

## DIGEST OF THE ENGLISH LAW REPORTS.

was in the contract provision for a penalty of £100 a week in case the works were not completed on or before on or before Aug. 31, 1873. The works were not completed on that date, and on Jan. 22, 1874, the defendants gave notice to the plaintiff to terminate the contract; and they at the same time seized the materials and implements of the plaintiff, under the following clause in the contract: "Should the contractor fail to proceed in the execution of the works in the manner and at the rate of progress required by the engineer, or to maintain the said works to the satisfaction of the engineer, his contract shall, at the option of the company, be considered void, as far as relates to the works remaining to be done; and all sums of money due the contractors, together with all materials and implements in his possession and all sums named as penalties for non-fulfilment of the contract, shall be forfeited to the company, and the amount shall be considered as ascertained damages for breach of contract." There was a clause providing that if the works were not completed "within the period limited for that purpose," it should be lawful for the company to assume control of and finish them, in which case the contractor should be paid only for the work he had done. *Held*, that the forfeiture of the sums of money, materials, and implements, as set forth in the above clause, could only be enforced before the expiration of the time limited for the completion of the contract.—*Walker v. The London & North-western Railway Co.*, 1 C. P. D. 518.

See PRINCIPAL AND AGENT, 1.

CONTRACT TO SELL.—See VENDOR'S LIEN.

CONTRIBUTORY NEGLIGENCE.—See COLLISION, 1.

COVENANT.

Covenant by a lessee to keep only such a number of hares and rabbits as should not injure the crops, &c.; and in case he kept a greater number, he should pay a fair compensation for the damage, to be fixed, in case of disagreement, by two arbitrators. In an action for breach of the covenant to keep only such a number, *held* that the action could be maintained before an arbitration, the clause as to arbitration being a distinct and collateral covenant.—*Dawson et al. v. Lord Fitzgerald*, 1 Ex. D. 257.

CREDITOR WITH NOTICE.—See JOINT DEBTOR.

DAMAGE TO CARGO.—See BILL OF LADING.

DAMAGES, MEASURE OF.—See MEASURE OF DAMAGES.

DEAF MUTE.

A deaf mute was found guilty of felony, but the jury also found that the prisoner was not capable of understanding, and did not understand, the proceedings against him. *Held*, that the prisoner could not be convicted; and it was ordered that he be detained as of insane mind during the Queen's pleasure.—*The Queen v. Berry*, 1 Q. B. D. 447.

DEBT OF HONOR.—See INFANT.

DELIVERY OF CARGO.—See BILL OF LADING.

DISCOVERY.—See PRODUCTION OF DOCUMENTS.

DISTRIBUTION.—See TRUST TO SELL.

DOCUMENTS, INSPECTION OF.—See INSPECTION OF DOCUMENTS.

ESTOPPEL.

A company, formed to build a railway, improperly went on when only one-fifth of the capital stock was taken. In a bill filed by a shareholder to avoid his contract to take shares, it appeared that, for a long time after the company was to his knowledge proceeding illegally, he continued to act with the other members of it, and did not protest against the improper and illegal acts. *Held*, that, though he might have originally had a ground of relief, he had lost it by acquiescence.—*Sharpley v. Louth & East Coast Railway Co.*, 2 Ch. D. 663.

See BILLS AND NOTES, 2; VENDOR'S LIEN.

EQUITABLE OWNER.—See INSURANCE.

EVIDENCE.—See BILLS AND NOTES, 2.

FORCIBLE ENTRY.

L. was mortgagee in fee of premises, but did not take actual possession. T. and W. occupied the premises under the mortgagor who had never been dispossessed. L. one day had a carpenter take off the lock of one of the doors, and he entered into possession. T. and W. entered by a window and expelled L. L. had them indicted for forcible entry. They were acquitted, and sued L. for malicious prosecution without reasonable and probable cause. *Held*, that the action could not be maintained. If L. got the legal possession for civil purposes, that was ground enough for an indictment against T. and W. for forcible entry.—*Lous v. Telford et al.*, 1 App. Cas. 414.

FOREIGN JUDGMENT.—See MARINE INSURANCE, 2.

FORFEITURE.—See CONTRACT, 2.

FORGED INDORSEMENT.—See BILLS AND NOTES, 2, 3.

FRAUDS, STATUTE OF.—See STATUTE OF FRAUDS.

FREIGHT.

Charterparty by the defendants to convey a cargo of railway iron from England to Taganrog, Sea of Azof, "or so near thereto as the ship could safely get," consigned to a Russian railway company. The ship arrived Dec. 17, at Kertch, a port thirty miles from Taganrog, where the captain, the plaintiff, found the sea so blocked up with ice, and unnavigable till April. Against the orders of the charterers, who notified him that they would hold him responsible, he proceeded to unload the cargo; and there being nobody to receive it, he put it in charge of the custom-house authorities there. The consignees claimed it; and, on their producing the bills of lading and charterparty, it was delivered to them against the captain's claim that it should be retained for freight. A receipt was given to the effect that the cargo was received