trespass, would enable him to maintain this action." Mr. Justice Holroyd based the liability of the defendant on the ground that the plaintiff was entitled to the benefit of his field not only for the use of his own cattle, but also for putting in the cattle of others.

Secondly, as to cases where the agent has not been in possession:

In Fowler *v.* Down (1 B. & P., 44), which was decided by the Court of Common Pleas in 1797, Chief Justice Eyre pointed out that it is not true that in cases of special property the claimant must have had possession in order to maintain trover, citing the case of a factor, to whom goods have been consigned, and who has never received them.

In Bryans *v.* Nix (4 M. & W., 775), a corn merchant, T, who had been in the habit of consigning cargoes of corn to the plaintiffs as his factors for sale at Liverpool, obtaining from them acceptances on the faith of such consignments, obtained from the masters of canal boats 604 and 54, receipts signed by them for full cargoes of oats deliverable to the agent of T in Dublin, in care for the plaintiffs. T inclosed the receipts to the plaintiffs, and drew a bill on them against the value of the cargo, which the plaintiffs accepted, on 7th Feb., and paid when due. On 6th Feb., W., an agent of the defendant, who was T's factor for sale in London, pressed T for security for previous advances, and T gave W an order on the Dublin agent to deliver to W, the cargoes of the boats on the arrivals. Only boat 604 was loaded when the receipt was given by the masters, and the acceptances were obtained from the plaintiffs. The loading of 54 was completed on the 9th, and T then sent to W a receipt signed by the master, similar to that sent to the plaintiffs, making the cargo deliverable to W, who took possession of both cargoes. The court held that the property in the cargo of boat 604 vested in the plaintiffs on their acceptance of the bill, and that they were entitled to maintain trover for it; but that they could not maintain trover for the cargo of boat 54, since none of it was on board, or other specifically appropriated to the plaintiffs when the receipt for that boat was given by the master.

"The transaction," said Baron Parke, who delivered the judgment of the court, "is in effect the same as if T. had deposited the goods with a stake-holder who had assented to hold them for the plaintiffs, in order to indemnify them. As evidence of such a transaction, it is wholly immaterial whether the instruments are bills of lading or not; and it might equally be proved through the medium of carriers' or wharfingers' receipts, or any other description of document, or by correspondence alone. If the intention of the parties to pass the property, whether absolute or special, in certain ascertained chattels, is established, and they are placed in the hands of a depository—no matter whether such depository be a common carrier or shipmaster employed by the consignor or a third person—and the chattels are so placed on account of the person who is to have that preperty, and the depository assents, it is enough; and it matters not by what documents this is effected, nor is it material whether the person who is to have that property be a factor or not; for such an agreement may be made with a factor, as well as any other individual." In Anderson *v.* Clark (2 Bing 20) a bill of lading, making the goods deliverable to a factor, was, upon proof from correspondence of the intention to vest the property in the factor as security for the antecedent advances, held to give him a special property the instant the goods were delivered on board, so as to enable him to sue the master of the ship for their non-delivery. When, however, the relation between consignor and consignee is simply that of principal and factor, the latter has no such interest in consignments that have not come into possession as to entitle him *to* maintain trover against the carrier who claims a lien: Kirloch *v.* Craig, 3 T. R. 783.

Lord Ellenborough observed, in Patten *v.* Thompson (5 M. & S. 350), that "if it be taken that the cargo was consigned to the Liverpool house as a security for advances made by them, this may afford a ground for their claim to detain the same until such time as they are indemnified against these advances on the responsibility they had contracted in respect of the cargo. But the case as it now stands seems to me to go further, and that the defendant, in order to succeed in his claim, must make out this position, that whenever a principal consigns goods to his factor for sale, and is at the same time in a course of drawing on the factor upon account, the circumstance of there being mutual