

RECENT ENGLISH DECISIONS.

statement of claim must allege not only that the master knew, but also that the servant was ignorant of the danger. "For the plaintiff it was contended that his knowledge was a mere matter of defence, and that it should so appear as a matter of pleading, but that is not true for the old form of declaration must have shown ignorance on the part of the servant."—Per Bowen, L.J.

EASEMENT—STATUTE OF LIMITATIONS—WAY—USER AT LONG INTERVALS.

Passing over *Jones v. Curling* and *Grant v. Easton*, notes of which have appeared in our columns under the head of "Recent English Practice Cases," at p. 326, and also two other cases of no general interest, we come to *Hollins v. Verney*, 13 Q. B. D. 304. This was an action in which a right of way was claimed under the statute, in respect of twenty years user as of right. It appeared that the way had only been used by the party claiming it—the defendant—for the removal of wood from an adjoining close. The wood was cut upon this close at intervals of several years; the last cutting had been in the year before the action was commenced, the one previous, twelve years before, and the next at another interval of twelve years. Between these intervals the road was occasionally stopped up, but the defendant used it as often as he wished while the wood was being cut. The Court of Appeal now affirmed the decision of the Queen's Bench Divisional Court, holding that there had not been an uninterrupted enjoyment of the way for twenty years within the Prescription Act, which did not apply to so discontinuous an easement as that claimed. Lindley, L. J., who delivered the judgment of the Court, said: No user can be sufficient, which does not raise a reasonable inference of continuous enjoyment as of right, for the full period of twenty years before action. "Moreover, as the enjoyment which is pointed out by the statute

is an enjoyment which is open, as well as of right, it seems to follow that no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term, (whether acts of user be proved in each year or not), the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement, the fact that a continuous right to enjoyment is being asserted, and ought to be resisted, if such right is not recognized, and if resistance to it is intended. Can an user which is confined to the rare occasions on which the alleged right is supposed in this instance to have been exercised, satisfy even this test? It seems to us it cannot: that it is not, and could not reasonably be treated as the assertion of a continuous right to enjoy; and where there is no assertion by conduct of a continuous right to enjoy, it appears to us there cannot be an actual enjoyment within the meaning of the statute."

INCORPORATION OF TERMS OF CHARTER PARTY IN BILL OF LADING.

Gullischen v. Stewart Brothers, 13 Q. B. D. 317, was an appeal from the judgment of the Queen's Bench Division, 11 Q. B. D. 186. The question in dispute was the proper construction of a charter party and bill of lading. The charter party contained stipulations in the usual form for the payment of freight and demurrage, and also a stipulation that, "as this charter party is entered into by the charterers on account of another party, their liability ceases as soon as the cargo is on board, the vessel holding a lien upon the cargo for freight and demurrage." The charterers placed the cargo on board, and received a bill of lading, whereby the goods were made deliverable to themselves, "they paying freight and all other conditions as per charter party." The action was brought against them as consignees of the cargo, for demurrage in respect of delay at the port of discharge.