

trust funds which were in the hands of the customer. The company having gone into liquidation, the bank applied the balance at the credit of account No. 2, in payment of an overdraft in account No. 1. The trustees were not satisfied with this, and sued the bank to recover the moneys which had been in account No. 2. After decisions for both parties in the various Courts of New Zealand, where the transactions took place, the matter was carried by the bank to the House of Lords, where it was held that, as the bank was not shewn to have received the moneys as trust funds, nor to have received during the currency of the account notice of the trust character, it was entitled to set them off in satisfaction of its claim against its customer on account No. 1. The court laid down a rule, that under such circumstances it is incumbent upon the trustee to prove that the moneys for which he sues are to the knowledge of the bank trust funds. 1898, App. Cas. 693.

TOTAL LOSS IN MARINE INSURANCE.—Where a ship has been sunk in deep water, the underwriters cannot escape liability as for a total constructive loss by gratuitously intervening and taking upon themselves, between the date of notice of abandonment and the time when legal proceedings are commenced under the policy, the expenses of raising the insured vessel, and saving her from being a constructive total loss. Such a gratuitous expenditure will not relieve the underwriters from their contractual liability. In considering whether a constructive total loss has occurred, the question is whether a ship owner of ordinary prudence and uninsured would have gone to the expense of raising a sunken ship and repairing her. 1898, App. Cas. 593.

In 1889 the Police Force of Hamilton established a Benefit fund, to provide for a gratuity for any member resigning or becoming incapacitated from length of service or injury, and for the family of any member dying in the service. Each member of the force was required to contribute a percentage of his pay for the purposes of the fund, and one of the rules was as follows: "No money to be drawn from the fund for any purpose whatever until it reach the sum of \$8,000. The Supreme Court has decided, over-ruling the Ontario Court of Appeal, that in the case of a member of the force dying before the fund reached \$8,000, the gratuity to his family was merely suspended, and became payable as soon as that amount was realized. 28 S. C. R. 475.

A policy of burglary insurance effected by a jeweller in England was expressed to be made "against loss or damage by burglary and housebreaking, as hereinafter defined," and provided that if the jewellery should be lost by theft following upon actual *forcible and violent* entry upon the premises, when the property was situate, the insurers should pay. The jewellery was in a shop the front door of which was shut, but not locked or bolted, and access could be gained by turn-

ing the handle of the door. In the temporary absence of the porter, who was moving the shutters to the rear of the premises, some person opened the front door, and entered the shop, and obtained the jewellery, by breaking a padlock off the case in which it was contained. The Insurance Association objected to pay for the loss, because the merchant was negligent in leaving his door unfastened, and no one in charge, and they urged the technical objection, that there was no forcible and violent entry into the shop, as provided in the policy. The question of liability was finally submitted in a friendly way, for the decision of the Court, and was heard by two Judges, who both agreed that the loss was a loss by theft following upon actual forcible and violent entry, within the meaning of the policy, for which the Association should pay. 1898, 2 Q. B. 136.

RECENT DECISIONS AFFECTING FIRE INSURANCE.

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9. CONTRACTS BETWEEN THE ASSURED AND THIRD PARTIES.

WITH A MORTGAGEE.—A mortgage company has no right, without the knowledge or consent of the mortgagor, to cancel a policy effected by the mortgagor, and to effect a new one for a smaller amount in another company, even though the mortgage contain a covenant, that the mortgagor will insure the buildings with a proviso that the mortgagees may themselves insure without any further consent from the mortgagor.

Morrow *vs.* Lancashire Insurance Co. 18 C. L. Times 220.

WITH A PURCHASER.—House property was sold under an agreement, by which the purchaser who went into possession was among other things to insure the buildings in the sum of \$400, pay all premiums, and to produce and deliver the policy to the vendor. The agreement also provided that if the purchaser made default in the observance and performance of the agreement for thirty days after any day on which performance should be made, the vendor might cancel the agreement and forfeit any purchase money paid. The purchaser obtained a cover note for thirty days, but did not deliver it to the vendor. The court held in the first place that it was doubtful whether the words "produce and deliver" did not mean produce and deliver on request; but, secondly, assuming that there was a right to re-enter, on default in producing and delivering the cover note for thirty days after the expiration of a reasonable time, for its production and delivery, it could not in the absence of proof of the circumstances be assumed that it could reasonably have been produced and delivered during its currency.

Heard *vs.* Campbell, 15 New Zealand 51.