

RECENT ENGLISH DECISIONS.

shipper or some previous owner of the goods. But the practice of merchants, it is never superfluous to remark, is not based on the supposition of possible frauds. The object of mercantile usages is to prevent the risk of insolvency, not of fraud; and any one who attempts to follow and understand the law merchant, will soon find himself lost if he begins by assuming that merchants conduct their business on the basis of attempting to insure themselves against fraudulent dealing. The contrary is the case. Credit, not distrust, is the basis of commercial dealings; mercantile genius consists principally in knowing whom to trust and with whom to deal, and commercial intercourse and communication is no more based on the supposition of fraud than it is on the supposition of forgery."

TIME WHEN TENDER OF BILLS OF LADING TO BE MADE.

Before leaving this case it may be observed that in reference to a further point which came up in this case, though not necessary to be decided, Brett, M.R., expressed a view, which the other judges also incline towards, that the seller of goods under such a contract as that in question in this case, should make every reasonable exertion to forward the bills of lading to the purchaser as soon as possible after the shipment, but there is no implied condition in such a contract that the bills of lading shall be delivered to the purchaser in time for him to send them forward so as to be at the port of delivery either before the arrival of the vessel with the goods or before charges are incurred there in respect of them.

STOPPAGE IN TRANSITU—DELIVERY TO AGENT OF VENDEE—
END OF TRANSIT.

The next case demanding notice is *Kendal v. Marshall, Stevens & Co.*, p. 356, which is on the subject of stoppage in transitu. The point of law illustrated by the decision is that though the goods purchased may not have reached the vendee, yet if they have been received by an agent of the vendee at some intermediate stage of their passage to the vendee, the transit is over for the purpose of

the vendor's right of stoppage in transitu. As Brett, L.J., says, p. 365:—"When the goods have arrived at the end of the journey upon which they have been sent by the vendee's orders, and have been received by the vendee's agent upon his behalf, the right to stop is gone." Or, in words of Cotton, L.J.: "So long as the goods have not been delivered the right to stop in transitu remains; but in order to ascertain whether the right still exists it is necessary to look at the persons and the place to whom and at which, as between seller and buyer, the delivery is to be made. If the goods get into the hands of the buyer before reaching their destination the right to stop is gone; for it is only when goods are in actual transit that the seller can prevent their delivery. The goods, however, may be sent to an agent of the buyer to be held for him, and to be disposed of as he may direct; in a case like that, the agent has no control over the goods except on behalf of the buyer, and he is merely employed to carry out the buyer's order, and the right to stop is lost, because the goods have reached their destination, and the transit as between buyer and seller is at an end. The transit from the seller to the buyer is the only one to be considered in determining whether the seller can exercise his right of stoppage. For this purpose it is immaterial that the buyer, when the transit from the seller to him is at an end, starts them on to a fresh destination. This is a fresh transit, not from the seller to the buyer, but by or from the buyer."

INSURANCE A CONTRACT OF INDEMNITY—SUBROGATION.

The next case which has to be noticed is *Castellain v. Preston*, p. 380, which is an appeal from the decision of Chitty, J., commented upon at some length in this Journal, *supra* Vol. 18, p. 296-7. It may be remembered there was here a contract for the sale of a house, on which a policy of insurance existed. Nothing was said in the contract as to the policy. After the date of the contract, but before the date fixed therein for the com-