co.
Gauvre, Coleen & Lamb.
Jas. Hingles & Co.
Forester, Blair & Co.
Fitzpatrick & Moore.
Gillespie, Moffatt & Co.
H. Hutchins.
Joffery, Brothers & Co.
Klugen & Klodsch.
Law, Young & Co.
Leeming & Buchanan.
E. Melville, Tyler & Co.
George Child & Co.
J. A. & H. Mathewson.

H. J. Gear.
Mitchell, Kinnear & Co.
William Niven & Co.
Deutscher, Lonsdale & Co.
Rhinmer, Gunn & Co.
Roberts & Beattie.
David Robertson.
Haviland Houth & Co.
Sunderson & Co.
Stclair, Jack & Co.
Jas. Tiffin & Sons.
David Torrance & Co.
Thompson, Murray & Co.
Alex. Urquhart & Co.
Whin & Holland.
Withers, Joy & Co.
Julie Fournier.

THE slightest symptoms of activity have not been shown in the grocery business during the last week, scarcely a sale worthy of mention having been made. We do not therefore enter into a detailed report of the trade. The stocks have in no way been affected by the transactions of the week, and the general features of the trade remain as reported in our last issue.

THE LEATHER TRADE.

Brown & Childs.
Douglass J. & Co.
Hux & Richardson.

Seymour, C. E.
Seymour, M. H.
Shaw F. & Bros.

INACTIVITY has been the principal feature of this trade for the week just closed. The receipts continue very light, and any articles for which a demand exists are firm in price. The stock of leather in first hands is small, and the general condition of the trade unchanged. For ruling prices see the heading "Leather," on next page.

PACIFIC RAILWAY.—It appears from the report of the Californian Directors of this great work, that they are moving with energy in the construction of the Western end of the road. They have now 6,000 Chinese at work, and soon expect 10,000 more. These Coolies are content with \$20 per month wages, and two per cent month each allowed for board. They are going over the mountains, 120 miles west from Sacramento, 7,000 feet above the water, and expect to have the road completed to Salt Lake in 1868.

LESSON TAUGHT BY THE CATTLE PLAGUE.—The British press has begun to agitate the question whether too much meat is not eaten in England. For one pound of meat the people of Scotland consume, the English consume ten. Yet there is quite as much health and muscular vigor north as there is south of the Tweed.

OUR DELEGATES IN ENGLAND.—The London *Morning Post* of Dec. 13th, has the following:—"Mr. William McDougall, Provincial Secretary of Canada; Mr. J. W. Dunscombe, Collector of Customs; and Mr. Ryan, of Canada, had an interview with the Right Hon. Edward Cardwell, yesterday, at the Colonial Office."

DEATH OF A CONDUCTOR.—The Toronto papers of Monday announce the sudden death of Mr. John Wey, one of the oldest conductors on the Grand Trunk Railroad, having been connected with it since the opening. Latterly he has been running between Toronto and Detroit. He had been in ill-health for a short time, but resumed work on Thursday. He left Detroit on Friday morning and arrived at Toronto the same evening. On Saturday morning he was found dead in his bed.

—The Toronto *Leader* informs us that the Hon. Mr. Vankoughnet has been again granted leave of absence, and will spend months in Europe. He is suffering from the effects of an over-worked brain, on which his arduous labours have begun to tell with too great severity.

—The New York *Tribune* thinks it would be a low estimate to place the baneful results of sleeping cars at thirty thousand typhoids and one thousand deaths per annum, in consequence of their foul atmosphere.