DECISIONS IN COMMERCIAL LAW

INSURANCE COMPANY OF NORTH AMERICA v. THE CANADA SUGAR REFINING COMPANY, LIMITED.—The United States Circuit Court of Appeals held in this recent case, that under a contract of insurance on the profits of a cargo of sugar "against total loss only," there is no actual total loss of profits where any part, however small, of the cargo is saved and reaches the owner in condition to earn a profit, and in such case no recovery can be had; that in the United States the owner may abandon ship or cargo and treat the loss as constructively total when the damage exceeds 50 per cent. of the total value; that in cases of constructive total loss, abandonment is indispensable to recovery of insurance, except when it could not possibly be of benefit to the insurer, and that where insurance is upon the profits of a cargo and not upon the cargo itself, a partial loss cannot be converted by abandonment into a constructive total loss.

An important decision, rendered by Judge Loranger this morning, defines the class of property to which rolling stock of a railway company belongs, whether movable or immovable. The importance of the point lies in the fact that, whereas any quantity of movable property is subject to seizure for a debt, the immovable cannot be divided, but must be sold either altogether or not at all. The present case was that of Edmund H. Barker against the Central Vermont R.R. Co., in which the seizure of two locomotives and seven cars, the property of the Central Vermont, had been made, while in Bonaventure station, in execution of a judgment obtained by Mr. Barker against the railroad company. Mr. C. M. Hays, receiver of the Central Vermont, filed an opposition to the seizure on the following principal grounds: First, that the locomotives and cars formed a portion of the real and immovable property of the Central Vermont Railroad; second, that that railroad, with its equipment, was no longer the property of the railroad company, but of the Circuit Court of the District of Vermont, which tribunal had taken possession of the property and appointed Mr. Hays its receiver, for the benefit of the creditors; thirdly, Barker was only a prete nom for the Ducey Lumber Company, which had transferred to him its claim based upon a note made and payable at St. Alban's, for no consideration.

The court held that the locomotives and rolling stock formed portion of the immovable property of the railroad. It had been urged by counsel for the contestant that the locomotives and cars, when seized, had not been on the Central Vermont tracks, but that did not make any difference. They were being used for the service of the Central Vermont, and that was sufficient. The second point raised by the opposants was also well founded. The property of the Central Vermont Railroad was now in the hands of the Vermont Court, and disposal of it could only be made through that tribunal. The third ground was also held good. The seizure was quashed, with costs.

Under this judgment the cars of the Street Railway Company are liable to assessment, in addition to the rails, wires and poles.—Montreal Herald, 12th.