

RECENT DECISIONS.

present Chief Justice of Appeal, that the Court of Chancery has jurisdiction in these matters, since the administration of Justice Act (R. S. O. c. 49), as stated in the judgment on the application for the mandamus nisi in the Napanee case, (Ch. Div. Nov. 16, 1881); and in *Re Stratford & Huron Ry. Co.*, 38 U. C. R. 112 (1876) Moss, C.J., said the writ of mandamus was not invested with any prerogative character in this Province in his opinion: "It is not attached to any particular Court, but may issue out of either of the superior courts of common law." In England, on the contrary, it has been held that ever since the Judicature Acts an application for the prerogative writ of mandamus must be made to the Q. B. Division (per Brett, L. J. *Glossop v. Hesten*, L.R. 12 Ch. D. 102). The Master in Chambers, however, on Dec. 23 ult. held in the case of *Campan v. Lucas*, ante p. 42, that the pleadings in replevin were not altered by the Judicature Act, and probably on the same principle the special nature of the proceedings in the matter of a return to a mandamus nisi would be held to exclude them from this operation of the Act.

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Proceeding with the December numbers of the Law Reports, we have now to deal with 7 Q. B. D. pp. 501-619; 6 P. D. pp. 125-156, and the very voluminous number of Chancery Division cases, 18 Ch. D. pp. 297-710.

CONTRACT.—DAMAGES.

In the first of these *Lilley v. Doubleday*, p. 511, requires notice. The defendant contracted to warehouse certain goods for the plaintiff at a particular place, but he warehoused a part of them at another place, where without any negligence on his part, they were destroyed. The Court held that the damage was not too remote, and that the defendant, by his breach of contract, had rendered him-

self liable for the loss of goods. For said Grove, J.—"if a bailee elect to deal with the property entrusted to him in a way not authorised by the bailor, he takes upon himself the risks of so doing, except where the risk is independent of his acts and inherent in the property itself." "*Hadley v. Baxendale*, 9 Ex. 341," said Lindley, J. "is wide of the mark, because the question here is whether the defendant was responsible for the goods, and if so the damages must be their value."

RECOVERY OF MONEY PAID UNDER ILLEGAL CONTRACT.

Next we may mention *Wilson v. Strugnell*, p. 548. In this case a Justice of the Peace remanded a prisoner to the next meeting of of the Justices of the County, and admitted him to bail, taking the recognizance of the defendant in £100 for his appearance. The accused paid the defendant £100 to indemnify him against liability under the recognizances. The accused failed to appear, but the defendant's recognizance was neither forfeited or discharged, nor did he pay anything under it. In this condition of things the accused was adjudicated a bankrupt, and the plaintiff, as trustee, sued to recover the £100 from the defendant. Stephen, J., held that the money was paid in pursuance of a contract which was contrary to public policy, and as the contract had not been executed, the plaintiff was entitled to recover. All the cases, he said, are consistent and reducible to plain and familiar principles; "The principle is, that where money has actually been paid upon an immoral or illegal consideration fully executed and carried out, it cannot be recovered by the person who paid it from the person to whom it was paid; but that where money has been paid to a person in order to effect an illegal purpose with it, the person making the payment may recover the money back before the purpose is effected;" and in this case, said he, "I do not think the matter can be said to have been fully completed until the same has been *actually and finally applied to the purpose of repaying him for a loss actually sustained by him*" (the defendant).