I am discussing hits the nail upon the head when it decreed that the instrument second in point of time had priority over the instrument first in point of date, though subsequently recorded.

There seems in this action to be some obscurity about the facts which, I think, indicate that when the plaintiff purchased the property he was not aware of the existence of the vines in question. Undoubtedly Kievell must have been aware of the agreement at the time he conveyed the property, and either acted fraudulently or, at all events, carelessly in not disclosing its existence. If the plaintiff had been aware of the existence of the vines in question, and not aware of the existence of the agreement, and was thereby induced to pay a larger consideration for the property than he otherwise would have paid, I cannot see why he should not retain the vines without accounting in any way to the defendants. His position appears to be precisely as if a building had been erected upon the property in question for the consideration of the construction of which the builder held an unrecorded mortgage. I cannot think, in the latter case, that the holder of the unrecorded mortgage would have any claim whatever against the vendee, and I should think that the same result would follow here, but as apparently the plaintiff here has alleged nothing of the kind, I think it must be assumed that the real facts would show that he purchased the property in question, unaware of the existence of the vines in question. Now, if that be the case, why should the defendants not receive compensation for their vines? The plaintiff has received something of considerable value for which he has paid in reality nothing, and it is not entirely unlikely that he, with that disregard of the law of *meum* and *tuum*, which characterizes many of our race, thought the opportunity not an unfit one for retaining the vines, and getting rid of the lien, and especially so as the relief that the defendants mainly relied on was the right to remove the vines. I cannot see, however, why the plaintiff should be called upon to perform the agreement which he never entered into, and which might operate as an injustice to him unless he were offered by the court (of which there is no evidence) the option of allowing the defendants to remove the vines, or be subjected (if the court might think proper under the circumstances to award against him) to the terms of the agreement.

If that were the case, and he had the option of giving up the vines, or of accepting the agreement, if the court had power so to direct that relief to the plaintiffs, he could not complain.

In the absence of any such offer to him, I should think the proper remedy would have been to refer to some officer of the court, to ascertain, without costs to either party, how much the property had been enhanced in value by the existence of the vines in question; in other words, what the plaintiff would have realized from the vines in question after making all just allowances.

SEARCHER AFTER TRUTH.

FLOTSAM AND JETSAM.

A STRANGE STORY.—Here is another Russian legacy case. A rich Russian lady bequeathed 400 roubles for the support and comfort of the dearest favourite of all her dogs. One of the servants was appointed the dog's guardian so long as it should live, but if the dog should survive its guardian then the care and charge should pass to another servant. The dog is now dead, and, according to the provisions of the will, the servant who had conscientiously fulfilled her duty to the dog for several years comes in for the 400 roubles, the interest of which, it appears, had been sufficient to keep the dog in ease and comfort. The residuary legatee, however, has not been permitted to settle down to the enjoyment of the 400 roubles without a challenge. The other servant mentioned, in view of probabilities or possibilities, demanded half the money on the pretence that the will declared that "descendants" of the dog were to share in the benefit of the legacy, and she was in possession of a "child" of the dead dog. But the guardian of the bequeathed dog avers that her charge died "childless." So the Russian lawyers and law courts have set to work, and are doing their best not only to swallow up the 400 roubles, but also to appropriate to themselves many more roubles from each of the litigants.—*Ex.*