

vessel and the Italian consul, acting as agent for the owners, undertaking, in case any moneys were received from the owners on account of the vessel or cargo, etc., that a sufficient portion thereof should be applied first in repayment of the amount advanced, with interest, etc. It became necessary to sell the ship and cargo and an adjuster was appointed to determine the general average and the contributions of the ship and cargo respectively and under his adjustment a large contribution towards general average was found to be due from the cargo to the ship. The master of the ship and the owner's agent thereupon gave W. an order on the adjuster for the payment of his advance and interest out of the funds to be obtained from the sale of the ship and the general average contribution, which the adjuster accepted payable when in funds. The agents of the cargo, S. C. & Co., who had notice of the advance made by W., delayed paying over to the adjuster the cargo's contribution to general average and while the money was in their hands, but after the order in favour of W. had been drawn upon the adjuster and conditionally accepted, plaintiffs took proceedings against the owners of the ship as absent or absconding debtors and attached the funds in the hands of S. C. & Co.

*Held*, that the undertaking given to W. by the master of the vessel and the owners' agent, on the faith of which the advance was made, and the subsequent order drawn upon the adjuster and accepted by him, constituted an equitable assignment and gave W. a claim upon the fund in the hands of S. C. & Co., for the amount advanced and interest prior to that of the attaching creditors.

*Mellish*, K.C., for plaintiffs. *W. B. A. Ritchie*, K.C., for claimant. *Stairs*, for garnishee. *Knight*, for defendants.

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Graham, E.J.] SMITH v. MCGILLIVRAY. [Oct. 26.

*Easement—Right of way—Evidence—Lost grant—License—Admission.*

In an action for trespass to plaintiff's land the defence was user of a way as of right for twenty years before action brought; also a claim of way by lost grant; also under a compromise of an action brought some eight years previously, the terms of the compromise being that defendant was to have the user of the way upon condition of keeping up a gate. Evidence was given to shew that within the period of twenty years plaintiff closed