so stowed with the knowledge and by the direction and license of the plaintiffs.

Held, that this was a bad plea, as it does not show a leave and license to stow negligently. The defendants pleaded also that the goods were dangerous to the knowledge of the plaintiffs, and that defendants did not know that they were so; and that the plaintiffs did not warn them of that fact as they ought to have done. The plaintiffs replied to this that the goods were salt cake, an article well known in commerce.

Held, that the plea was good, and the replication was no answer.

EX. C. LAING v. WHALEY ET AL. *June* 19.

Water—Right of party having permission to use water—Pollution by a stranger—Declaration—Allegation of right.

Declaration stated that defendants were possessed of coal mines and steam engines and boilers for working the same, and enjoyed the benefit of the waters of a certain canal near the said engines, &c., to supply water for working the same, &c.; and which said waters then ought to have flowed, and been without the fouling therein mentioned, yet that the defendant fouled the same, &c. The facts showed only that the plaintiffs by permission of a canal company, made a communication from the canal to their own premises by which water got to those premises, and with which water they fed the boilers; and the defendants fouled the waters of the canal, and by the use of it plaintiffs' boilers were injured, defendants having no right or permission to do this from the canal owners.

Held, reversing the judgment of the Exchequer, (*dissentientibus* WILLES and CROWDER, J.J., who supported the judgment of the Court below.)

Per CROMPTON and ERLE, J.J., That the effect of the allegation in the declaration, that the waters "ought to have flowed," is that the plaintiffs assert a right for the supply of the water which must be distinctly made out; which right however the facts did not establish, and therefore that a verdict would be for the defendant on the issue raised on the allegation.

Per WILLIAMS and WIGHTMAN, J.J., That the declaration contained no allegation of title, but that it showed no cause of action and consequently the judgment should be arrested.

EX. C. ROBERTS v. EBERHARDT. *June* 18.

Arbitration—Right of arbitrator when also appointed receiver to retain his fees out of the fund in his possession—Arbitrator not entitled to fix conclusively his own fees—Final and certain award.

Two partnerships having existed between the plaintiff and another, and disputes having arisen out of them by a special submission the disputes in each case were referred to an arbitrator who was also appointed receiver of one of the partnerships, and was authorized to make a single award. The costs of the reference and award were left to the discretion of the arbitrator; and by his award he certified that he had deducted the costs of the award out of the monies which he had received as receiver; but he neither stated the amount, nor by whom the amount deducted was to be paid, nor in what proportion.

Held, by the majority of the Court that the award was valid; that it was not open to objection upon the ground of misconduct in the arbitrator in retaining his own fees, or of its being uncertain and not final.

EX. C. DALE AND OTHERS v. HUMPHERY. *July* 5.

Contract of sale—Liability of brokers for undisclosed principal—Custom of trade—Statute of Frauds.

Plaintiff employs T. & M., brokers, to sell, and S. employs defendants, brokers also, to buy goods. The dealing is between the brokers. Defendants hand T. & M. a sold note signed by them in these terms, "sold for T. & M. to our principals, &c.;" T & M. hand to plaintiff a note signed by them in these terms, "sold to D. & M., (defendants) for account of H. (plaintiff) &c.," and made a corresponding entry in their books. Defendants did not disclose the name of their principal. In an action by plaintiffs against defendants for not accepting, it was proved that according to the usages of the trade, a broker purchasing without disclosing the name of his principal was held to be looked upon as a purchaser.

Held, affirming the judgment of the Queen's Bench, (*dissentientibus*, WILLES, J., and MARTIN, B.) 1st. That there was evidence of a contract of sale as between plaintiffs and the undisclosed principal of defendants, and, 2nd. That evidence of the usage of trade was admissible to show that under the circumstances defendants were personally liable.

EX. C. THOMPSON ET AL v. HOPPER. *July* 5.

Marine insurance—Warranty of sea worthiness—Proximate cause of loss.

Where to an action on a marine policy of insurance the misconduct of the assured is set up as a defence, it is necessary for the protection of the insurer that the misconduct should be the proximate cause of loss. And, therefore in case of a time policy where the alleged misconduct was the wrongful sending of the ship to sea in an unseaworthy state, and keeping her for a long time in a dangerous position near the sea shore, and thereby causing her loss; and in answer to the judge the jury found that the unseaworthiness was not directly or indirectly the cause of the loss.

Held, (*dissentientibus*, CROWDER, J.,) that the judge was right in so putting the question, and that the judgment of the Queen's Bench should be reversed, the same deciding that the jury should have been asked whether or not the misconduct of the assured occasioned the loss, though it might not have been the immediate cause of it.

CHANCERY.

L.C. & L.L.J. BIGG v. STRONG. *May* 1.

Specific performance—Constructive acquiescence—Notice.

J. S., and J. T. S. his son, were trustees and mortgagees in possession of leasehold with power of sale. B. entered into a negotiation with J. T. S. for the purchase of part of the said property; and a written agreement for sale expressed to be made between J. S. and J. T. S. of the one part, and B. of the other part, was executed by J. T. S. Subsequently to such execution J. S. and J. T. S. conveyed the property therein comprised to Z., with a notice of above mentioned negotiation. Upon bill by B. for specific performance

Held, that whether J. T. S had authority to bind J. S. or not, the latter had by his conduct subsequently so ratified the contract as to entitle the plaintiff to a decree.

M. R. RE DALY'S SETTLEMENT. *May* 7.

Husband and wife—Domicil—Foreign will—Execution of power.

Under a power to appoint by writing under hand or by will a married woman who for thirty years has resided in Paris apart from her husband, a domiciled Englishman, disposed of the fund by testementary papers signed and good by the law of France, but not attested.

Held, that this was not a valid execution.

V. C. S. ODDIE v. BROWN. *May* 3.

Will—Void gift—Remoteness—Perpetuity.

A testator directed his trustees to accumulate his residuary personal estate until the same should amount to £3000 or thereabouts, and then to apply the same in the manner and for the benefit of the persons in his will mentioned.

Held, that since the sum of £3000 might not come into existence within the extreme period allowed by law, the gift was too remote and failed accordingly.

V. C. W. WHARTON v. BARKER. *April* 30.

Will—Construction—Period of distribution.

Testator after after giving his property in moieties in trust for his two daughters M. and S. and their children with cross rem.in-