to give the father a remedy over against him, should he not have contributed his share of the debt in the purchase money. *Lee* v. *Rook*, Mos. 318; *Bond* v. *England*, 1 Jur. N. S., 918; *Roberts* v. *Rees*, 5 U. C. Law Jour. 41. The plaintiffs are also entitled to their costs of the action at law: *Jones* v. *Brooke*, 4 Taunt., 464; *Stratton* v. *Matthews*, 18 L. J., Ex. 5; *Pierce* v. *Williams*, 23 L. J., Ex. 322.

G. Morphy, for defendant *George Duffy*, contended that such defendant was not liable, and that *Edward Duffy* was the party who should pay, he now having the property. It is laid down in several cases that he who has the land is the proper party to discharge the incumbrances thereon. The transfer of the fee must be held to have also transferred the liability to pay the incumbrance.

Hodgins, in reply. The contract here is not one to which the rule in *Evelyn* v *Evelyn* 2 P, Wms. 663, applies. The contract is one which affects the conscience of the father, and the equity of it is not transferred to the son, except as before stated.

ESTEN, V. C, delivered the judgment of the Court. I think the transfer of the property to *Edward Duffy* makes no difference in regard to the liability of *George* to discharge the mortgage according to his undertaking. I quite agree with the principles laid down in Hilliard on mortgages, that where a mortgagor sells subject to his mortgage, the rule in regard to principal and surety applies, and the mortgagor becomes a surety to the mortgagee for the payment of the mortgage debt; and he may apply to this Court for relief in case his purchaser makes default. The defendant *Edward* is, I think, a proper party, where the vendor seeks to enforce his lien against the land. The plaintiffs are entitled to their costs at law; and the decree will therefore be that the defendants do discharge the mortgages, and pay the costs at law and of this suit, and in default a sale of the property. I may remark, that, in suits like the present, I think the mortgagor is entitled to something more than mere payment of the mortgages; I think he is entitled to have them discharged from the registry; and as he is sued at law, and perhaps a judgment entered and registered against him, it is only proper that he should also have a release or discharge of that judgment, and also satisfaction entered up in the proper form.

CAWTHRA v. MCGUIRE.

Practice—Injunction against Mortgagor after Decree for foreclosure—Waste.

After a decree for foreclosure, if the mortgagor in possession commits waste, the Court will enjoin him, though an injunction may not have been prayed for in the Bill.

(27th May, 1859.)

This was an ordinary case of foreclosure; and it appeared that after the decree the defendant was committing waste. The affidavit showed that the land was a scanty security.

Hodgins, for the plaintiff, moved for an injunction restraining the defendant from cutting down timber. No injunction had been prayed for in the bill; but it was laid down in *Wright* v. *Atkyns*, 1 V. & B. 314, and *Goodman* v. *Kine*, 8 Beav. 379, that a mortgagee was entitled to such relief as was now asked for.

ESTEN, V. C. The affidavit is satisfactory as to the scanty security of the property, and according to the rule laid down by Sir *James Wigram*, a mortgagee is entitled to a security of one-third more than the amount of his mortgage. The cases quoted are authorities that the injunction may issue against a mortgagor committing waste after a decree for foreclosure, and the injunction may go in this case; but I am not quite satisfied whether an injunction would be granted where the property is not shown to be of or less than the security I have referred to.

MONTHLY REPERTORY.

COMMON LAW.

EX. *Jan.* 13.

THE NATIONAL GUARANTEED MANURE COMPANY v. DONALD.

Parliamentary corporation—Their right to an easement no longer required by them—Prescription.

A Canal Company incorporated by Act of Parliament, in order to obtain a fall of water to be used for purposes connected with their canal, erected a sluice and so dammed up the waters of the river C., on which the defendant's mill was situate. Subsequently the canal company was converted into a railway company, and the fall of water was no longer required. The defendant, whose mill was injured by the water being dammed up, thereupon made a cut and let off the water.

Held, in an action against him by plaintiffs, the lessees of the railway company for so doing, that the canal having ceased to exist, the easement claimed with respect to the river C. had ceased with it.

Held, also, *per* Pollock, C. B., and Channell, B., and *Semble per* Martin, B., that the Prescription Act does not apply to a parliamentary corporation exercising such a right as this.

It was contended for the plaintiffs, that the right to dam up the water conferred on the canal company, was transferred to the railway company, who might therefore grant it to the plaintiffs.

POLLOCK, C.B.—A parliamentary corporation exists only for the purposes of the Act of Parliament which created it. The plaintiffs exist only as a railway company, and therefore can have no right to take water from a river, which right was granted for the purposes of canal navigation only. It was said that there had been an uninterrupted enjoyment of this right by the canal company for more than twenty years, and therefore it has become indefeasible, by reason of the provisions in the Prescription Act 3 and 4, W. 4, cap. 71. But I am of opinion, that the Act does not apply to such a case as this. A prescription under that act stands in the place of a grant, but a railway company could not take by grant, the power the plaintiffs have here assumed to exercise.

EX. HARDON v. HESKETH. *Jan.* 15.

Use and occupation—Evidence for the Jury.

It is some evidence to go to the jury in support of a count for use and occupation, that a fixed payment has been made for many years in respect of the land in question, by the defendant to the plaintiff; the defendant abstaining from all explanation of the origin or grounds of that payment which it seemed he was able to give.

Q. B. REGINA v. SMITH. *Jan.* 18.

Conviction under 4 & 5 Wm. IV. c. 85, s. 17,—Evidence of selling beer.

Upon information for unlawfully selling beer under 4 & 5 Wm. IV., c. 85, s. 17, it was proved that the appellant's wife had actually supplied the beer to three persons who had asked the appellant for beer and to which he had said whilst pointing to his wife, 'you must ask her.'

Held, that upon this evidence the conviction was right.

In this case there was an appeal against the decision of Justices. It was argued that if the wife acted as agent for her husband they both ought to have been summoned and convicted together. However the court gave judgment for the respondent.

Q.B. FLETCHER v. FLETCHER. *Jan.* 18.

Lunatic—False imprisonment—Justification.

A plea of justification to an action for false imprisonment, that the plaintiff had conducted himself as a person of unsound mind, and incapable of taking care of himself, and that the medical certificate required by 8 and 9 Vic., cap. 100, had been obtained, and that defendant had reasonable grounds for believing him to be of unsound mind.

Held, bad on demurrer. In support of the demurrer it is said the plea is bad for not alleging in terms, that the plaintiff was a lunatic.

The Court per LORD CAMPBELL, C. J., We think the plea is clearly bad. At Common Law, only persons who are actually of unsound mind, and whom it would be dangerous to leave at large, can be restrained of their liberty. Mr. Bovill has gravely argued, that persons who *sham* madness may be shut up in lunatic asylums. It would be most dangerous to the liberty of the subject