

A *cestui que trust* whose interest is reversionary, is not bound to assert his title until it comes into possession.

The mere knowledge and non-interference of a *cestui que trust*, particularly while his interest is reversionary, does not amount to such acquiescence in a breach of trust as will release the trustee from liability.

M. R. BUCKLEY v. HOWELL. March 19.

Will—Construction—Trustees—Power of sale and exchange—Mines—Sale of land excepting the minerals under it—Improper exercise of power.

A testator by his will devised to trustees certain manors, lands, tenements, hereditaments and premises, with the mines, and quarries, and appurtenances thereto belonging, upon trusts in strict settlement; and he empowered them, at the request of the person or persons for the time being entitled to the actual possession of the rents and profits thereof, to sell or convey in exchange, all or any part or parts of the manors, lands, tenements, hereditaments and premises thereinbefore devised, and the inheritance thereof, and hold the lands purchased or taken in exchange upon the same trusts.

Held, that under this power, the trustees could not sell the land with an exception or reservation of the mines and minerals under the same, but that the land and minerals under it must be sold together.

COMMON LAW.

C. P. BELL v. MIDLAND RAILWAY CO. April 23.

Railway—Private branch—Obstruction to right—Evidence—Injury to reversion—Damages

The plaintiff having lands adjoining defendants' railway under a clause in their special act acquired the use of a siding which he used as a coal wharf. By agreement with the plaintiff, the defendants used to supply engine power for conveying plaintiff's coal to the wharf. Disputes arising, the defendants refused to convey the coal any longer, and also denied the plaintiff's right to use the siding; and with the intention of preventing his doing so, obstructed the entrance to the siding by a line of carriages constantly kept there, and by other means. Plaintiff did not try to exercise his right of conveying trucks on to the siding by means of engines of his own, nor did he put himself in a condition to do so by complying with certain regulations prescribed by the act.

Held, sufficient evidence to go to jury of an obstruction of the plaintiff's right.

Part of the wharf was let to tenants at a minimum rent, to be increased by a royalty of so much per ton of coal sold beyond a certain amount.

Held, a present interest in the plaintiff on which he could maintain an action.

Seemle (per WILLES, J.) that the obstruction was sufficiently permanent to give the plaintiff a right of action as reversioner, and that he had a right of action on the ground that his tenants had determined their tenancies in consequence of the wrongful act of the defendants.

Held, also, that this was a case where the jury might give exemplary damages.

C. P. FREEMANTLE v. THE L. & N. W. RAILWAY CO.

Negligence—Sparks from locomotive engine.

In an action against a Railway Company for injury done to plaintiff's land by sparks emitted from their locomotive engine, the evidence for the defendants was to the effect that the engine was of the best known construction. The plaintiff's witnesses gave their opinion to the effect that with the engine in question the risk of causing mischief by sparks was not improbable, and that the engine was so constructed as to be dangerous without a precaution of some kind.

The judge left it to the jury to decide whether they believed either the plaintiff's or defendants' witnesses on this point; and also left to them to consider whether each set of witnesses might not have been mistaken in the degree of excellence or of defect imputed to the engine, and if so, it was evidence for them to decide either for the defendants, that no further precaution would be with reason required, or for the plaintiff if it were in reason requisite.

Held to be a proper direction.

REVIEWS.

LOWER CANADA REPORTS. Edited by M. LeLievre. Publisher, Augustus Cote, Quebec.—Nos. 3 & 4 of vol. XI. are received. It contains some very important decisions. Among these may be mentioned *Grant v. The Aetna Insurance Company*, in which the law of insurance on property is investigated at great length. There are eleven other cases in the number, the majority of which are of interest only to our confederates in Lower Canada.

THE NORTH BRITISH REVIEW. New York: Leonard, Scott & Co.—The November issue of this well known quarterly is received. The contents are, "Pascal as a Christian Philosopher;" "What is Money?" "Plato and Christianity;" "Spain;" "Poets and Poetry of Young Ireland;" "Edmund Burke;" "Scottish Humour;" "Comets;" "Mott on Representative Government."

THE EDINBURGH REVIEW (same publishers) is also received. Contents: "Macaulay's History of England (5th vol.);" "Montalambert's Monks of the West;" "Levergue on the Agriculture of France;" "O'Donoghue's Memoirs of the O'Briens;" "Cunningham's Church History of Scotland;" "The Story of Burnt Nial;" "English Jurisprudence;" "Thiers' Revolution of the Hundred Days;" "The Works of Elizabeth Barrett Browning;" "Dr. Hesse's Bampton Lecture;" "The Disunion of America."

BLACKWOOD for December (same publishers) is also received. Contents: "Clutterbaste's Campaign;" "Augustus Welby Pugin;" "Chronicles of Carlisle;" "Wassail;" "A Word from a New Dictionary;" "Flunkeyism;" "Fletcher on Hamlet and Othello;" "A Month with the 'Rebels';" "Some account of both sides of the American War."

THE ECLECTIC, for January, 1862 (New York: W. H. Bidwell), is received. It opens with two plates—the one "The Wife of Banyan interceding for his release from prison;" the other "The Battle of Bunker's Hill"—both engraved by Sartain, and possessing the peculiar combination of softness and brilliancy for which that artist's engravings are celebrated. The contents are various, including "Life and Times of Cavour;" "The Genealogy of Creation;" "Kings and Queens of Diamonds;" "Meeting of the British Association;" "Revolutions of English History;" "The Constable of the Tower;" "Fire-doomed Cities."

APPOINTMENTS TO OFFICE, &c.

NOTARIES PUBLIC.

JOHN BELL GORDON, of Frederic, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted December 28, 1861.)

ROBERT SMITH, of Stratford, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.—(Gazetted December 28, 1861.)

TO CORRESPONDENTS.

"RAILFIRE"—Under "Division Courts."
"C."—"G. W. Wicksteed"—Under "General Correspondence."