The Legal News.

Vol. X. NOVEMBER 12, 1887. No. 46.

An English solicitor, who has been in New South Wales for some time, relates his experience in terms which should deter his brethren of the profession from rashly trying their luck in new fields. He says he made an unsuccessful endeavour to obtain a clerkship, and wasted five months in the attempt, notwithstanding the backing of some of the most influential residents. "There are only between 300 and 400 solicitors in Sydney, and they will not take into their employ an English solicitor. I know of my own knowledge that nine English barristers applied to one firm of solicitors for a clerkship in one week; and there are hundreds of English professional men walking about and doing all kinds of menial labour so as to obtain sufficient to keep life within them." He adds: "Professional men are not wanted in the colonies, which want mechanics and agriculturists with capital to open out the country," which is as true with reference to Canada as to New South Wales.

Lord Justice Bowen has been lightening the fatigue of his official duties by translating Virgil into English verse, and the work is to be given to the world and the tender mercies of the critics in a few days. The *Law Journal* says, "its appearance will revive the tradition, of late years somewhat faded, that judges should be men of letters. Since the days when Talfourd and Alderson were on the bench together, no judge has made any name in the general literature of his country. Lord Justice Bowen happily illustrates the fact that even at the end of the nineteenth century the qualities that make a man a scholar and a poet do not disqualify him for success at the bar and on the Bench."

Chief Justice Sir A. A. Dorion, in his charge to the Grand Jury, Nov. 2, at the opening of the term of Queen's Bench, observed:—"It is well that I should mention what is a libel and what are your duties with regard to the cases that may be brought to your notice. A libel is the publication of any injurious writing against the character, position or standing in society of any person or persons. It is not necessary that the writing should be of such a character as to impose a material injury upon the person who complains of the libel, but it is sufficient that the writing is calculated to bring the person against whom the writing is directed into contempt, or even ridicule. Your duty is to see whether in reality the writing in question contains anything injurious to the good name of the complainant or brings him into contempt. When you are satisfied that such a libel has been published you will see whether the person accused of publishing it is really responsibly connected with the publication of the libel. It is not necessary for you to see whether there is any legal defence to be made to the accusation. This is not the province of the grand jurors, unless it clearly appeared by the evidence adduced by the prosecution that the accusation is either frivolous or malicious, in which case you might throw out the bill."

SUPREME COURT OF CANADA.

Quebec.]

UNION BANK OF LOWER CANADA v. BULMER.

Promissory note—Accommodation—Made by partner without authority — Renewal — Knowledge of holder.

In an action on a promissory note, the defence was that the note of which it was a renewal was given for the accommodation of the payee by the defendant's partner, who had no authority to make it, and that the plaintiffs, when they took the renewal, knew its defective character.

Held, that as it did not appear that such knowledge attached when the original note came into plaintiffs' possession, they were entitled to recover.

Irvine, Q.C., for appellants.

A. W. Atwater, for the respondent.

Quebec.]

THE EXCHANGE BANK OF CANADA v. THE PEOPLE'S BANK.

Bank cheques—Acceptance by Cashier and President at a future date—Liability of Bank.

In 1881, G., having business transactions with the Exchange Bank, agreed with C., President and Manager of the Bank, that in lieu of further advances the Bank would accept his cheque, but made payable at a future date. On the 19th October, 1881, G. drew a cheque on the Exchange Bank, and after having it accepted as follows: "Good on February 19th, 1882, T. Craig, Pres.," got the cheque discounted by the People's Bank and deposited the proceeds to his credit in the Exchange Bank. This cheque was renewed on the 23d of May, and it was presented at the Exchange Bank and paid. Thereupon another cheque for the same amount was accepted in the same way and discounted by the People's Bank on the 7th September, 1883. At the time of the suspension of payment by the Exchange Bank, the People's Bank had in its possession four cheques signed by G. and accepted by T. Craig, President of the Exchange Bank, which were subsequently presented for payment on the dates when they were payable, and duly protested, and also after the three days of grace.

The total amount of these cheques was $66,020.64, and one of them, viz., the one dated 7th September, 1883, for $31,000, was a renewal of the cheque the proceeds of which had been paid to the credit of G. in the Exchange Bank. C. was manager as well as president of the Exchange Bank.

On an action brought by the People's Bank against the Exchange Bank, for the recovery of the sum of $66,020.74, based on the four cheques in question, the Exchange Bank pleaded *inter alia* that C. had not acted within the scope of his duties and within the limits of his powers, and that the Bank had never authorized or ratified his acceptance of G.'s cheques.

Held, affirming the judgment of the Court of Queen's Bench (Strong, Taschereau and Gwynne, JJ., dissenting), that under the circumstances the Exchange Bank was liable for the acceptance by their president and manager of G.'s cheques discounted by the People's Bank in good faith and in due course of business.

Appeal dismissed without costs.

Macmaster, Q. C., for appellants.
Geoffrion, Q.C., for respondents.

Quebec.]

GILLESPIE v. STEPHENS.

Reddition de comptes—Settlement by mandator with his mandatary without vouchers, Effect of—Action en redressement de compte.

Held, affirming the judgment of the Court below, that if a mandator and a mandatary, labouring under no legal disability, come to an amicable settlement about the rendering of an account due by the mandatary, without vouchers or any formality whatsoever, such a rendering of account is perfectly legal, and that if subsequently the mandator discovers any errors or omissions in the account his recourse against his mandatary is by an action *en redressement de compte*, and not by an action asking for another complete account.

