

Q. B.]

NOTES OF CASES.

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## ST. JOHN V. BULLIVANT.

*Trover*

The plaintiff was mortgagee of sixty-four shares in defendant's propeller, and on defendant's insolvency was allowed by the creditors and assignee to take the vessel as she stood at a valuation. Before this time the defendant had removed from the vessel a piano and several other articles, and had substituted stoves for steam heaters.

*Held*, that the plaintiff was concluded by the settlement with the assignee, by which he took the vessel as she then stood, in the absence of fraud, and could not recover these articles. The mortgagor being in possession had a right to manage the vessel according to his good discretion by removing articles on board or substituting others for them.

*Semble*, that a piano on board a vessel would not pass to the mortgagee under such general words as "with her boat, guns, ammunition, small arms and appointments."

*McClive*, for plaintiff.

*Bethune*, Q. C., for defendant.

## LUMSDEN V. DAVIES.

*Sale of goods upon conditions as to re-purchase—Statute of Frauds.*

The defendant sold to the plaintiffs a quantity of tea, and agreed that if the plaintiffs, after trying to dispose of the same, had any left upon their hands at a certain date that he, the defendant, would re-purchase it at an advance of ten cents per pound. The tea was delivered, and upon the defendant's refusal to buy back what was left on the plaintiff's hands at the date named, this action was brought for the breach.

*Held*, that the whole agreement consisted of one conditional contract of sale and not of two contracts; and that the delivery of the tea by the defendant therefore satisfied the Statute of Frauds.

*Osler*, Q. C., for plaintiffs.

*Ferguson*, Q. C., for defendant.

## LAPOINTE V. LAFLEUR.

*Ejectment—Reservation of certain quantity of land from conveyance—Time of selection.*

Defendant conveyed to his son, J. L., Jun., the E. ½ of a lot, "reserving from the opera-

tion of these presents unto the said parties of the first and second parts (the latter being defendant's wife), during their joint lives, and during the life of the survivor, one acre of the said lot hereby conveyed, the same acre to be taken in any part of the said hereby conveyed, land when the parties of the first and second parts see fit." Defendant continued to live on the lands with his son till the latter's death, in 1876. Several years before his death J. L., jun., built a small house on the land, which was occupied by his men till his death. After his son's death, the defendant went off the land, but returned in about a year, and lived in the small house built by his son, and improved the same. The mortgagees of the son sold to the plaintiff under the power in their mortgage, and the defendant, at the sale to the plaintiff, on being asked, said he had not selected his acre, was then asked to do so, and then selected the part where he was living. The plaintiff was present and heard this, and his conveyance was "subject to the reservations contained in the deed from J. L. sen., to J. L. jun."

*Held*, that the reservation in the deed from defendant to his son was more properly an exception than a reservation, and that an estate for the joint lives of defendant and his wife and for the life of the survivor, remained in the defendant, and he therefore was entitled to select the acre at any time, and was not bound to do so in the life-time of his son.

*Burnham v. Ramsay*, 32 U. C. R. 491, distinguished.

*Bethune*, Q. C., for plaintiff.

*A. Cassels and W. N. Ponton*, for defendant.

## PATTERSON V. THOMPSON.

*Illegal distress—Replevin—Exemption from distress of goods brought to be manufactured.*

The exemption from distress of goods entrusted to persons carrying on certain public trades to exercise their trades upon them is a privilege founded on public policy for the benefit of trade.

In this case saw-logs were taken to a saw-mill by the plaintiff, to be converted into lumber in the due course of business of the mill.

*Held*, that the business of sawing lumber for