

PERSONAL PROPERTY IN ICE.

ward application to counteract a sun-stroke, to an inward application to "cool the coppers" of those who have made their alcohol unwholesome, according to the Celtic theory, by too great an admixture of water the night before.

Ice is, of course, an article of commerce of some importance, and is therefore entitled to its own special litigation in these Millennial days, when litigants politely endeavour to "swear their cases through," with smiles on their faces, and malice in their hearts, instead of the old "a word and a blow" of what we are pleased to call the "dark ages." But we should not enlarge on this topic for fear of endangering the craft.

The litigation on this subject, is not, however, very extensive. The last case we have seen discusses the elementary question, as to whether ice is personal property; and it was then decided, with undoubted correctness, that a sale of ice, ready formed, whether in or out of the water, as a distinct commodity, is a sale of personalty. It was further held that a parol bargain for ice formed on the surface of a pond, both parties being in view thereof, and the price being paid on the spot, passed the title (*Higgins v. Kusterer*, Supreme Court, Michigan, U. S., noted in *Central Law Journal*). The Chief Justice in delivering judgment, said:—

"While we think there can be no doubt that the original title to ice must be in the possessor of the water where it is formed, and while it would pass with that possession, yet it seems absurd to hold that a product which can have no use or value except as it is taken away from the water, and which may at any time be removed from the freehold by the moving of the water, or lose existence entirely by melting, should be classed as realty instead of personalty, when the owner of the freehold chooses to sell it by itself. When once severed no skill can join it again to the realty. It has no more organic connexion

with the estate than anything else has that can float upon the water. Any breakage may sweep it down the stream and thus cut off the property of the freeholder. It has less permanence than any crop that is raised upon the land, and its detention in any particular spot is liable to be broken by many accidents. It must be gathered while fixed in place, or not at all, and can only be kept in existence by cold weather. In the present case the peculiar situation of the pond rendered it likely that the ice could not float away until nearly destroyed, but it could not be preserved from the other risks and incidents of its precarious existence. Any storm or shock might in a moment convert it into floating masses which no ingenuity of black-letter metaphysics could annex to the freehold.

"It does not seem to us that it would be profitable to attempt to determine such a case as the present by applying the inconsistent and sometimes almost whimsical rules that have been devised concerning the legal character of crops, and emblements. Ice has not been much dealt with as property until very modern times, and no settled body of legal rules has been determined upon concerning it. So far as the principles of the common law go, they usually, if not universally, treated nothing movable as realty, unless either permanently or organically connected with the land. The tendency of modern authority, especially in regard to fixtures, has been to treat such property according to its purposes and uses as far as possible.

"The ephemeral character of ice renders it incapable of any permanent or beneficial use as part of the soil; and it is only valuable when removed from its original place. Its connexion—if its position in the water can be called a connexion—is neither organic nor lasting. Its removal or disappearance can take nothing from the land. It can only be used and sold as personalty; and its only use tends to its immediate destruction. We think that it should be dealt with in law according to its uses in fact, and that any sale of ice already formed, as a distinct commodity, should be held a sale of personalty, whether in the water or out of the water."