

SELECTIONS.

„These two defences, that which rests on the doctrine *volenti non fit injuria* and that which is popularly described as contributory negligence, are quite different, and both, in my opinion, are open to an employer, if sued under the Employers' Liability Act of 1880.”—*Irish Law Times*.

ESTOPPEL AND INTERPLEADER.

The case of *Richards v. Jenkins*, 56 Law J. Rep. Q. B. 293, reported in the June number of the *Law Journal Reports*, is likely to be of use in considering some of those questions of delicacy which often arise in interpleader issues. It concerns mainly the application of the doctrine of estoppel to questions of title to personalty arising in interpleader. The doctrine is one which of late years has made rapid progress, and no doubt has, especially in its application to the commercial transactions of life, added to the weapons of justice and facilitated business. In the hands of great and far-seeing judges no harm is done by its use, but there is, perhaps, some danger that in weaker hands it may degenerate into a means for undermining the positive and strict rules which are the foundation of the law of property. It is, therefore, as well that in the strict form of proceeding known to the law of personal property by way of interpleader the doctrine of estoppel should be considered as barred. The form of the issue “whether the property is the property of A as against B” is as narrow as it well can be, and probably the narrower it is the better.

The case arose out of the seizure by a County Court bailiff of certain machinery and plant which had been left by the claimant on a brickfield leased by him to the execution debtor. The lease was for twenty-five years from 1879. In 1884 the claimant had become bankrupt, but as the goods were in the possession of the execution debtor, and the bankrupt gave him no information in regard to them, the trustee did not make an attempt to take possession of them. The appearance of the bailiff, however, drew the bankrupt from his position of masterly inactivity: he became plaintiff in the interpleader issue, and the County Court judge decided in his favour on the authority of the case

of *Carne v. Brice*, 18 Law J. Rep. Exch. 28. That was an interpleader issue between a married woman and the execution creditor of her husband, the goods seized being part of her separate estate. In that case the Court of Exchequer declined to allow the wife to give proof of the fact that the husband had become bankrupt, and that therefore the goods were not his. The County Court judge appeared to think that the decision governed this case, and that the effect of it generally was to prevent the *jus tertii* being set up in interpleader, but the effect of it in fact was only to prevent the *jus tertii* being set up in favour of the claimant, and it discountenanced the idea that the claimant could succeed merely by showing that the goods were not the execution debtor's. This view of the County Court judge led to a judgment in favour of the wrong person. The view taken by the Divisional Court (55 Law J. Rep. Q. B. 435) was in favour of the right side, but according to the Court of Appeal proceeded on the wrong ground. The Divisional Court held that the possession of the bailiff was the possession of the execution creditor, and therefore that the onus of proof lay on the claimant to show that the possession, which was *prima facie* evidence of title, was not in accordance with the true title. This the claimant was unable to do, because whatever was proved to be his he at the same time showed to be his trustee's. The Court of Appeal held that the theory of the possession of the bailiff or sheriff being the possession of the judgment creditor is unsound. The Master of the Rolls points out with much force that the moment of time at which the title is to be ascertained is the moment before the seizure, and that the possession after that is a possession for the law and not for either of the parties. On consideration this seems clear. The possession of goods by the sheriff can no more affect the rights of the parties to the goods than the possession by the Bank of England of money paid into court can affect the rights of parties to it. The point of time on which the rights of the parties centre is necessarily the seizure. But for the interpleader there would be an action of trespass, and in that action the question of right in the goods would have to be considered in reference to the moment of