and the fact of barratry not being expressly excepted in the policy, would not entitle the insured to recover.

Appeal dismissed with costs.

Macmaster, Q.C., & W. B. Ross, for appellant.

MacCoy, Q.C., for respondents.

New Brunswick.]

WINCHESTER v. BUSBY.

Trover—Conversion—Bill of lading—Refusal to deliver cargo—Pre-payment of freight—Expenses of storage.

W. was master of a vessel carrying a cargo of coal for B. On arrival, W. refused to deliver the coal unless the freight was pre-paid, which B. refused, offering to pay freight ton by ton as delivered. The agent of the owners then caused the coal to be stored, on which the whole freight was tendered by B. and the coal demanded, which the agent refused unless the expenses of the storage were paid. In an action of trover against W.:—

Held, affirming the judgment of the Court below, Gwynne, J., dissenting, that there was a conversion of the coal for which B. could recover in trover.

Held, per Patterson, J., that B. had a right of action, but not against the master of the vessel, and that the appeal should be allowed on that ground.

Appeal dismissed with costs.

Weldon, Q.C., for the Appellant.

W. Pugsley & C. A. Palmer, for the respondent.

New Brunswick.]

SNOWBALL v. NEILSON.

Action to set aside judgment—Collusion.

S., a judgment creditor of J. N., Sr., applied to the Supreme Court of New Brunswick, on affidavits, to have a judgment of J. N., jr., against said J. N., sr., his father, set aside as being obtained by collusion and fraud, and in order to cover up assets of the said J. N., sr. The facts alleged in the affidavits supporting the application were: that a cognovit was given and said judgment of J. N., jr., was signed on the same day; that no account was ever rendered of the debt; that no entries were ever made by said J. N., jr., against his father; that the account for which the cognovit was given was made up from calculation and not from books; that the father had offered to have the judgment discharged on payment of a much smaller sum; and that on an examination of the father for disclosure, he would not swear that he owed his son the amount, and that he had had no settlement of accounts. The affidavits in answer stated how the debt had accrued, giving the details; that there was no collusion between the father and son; that the son had frequently asked his father for a settlement, but could not get it; and that he had never been a party to, or authorized any settlement. The Court below held that the applicant had failed to show fraud and refused to set aside the judgment.

Held, that the decision of the Court below should be affirmed.

Appeal dismissed.

G. J. Gregory, for appellant.

Hanington, Q.C., & J. A. Van Wart, for respondent.

New Brunswick.]

MACFARLANE v. THE QUEEN.

Criminal law—Assault—On constable in discharge of duty—Indictment for—Service of summons under Canada Temperance Act—Wife of defendant—Competent as witness on trial.

A constable in attempting to serve a summons on M. for violation of the Canada Temperance Act, was assaulted by M. and his wife. On indictment for such assault as an assault on a constable in discharge of his duty, under 32-33 Vic., c. 20, s. 39; R. S. C. c. 162, s. 34:

Held, affirming the judgment of the Court below, that such section applies to the case of a constable serving a summons for violation of the Canada Temperance Act.

Held, also, that on the trial of such an indictment, neither the defendant or his wife is a competent witness under sec. 216 of the Act relating to Procedure in criminal cases R. S. C. c. 174.

Appeal dismissed.

J. A. VanWart, for the appellant.

R. J. Ritchie, Sol. Gen. of New Brunswick, for the respondent.