

matter of law, to have impliedly agreed to incur that danger, or to have voluntarily incurred it, because he does not refuse to face it, nor can it, in my opinion, be held that there is no case to submit to a jury on the question whether he has agreed to incur it, or has voluntarily incurred it or not, simply because, though he protested, he went on as before."

None of the cases in the Probate Division appear to require notice here.

SALE OF GOODS INDUCED BY FRAUD—RESTITUTION OF GOODS ON CONVICTION—SALE IN MARKET OVERT.

Turning now to the appeal cases, the first we find requiring notice here is *Bentley v. Vilmont*, 12 App. Cas. 471, in which the House of Lords affirms the case reported *sub nom*, *Vilmont v. Bentley*, 18 Q. B. D. 322, noted *ante*, vol. 23, p. 142. This was a civil action brought by a person who had been induced by fraud to sell his goods, to recover them from a third person who had bought them in market overt before conviction of the fraudulent purchasers, and without notice of the fraud—no order for restitution had been made. The Court of Appeal overruling *Moyce v. Newington*, 4 Q. B. D. 32, held the plaintiff entitled to recover, and this decision was affirmed by the Lords, though in pronouncing the judgment their Lordships said they had come to the conclusion with very great reluctance. As Lord Watson points out, there is a material distinction between the case of stolen goods, and goods obtained by fraudulent practices. In the former case the original owner and the purchaser in market overt are in *pari casu*, and neither has done ought to mislead the other; whilst in the latter case, the original owner has intentionally given his fraudulent vendee an *ex facie* absolute and valid title to the goods upon which purchasers, without notice of the fraud, are entitled to rely. But their Lordships held that the statute allowing restitution had made no distinction between the two cases, and therefore in both cases the right to the goods remained in the original owner.

MARINE INSURANCE—CONCEALMENT OF MATERIAL FACTS—PRINCIPAL AND AGENT—CONCEALMENT BY AGENT, THROUGH WHOM POLICY NOT EFFECTED.

It must be confessed that the Court of Appeal, when it differs from its Chief, has been unfortunate in the result of the appeals from its decisions reported in this number. In the important case of *Blackburn v. Vigors*, 12 App. Cas. 531, their decision in 17 Q. B. D. 553, noted *ante*, vol. 22, p. 377, which came with something like a shock upon the profession, has been reversed in the Lords. It will be remembered that in this case the plaintiffs instructed a broker to insure an overdue ship. Whilst acting for the plaintiff this broker received information which cast grave doubts on the safety of the ship. Without communicating this information to the plaintiff, he recommended him to apply to another broker, which the plaintiff did, and effected an insurance through this other broker, "lost, or not lost," on which the action was brought. The ship had in fact been lost some days before the insurance was effected; but neither the plaintiff nor the broker through whom the insurance was effected knew it, and they acted in good faith. The Lords held that the knowledge of the first broker was not the knowledge of the plaintiffs, and that the plaintiffs were entitled to recover.