

## RECENT ENGLISH DECISIONS.

able accidents preventing the loading." The ship arrived at the dock and loaded part of the cargo; a frost then set in and made a canal, which communicated with the dock, impassable, so that the remainder of the cargo, which was ready at a wharf on the canal, could not for several days be brought in lighters to the dock. The dock itself was not frozen over, and if the cargo had been on the dock the loading might have proceeded. And it was held by the House of Lords, affirming the Court of Appeal, that the frost did not prevent the loading within the meaning of the exception.

The point was neatly put by Lord Fitzgerald: "It seems to me the exception applies only where the accident prevents the loading at the place of loading, and not where it prevents or retards the transit or conveyance of the cargo to the place of loading. The shipper was bound to have a full cargo at the place of loading, and he took on himself all risks consequent upon delay in transit. If he had had it there it could have been loaded within the lay days, and no case of demurrage could have arisen."

## POWER OF ATTORNEY TO SELL AND PURCHASE.

Before closing the number containing the appeal cases, we may briefly notice the Indian case of *Fonmenjoy Condo v. Watson*, 9 App. Ca. 561, which is one of general interest, turning on the construction of a power of attorney. The power in question authorized the donee "from time to time to negotiate, make sale, dispose of, assign and transfer" government promissory notes, and "to contract for, purchase, and accept the transfer" of the same, and "for the purposes aforesaid to sign for me and in my name, and on my behalf, any and every contract and agreement, acceptance, or other document." The question to be determined was whether this power authorized a

pledge of the government notes as well as a purchase and sale thereof, and the Judicial Committee determined that it did not.

## RIGHT OF WAY—UNITY OF POSSESSION OF TENEMENT AND WAY.

In the Chancery Division, the first case which calls for attention is that of *Bayley v. Great Western Railway Co.* (26 Ch. D. 434 C. A.). The defendants, under the powers of their Act, had purchased a piece of land on which was a stable. By the conveyance to the Company the premises were granted, together with "all rights, members, or appurtenances to the hereditaments belonging or occupied or enjoyed as part, parcel or member thereof." The vendor had, many years previously, made a private road from the highway to this stable over his own land, for his own convenience, and had used it ever since. The soil of the road was not conveyed to the Company, and no express mention of it was made in the conveyance. The plaintiff refused to allow the Company to use the road, and a special case was stated for the opinion of the Court as to whether or not, under the circumstances, the Company had any right of user of, or right of way over, the road; and it was held by the Court of Appeal, affirming the judgment of Chitty, J., that, notwithstanding the unity of possession of the stables and the private road at the date of the conveyance to the Company, a right of way passed to the Company under the general words of the conveyance following *Kay v. Oxley*, L. R. 10 Q. B. 360, and *Watts v. Kelson*, L. R. 6 Chy. 166. Secondly, that the fact of the stable having been purchased by a railway company, for the purposes of their undertaking, did not preclude them from claiming the right of way, so long as they used the premises as a stable, which they might lawfully do until they were required for the purposes of the railway, or were sold as superfluous land.