Smith v. *Smith*, 2 Pick. 621, is frequently cited as an authority in support of the rule of *Thorogood* v. *Bryan*, but all that was decided in that case was that one who is injured by an obstruction placed unlawfully in a highway cannot maintain an action for damages if it appears that he did not use ordinary care by which the obstruction might have been avoided. This rule is well established, and is, we take it, not in conflict with the principal case. See *Styles* v. *Geesey*, 71 Penn. St. 439; *Cleveland, Columbus & Cincinnati R. R. Co.* v. *Terry*, 8 Ohio St. 570; *Williams* v. *Mich. Cent. R. R. Co.*, 2 Mich. 259; *Murphy* v. *Deane*, 3 Am. Rep. 390.

In *Puterbaugh* v. *Reasor*, 9 Ohio St. 484, the plaintiff put R. in charge of his team. R. and the defendant engaged in a fight which frightened the team and it ran away, and one horse was killed. The defendant was held not liable because the plaintiff, having placed R. in charge of the team, was responsible for his negligence. Sherman and Redfield cite this case as well as that of *Cleveland, etc.*, v. *Terry*, and *Smith* v. *Smith*, *supra*, as authorities for the rule of *Thorogood* v. *Bryan*, but they are obviously not so as to the question of privity in negligence.—*Albany Law Journal.*

AGENCY—RIGHTS OF AGENT AGAINST THIRD PERSONS IN TORT.

Any special or temporary ownership of goods, with immediate possession, is sufficient to maintain an action for conversion: Legg *v.* Evans, 6 M. & W. 36. An agent having such special property, with immediate possession, may maintain an action against the absolute owner for wrongful conversion, but can only recover damages in respect of his limited interest: Roberts *v.* Wyatt, 2 Taunt. 268. If an agent is not in possession at the time of the conversion, and has to rely upon his right only, he may be called upon to prove a good title, and the defendant will be allowed to rebut his title by showing a *jus tertii*: Leake *v.* Loveday, 4 M. & G. 972; Gadsden *v.* Barrow, 9 Ex. 514. Where the defendant has disturbed the actual possession of the plaintiff, he will not be allowed to set up a *jus tertii*, unless he can justify his act under the authority of the third party: Jeffries *v.* The Southwestern Railway Company, 5 E. & B. 802; 25 L. J. 107 Q. B.

First, as to the cases where the agent has been in possession of the goods or chattels in respect of which he sues:

In Burton *v.* Hughes (2 Bing. 183) the owner of furniture lent it to plaintiff under the terms of a written agreement. The plaintiff placed it in a house occupied by the wife of a bankrupt. The assignees of the bankrupt seized the furniture, and the Court of Common Pleas held that the plaintiff might recover it in trover without producing the agreement. "The case of Sutton *v.* Buck, 2 Taunt. 302, which has been referred to," said Chief Justice Best, "confirms what I had esteemed to be the law upon the subject, namely, that a simple bailee has a sufficient interest to sue in trover." In that case a person whose title was not completed by registry of a regular conveyance sued in trover to recover a ship of which he was possessed. "Suppose a man," observed Chief Justice Mansfield, "gives me a ship, without a regular compliance with the Register Act, and I fit it out at £500 expense, what a doctrine it is that another man may take it from me and I have no remedy." "There is enough property in the plaintiff," remarked Mr. Justice Lawrence, "to enable him to maintain trover against a wrongdoer; and, although it had been urged that the contract is void with respect to the rights of third persons, as well as between the parties, yet so far as regards the possession, it is as good as against all except the vendor himself."

The rule laid down by Mr. Justice Chamber, in the case cited by Chief Justice Best, is that an agister, etc., a carrier, a factor may bring trover. A general bailment will support the action, though the bailment is made only for the benefit of the true owner.

In Rooth *v.* Wilson, 1 B. & Ald., 59, which was an action on the case against the defendant for the not repairing the fences of a close adjoining that of the plaintiff, whereby a horse of the plaintiff fell into the defendant's close and was killed, it was objected that the plaintiff had not such a property in the horse as to entitle him to maintain the action, he being merely a gratuitous bailee. A verdict having been found for the plaintiff, the court discharged a rule for a new trial. "I think," said Mr. Justice Abbott, "that the same possession which would enable the plaintiff to maintain