

to a nonsuit. The jury were justified in finding that the guard was negligent and that the plaintiff was not. (Exch. Ch.)—*Fordhum v. Brighton Railway Co.*, L. R. 4 C. P. 619; s. c. L. R. 3 C. P. 368.

**MORTGAGE.**—A mortgagee is bound to convey the legal estate in the mortgaged property, and to deliver up the title deeds, to a person from whom he has accepted a tender of his principal, interest, and costs, although such person may have only a partial interest in the equity of redemption—*Pearce v. Morris*, L. R. 8 Eq 217.

**PARLIAMENT.**—Members of either House of Parliament are not criminally liable for a conspiracy to make statements which they know to be false, in the House, to the injury of a third person—*Ex parte Wason*, L. R. 4 Q B. 573.

**PRESUMPTION OF DEATH, &c.**—There is a presumption of law that a person who has not been heard of for seven years is dead, but there is no presumption of his death at any particular period of the seven years.

There is no legal presumption that a person shown to be alive at a given time has continued to live for any particular period after that given time.

A person whose title depends upon A having survived B, must prove affirmatively by evidence that A did survive B.

Review of all the authorities on the subject.

F. by his will bequeathed the residue of his estate to his nephews and nieces, share and share alike. F. died on the 5th January, 1861. N. P. M., one of the nephews, left his home in Germany, on the 19th August, 1853, and always wrote home regularly until August 1858. The last letter received from him was addressed to his mother, from on board the United States' frigate *Roanoke*, 15th August, 1854. He was never directly heard of again by any of his family. In 1867, upon enquiries being made of the United States' naval authorities, information was received that N. M., a sergeant of marines in the service of the United States, deserted June 6th, 1860, while on leave from New York to join the Philadelphia Station, and had not since been heard of. This information was in answer to a letter of enquiry which stated the letter of N. P. M. of the 15th August, 1858, to his mother. A petition was, in 1869, presented by the administrator of N. P. M. for payment to him of a share of a residue of the estate of F., which was in court to an account entitled "The account of the share intended for N. P. M." Vice-Chancellor

James, contrary to his own view of the law, but in deference to previous authorities, ordered the fund to be paid to the administrator of N. P. M. On Appeal,

*Held*, that the administrator of N. P. M. not having proved that N. P. M. survived the testator, had not established any title to the fund.

The Vice-Chancellor's order was therefore discharged.—*Re Phene's Trusts*, 18 W. R. 303.

**PATENT—INJUNCTION.**—In an action for an infringement of a patent, an application under the C. L. P. Act for an injunction to restrain the defendant was refused, the patent having been very recently granted, and their being conflicting affidavits as to the rights of the plaintiff to the patent, and *held* that the plaintiff must establish his title at law before he would be entitled to an injunction.

*Semble* 1. That the application would also have been refused under the Patent Act of 1869, sec. 24.

2. That to entitle a plaintiff to an interim injunction or account he must waive all claim to more than nominal damages at the trial.—*Bonathan v. Bowmanville Furniture Manufacturing Company*, Chambers, Feb. 11, 1870.

**OFFER TO BECOME SECURITY—GUARANTEE—CONSTRUCTION.**—A guarantee should be construed as all other contracts, not strictly as against either side, but by collecting the real intention of the parties from the instrument and the surrounding circumstances, taking the words in their ordinary sense, unless by the known usage of trade they have acquired a peculiar meaning.

In this case it appeared that one H., requiring some proof spirits for the purpose of a trade carried on by him, received from defendant, a friend of his, a letter of introduction to plaintiff, a distiller, to whom defendant was well known, but H. an entire stranger, though, as well as defendant, living in his neighbourhood. There had not been, as far as it appeared, any previous application by H. to plaintiff for a credit, nor had the latter declined dealing with him without a guarantee. The letter to plaintiff was as follows: "The bearer is Mr. Joseph Hugill, a friend of mine, who wishes to purchase some proof spirits, which he hears that you manufacture. If you can arrange matters to your mutual satisfaction, I am sure Mr. Hugill will prove a very reliable person to deal with. I will myself, with pleasure, become security for anything he may be disposed to give an order for."

*Held*, upon the authority of *McIver v. Richardson*, 1 M. & S. 557, that this letter did not import a perfect and conclusive guarantee in itself,