Recent English Decisions.

Marine insurance—Non-disclosure of facts known to agent.

Blackburn v. *Vigors*, 17 Q. B. D. 553, is an important decision of the Court of Appeal upon a point in the law of marine insurance. The case was shortly this: the plaintiffs were anxious to secure insurance on a ship which was some days overdue. They accordingly instructed their usual agents to procure the insurance, and in the course of their employment these agents learned some important information casting grave doubts upon the ship's safety. These agents were unable to secure the insurance, and, without communicating to the plaintiffs the intelligence they had received, recommended them to apply to certain other brokers to procure the insurance, which the plaintiffs accordingly did, and through these brokers the insurance on the ship, "lost or not lost," was effected, to recover which this action was brought; neither the plaintiffs nor their agents who actually effected the insurance having any notice of the information acquired by the agents first employed. The defendants contended that the policy was void by reason of the non-disclosure of the information obtained by the agents who were first employed by the plaintiffs. The majority of the Court of Appeal (Lindley and Lopes, LL.J.) held that the policy was void; but Lord Esher, M.R., dissented, agreeing with Day, J., who tried the action. The following passage from the judgment of Lopes, L.J., embodies the views of the majority of the court:—

> I fail to see why in principle there should be any distinction between the case where the insurance is effected by the agent who obtained the information, and when it is effected by another agent employed about the insurance. In both cases the assured, by a suppression of what ought to have been communicated to him, obtains an insurance which he would not otherwise have got. The underwriters are as much misled in the one case as in the other. In both cases there is a misconduct on the part of the agent of the assured; in both cases the underwriters are free from blame. It seems to me unjust and against public policy that a person through whose agent's fault the mischief has happened, should profit to the detriment of those who are in no way in fault.

On the other hand, Lord Esher, M. R., while strenuously denying any legal duty on the part of the agent to have communicated the information to his principals, as to the argument founded on public policy, observes, at p. 570:—

> It seems difficult to see how public policy can be affected by any circumstances relating to the power between the parties of enforcing or repudiating a contract of insurance any more than of any other contract; and, secondly, it seems difficult to reconcile the interference of the doctrine of public policy in the case of a contract of insurance on ship or goods, lost or not lost, one step beyond affirming that the parties who are allowed by law to enter into this hazardous and well-nigh gambling speculation of whether a loss has or has not already happened, must be equally informed, or equally ignorant.

Practice—Service of writ out of jurisdiction—Order limiting plaintiff's right to recover at the trial.

Thomas v. *Hamilton*, 17 Q. B. D. 592, is a decision of the Court of Appeal on a point of practice. The defendant having applied on motion to set aside an order authorizing the service of notice of the writ out of the jurisdiction, on the ground that the cause of action was not one in which the writ could properly be served out of the jurisdiction: the judge who heard the motion, being doubtful on the affidavits used, whether or not there had been any breach of the contract sued on within the jurisdiction, refused the application, but ordered that the plaintiff's claim should be limited to the recovery of the price of goods in respect of which it might appear at the trial, that the writ could have been properly served out of the jurisdiction. The Queen's Bench Divisional Court had set aside this order, but the Court of Appeal held that it was rightly made.

Larceny—Ordering restitution of proceeds of stolen goods (32 & 33 Vict., c. 21, s. 113, D.).

In the case of *The Queen* v. *The Justices of the Central Criminal Court*, 17 Q. B. D. 598, a Divisional Court composed of Lord Coleridge, C.J., and Cave, J., determined that, under the Imperial Statute, 24 & 25 Vict., c. 96, s. 100, (from which the Canadian Act, 32 & 33 Vict., c. 21, s. 113, is taken, and which provides for restitution of stolen property), the court may not only order restitution of the stolen property in specie, but may also order the payment over of the proceeds of it, where it has been sold. As to the manner in which this jurisdiction should be exercised, it may be useful to refer to the following observations of Lord Coleridge:—

> An application for the restitution of property stolen or obtained by false pretences is rightly made to the court before which the felon or misdemeanant is convicted: and, if the goods have been sold, an application may be made for restitu-