

LAW STUDENTS' DEPARTMENT.

under seal; and the mere existence of the debt, default or miscarriage in respect of which the promise is given, is not a sufficient consideration.

A surety will be discharged from his liability: (1.) By any material misrepresentation or concealment whereby he has been induced to enter into the contract of suretyship; (2.) By the failure of an intended co-surety to execute the instrument of guarantee; (3.) By a release given by the creditor to the principal; (4.) By the liability of the principal becoming extinguished in any other way (except operation of law, as on bankruptcy, *Ex parte Jacobs*, L. R. 10 Ch. App. 211); (5.) By the creditor entering into a binding contract to give time to the principal, unless the creditor at the same time reserves his rights against the surety, so that the latter may at once pay the debt and proceed against the principal; (6.) By any material alteration (without the surety's consent) of the terms of the agreement between the creditor and the principal in respect of which the surety becomes bound; (7.) By the creditor giving up (without the surety's consent) any collateral securities held by him for the debt of the principal, in which case the surety will be discharged to the extent of the value of the surety given up.

Q.—4. Define a "common carrier," and the extent of his liability for goods entrusted to him,—showing how far he is protected by modern legislation.

A.—A "common carrier," is one who undertakes for hire to transport from place to place, either by land or water, the goods of such persons as may choose to employ him (Chitty on Contracts, 445).

By the Common Law a carrier was liable for loss or injury to goods by any cause except the act of God or of the King's enemies, or some defect in the goods carried (Chitty, 448; *Nugent v. Smith*, 1 C. P. D. 423); unless he limited his liability by a contract made for that purpose with his customer. A notice limiting the carrier's liability put up in his office, and shown to have come to the customer's knowledge, was formerly held to constitute such a contract; but the Carriers' Act, 11 Geo. IV. & 1 Will. IV. c. 68, provides that no such notice shall have any effect. And by the Railway and Canal Traffic Act, 17 & 18 Vict. c. 31, no special contract between the carrying company and any person as to the forwarding and delivering of any goods is to be binding unless signed by him or the person delivering the goods.

The common law liability of carriers by land was materially altered by the Carriers' Act, 11 Geo. IV. & 1 Will. IV. c. 68, under which the carrier is not liable for the loss

of or damage to certain articles specified in the Act, when the value exceeds £10, unless the value be declared at the time the goods are delivered to the carrier, and an increased charge, notified in the carrier's office, accepted by him. The Act, however, does not protect the carrier when he does not properly notify or demand the increased charge, or when the loss of or damage to the goods arises from his own misfeasance or the felonious acts of his servants.

The Railway and Canal Traffic Act, 17 & 18 Vict. c. 31, limits the liability of Railway and Canal companies for loss of or damage to horses and other beasts to certain specified amount, unless the higher value is declared and an increased rate paid.

Carriers by sea are protected by the Merchant Shipping Act, 1854, 17 & 18 Vict. c. 104, from liability for loss caused by fire, or by the fault of any pilot where the employment of such pilot is required by law, or (as regards certain valuable articles) by robbery or embezzlement, happening without their privy or default, unless a notice in writing of the nature and value of such articles has been given to the master or shipowner. And by the Merchant Shipping Act, 1862, 25 & 26 Vict. c. 63, they are not liable in respect of injuries to ships or goods to an aggregate amount exceeding £8 per ton of the ship's tonnage where the loss or damage arises without their default or privy.

Q.—5. What is the origin and nature of the remedy by distress, and in what cases can it be resorted to?

A.—Distress is a legal mode of obtaining satisfaction for certain wrongs by the mere act of the party injured without action or suit in a court of justice. It was originally regarded as a remedy for wrongs which could not be redressed by ordinary process of law, owing to the courts of justice in early times being unable in many cases to effectually enforce their judgments. It consists in "the taking of a personal chattel out of the possession of the wrong-doer into the custody of the person injured to procure satisfaction for the wrong committed."

The remedy by distress is given by the Common Law for (1.) Recovery of rent in arrear, in which case chattels found on the premises subject to the rent may (with some exceptions) be distrained; (2.) Trespass by cattle, where a man finds on his land another's cattle *damage feasant*, that is, doing damage by treading down grass, &c., in which case the owner of the land may in general distrain them; (3.) Neglect of certain feudal duties, now of no practical importance.