

NOTES OF RECENT DECISIONS.

Form No. 138, an order made to examine judgment debtor in *Chambers*. Is there need for an order at all? O. XLI. r. 1.

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CONTRACT.

An interesting case to mercantile men is that of *Lambe v. Hartlaub, et al.*, reported in the *Legal News* (p. 138). The action was to recover the value of a large quantity of teas sold by plaintiff to defendants (not, by the way, "an action to rescind a sale of, &c.," as stated by the reporter). The sale was made in Toronto, in February, 1880, through a Montreal broker, at a certain price, duty paid, delivered in Toronto, the terms of payment being cash on delivery. The goods were shipped to the defendants by G. T. R. Co., duty paid, but were on their arrival in Montreal seized by the Customs' authorities, on the allegation that they were fraudulently entered as a direct importation from Japan; and that thus a less duty was paid than was properly chargeable.

The Government being subsequently satisfied that the goods were properly entered, released them on 6th April, 1880. The defendants sought to avoid the contract, or a reduction in the price, on the ground that owing to the seizure they were unable to carry out a sale they had made on the faith of the purchase from plaintiff, whereby they lost their profit, and had become liable to their vendee. The Court very properly held that the plaintiff must succeed, and that the rights of the defendants, if any, were against the Customs' authorities, and not against the plaintiff, who had made no default.

BANKERS AND GUARANTEE COMPANIES.

The *Legal News* also reports (p. 147) the case *La Banque Nationale v. Lesperance, et al.*, which brings up the liability of a surety for a bank official under rather peculiar circumstances. The facts of the case (fully set out in the report) are shortly as follows:—

The Teller of a bank endorsed on a parcel of bank notes the amount which it was supposed to contain. It was subsequently discovered that the parcel was \$6,300 short, and it was ascertained that a deficiency of the same amount existed in the Teller's accounts, and had been

during several years skilfully covered up and concealed from the knowledge of the authorities of the bank, who had made the usual inspections.

Upon an action brought by the bank on a policy of the defendant, guaranteeing the fidelity of the Teller, and against the defaulter himself, it was held by JOHNSON, J. of the Superior Court, that the Guarantee Company was liable for the deficiency, but only to the extent which occurred after the contract was made.

NUISANCE BY LETTING OFF FIREWORKS.

In *Coombe and Wife v. Moore*, the defendant, being an American, on July 4 last, celebrated the anniversary of the declaration of the independence of the United States of America, and invited several friends to his house on the occasion. Part of the entertainment which he had prepared for his guests was a display of fireworks. July 4 was a Sunday; and, when the Sunday had passed, between 12 and 1 o'clock on the morning of the 5th, some fireworks were let off in the defendant's garden. The reports of the fireworks were described by witnesses as having a sound like an explosion; and evidence was given that twelve or fourteen rockets had been let off on the occasion in question. The plaintiffs were aroused by the first report, and Mr. Coombe went down stairs, followed by Mrs. Coombe. While he was in his garden, he saw four or five rockets, the cases and sticks of which fell into his garden. Mrs. Coombe was much alarmed, an attack of hysteria supervened, which was followed by neuralgia. Under the doctor's advice, she went by sea for a trip to Ireland, which improved, though it did not quite restore, her health. The judge submitted two questions to the jury—namely, whether the acts of the defendant were reasonably calculated to interfere with the health of people living in the neighborhood, having regard to people's ordinary habits of life; and whether the injury to the health of Mrs. Coombe was the consequence of the acts of the defendant; and he directed them that the defendant would not be liable for an interference with the comfort of the plaintiffs unless their comfort was so far interfered with as to affect health.—The jury answered the questions which had been left to them, in favor of the plaintiffs, and assessed the damages at one farthing.

We confess to feeling some sympathy for