

credits between them, does of itself give to the factor a right, not merely to detain such consignments as shall come to his hands, but to anticipate the possession, and to keep it against the unpaid seller. If there had been any specific pledge of this cargo in the course of the transaction, if bills had been accepted by the Liverpool house on the credit of this particular consignment, or if it had been so stipulated, this would have been a different case."

In *Evans v. Nichol*, Scott, N. R. 43, which was decided in 1841, trover was brought for a quantity of alkali and potash, and the defendants pleaded that the plaintiffs were not possessed, of their own property, of the goods mentioned. At the trial, it appeared, that a manufacturer at Newcastle consigned the potash and alkali to E. & Co., their factors in London, specifically to meet a bill drawn upon them, transmitting to them a receipt signed by the mate of the vessel. The receipts acknowledged the goods to have been received for E. & Co. At the time of the shipment the consignor was indebted to the shipowners for freights due on former shipments. He became bankrupt, whereupon the shipowners refused to sign the bills of lading, claiming a general lien. The vessel reached London, and the shipowners sent to their agents there (the defendants) an order for the goods in question. The defendants received the goods, and refused to deliver them to E. & Co., the plaintiffs. An unsuccessful attempt was made to prove a custom to a general lien, and Chief Justice Tindal ruled upon the other question, that the circumstances of the alkali having, at the time of the shipment, been specifically appropriated by the consignor to the bill, vested such a property therein in the plaintiffs as to enable them to maintain trover. A rule nisi to enter a non-suit was discharged.

Maule, J., said, "Upon the delivery of the goods to the defendants to be delivered to the plaintiffs, and the defendants' acceptance of them upon those terms, the property vested in the plaintiffs, who had an interest in them, viz., the interest of persons with whom the goods were pledged. And this view of the case is strongly supported by the decision of the Court of Exchequer in *Bryans v. Nix*, 3 M. & W. 15. It is clearly competent to a man to

sell goods to another, and to vest in him the property, though the goods are not present. It is admitted that the plaintiff's right to recover would have been indisputable had the relation between Clapham (the consignor) and the plaintiffs been that of vendor and vendee, instead of pawner and pawnees. But the goods having been shipped by Clapham to the order of the plaintiffs upon their acceptance of the £500 bill, and the defendants having received them for the purpose of being delivered to the plaintiffs, and Clapham not having revoked the consignment, it appears to me that the plaintiffs acquired such an interest in the property and right to the possession as to entitle them to maintain trover against the defendants."

The case of *Haille v. Smith*, 1 B. & P. 563, bears a resemblance to *Evans v. Nichol*. A, of Liverpool, wishing to draw upon the banking house of B in London, agreed, among other securities given, to consign goods to a mercantile house consisting of the same partners as the banking house, though under the firm of B and C. Accordingly he remitted the invoice of a cargo and the bill of lading indorsed in blank to B and C, but the cargo was prevented from leaving Liverpool by an embargo. A then became bankrupt, being considerably indebted to B, and the cargo was delivered to his assignee by the captain. It was held that B and C might maintain for the cargo against the captain.

In *Kinloch v. Craig*, (3 T. Rep. 783), *Bruce v. Wait*, (3 M. & W. 15), and *Nichols v. Clent* (3 Price, 547), there was no documentary or other evidence to prove that the intention of the consignors was to vest the property in the consignee from the moment of delivery to the carrier.—*W. Evans*, in *London Law Times*.

Mr. H. C. Wethey, barrister-at-law, and reporter to the Court of Queen's Bench, Ontario, died on the 22nd ult. The deceased was called to the bar in Hilary Term, 1871, and succeeded Mr. Christopher Robinson as reporter of the Queen's Bench. As a reporter, Mr. Wethey was accounted most industrious and painstaking, while his amiable qualities gained him the esteem and affection of his professional brethren.