Appeal dismissed with costs.

Nicolls and *Fleming*, Q.C., for appellant.
Carter, for respondent.

DUFFUS v. CREIGHTON.

Sheriff—Action against—Execution of writ of Attachment—Abandonment of seizure—Estoppel.

A writ of attachment against the goods of M. in the possession of S. was placed in the sheriff's hands and goods seized under it. After the seizure the goods, with the consent of the plaintiff's solicitor, were left by the sheriff in charge of S. who undertook that the same should be held intact. The sheriff made a return to the writ that he had seized the goods. The sheriff subsequently sold the goods under executions of the creditors. In an action against the sheriff:

Held, reversing the judgment of the Court below, that the act of leaving the goods in the possession of S. was not an abandonment by the plaintiff's solicitor of the sei-

zure, and if it was, the sheriff was estopped by his return to the writ from raising the question.

Held, also, that the fact of plaintiff's solicitor acting as attorney for S. in a suit connected with the same goods was not evidence of an intention to discontinue proceedings under the attachment.

Russell, for the appellants.

Gormully, for the respondent.

Nova Scotia.]

CASSELS v. BURNS.

Ships and shipping—Charter party—Damage to ship—Nearest port—Deviation.

A ship sailed from Liverpool in September under charter to load lumber at Bathurst, N.B. Having encountered heavy weather the captain found it necessary to make repairs, and proceeded to St. John for that purpose. By the time the repairs were completed it was too late to go to Bathurst and carry out the charter. In an action against the owners for breach of charter the plaintiff obtained a verdict, the jury finding that the repairs could have been made in Sydney, C.B., and if made there could have been completed in time to load at Bathurst.

Held, affirming the judgment of the Court below, (20 N. S. Rep. 13) that going to St. John to repair the ship was such an unnecessary deviation from the voyage as to render the owners liable for breach of charter party.

Skinner, Q.C., for the appellants.

W. Pugsley, for the respondents.

Nova Scotia.]

ELLS v. BLACK.

Trespass—Disturbing enjoyment of right of way—User—Easement.

E. and B. owned adjoining lots, each deriving his title from S. E. brought an action of trespass against B. for disturbing his enjoyment of a right of way between said lots and for damages. The fee in the right of way was in S., but E. founded his claim on a user of the way by himself and his predecessors in title for upwards of fifty years. The evidence on the trial showed that it had been used in common by the successive owners of the two lots.

Held, affirming the judgment of the Court below, (19 N. S. Rep. 222) Ritchie, C. J., and Gwynne, J., dissenting, that as E. had no grant or conveyance of the right of way, and had not proved an exclusive user, he could not maintain his action.

Sedgewick, Q.C., for the appellant.

Drysdale, for the respondent.

MOONEY v. MCINTOSH.

Trespass—Title to land—Boundaries—Easement—Agreement at trial—Estoppel.

In an action for damages by trespass by McI. on M.'s land and closing ancient lights, defendant claimed title in himself, and pleaded that a conventional line between his lot and the plaintiff's had been agreed to by a predecessor of the plaintiff in title. On the trial the parties agreed to strike out of the pleadings all reference to lights and drains, and to try the question of boundary only.

Held, affirming the judgment of the Court below, Ritchie, C. J., and Gwynne, J., dissenting, that independently of the conventional boundary claimed by the defendant, the weight of evidence was in favor of establishing a title to the land in question in the defendant, and the plaintiff could not recover, and that by the agreement at the trial the plaintiff could not claim to recover by virtue of a user of the land for over twenty years.

Semble, that if it was open to him, such user was not proved.

Sedgewick, Q.C., for the appellants.

Henry, Q.C., for the respondents.

Ontario.]

EXCHANGE BANK v. SPRINGER.

Surety—Cashier of Bank—Buying and selling stocks—Negligence of Directors.

In an action against the sureties of an absconding cashier it appeared that the bank had become possessed of certain stock on the security of which advances had been made, and to save loss the stock was put on the market and other stock bought to affect the

price. An account was kept in the books of the bank called the "C. R. M. Trust account," in which these stock transactions were recorded. The cashier used this account to assist him in some private speculations, and having become a defaulter in a large amount he absconded.

Held, affirming the judgment of the Court below (13 Ont. App. Rep. 390), that even if this dealing in stocks by the bank was illegal it would not relieve the sureties of the cashier from liability on their bonds.

Robinson, Q.C., and *Malone*, for the appellants.

Bain, Q.C., for the respondents.

New Brunswick.]

GREENE v. HARRIS.

Practice—Set off—Not pleaded in action—Right to set off judgment—Equitable assignment.

G. and H. brought counter actions for breaches of agreement. In March, 1884, G. obtained a verdict with leave to move for increased damages, which was granted, and in June, 1885, he signed judgment. In April, 1884, G. assigned to H. all his interest in the suit against H., and gave notice of such assignment in May, 1884.

In February, 1885, H. signed judgment against G. on confession.

Held, reversing the judgment of the Court below (25 N. B. Rep. 451), Strong, J., dissenting, that H. could not set off his judgment against the judgment recovered against him by G. and assigned to H.

Weldon, Q.C., for the appellant.

CIRCUIT COURT.

SHERBROOKE, October 31, 1887.

Coram BROOKS, J.

PIJON v. LA COMPAGNIE TYPOGRAPHIQUE DES CANTONS DE L'EST.

Affidavit to be made by publisher of newspaper— C.S.L.C., ch. 11.

HELD:—*That that portion of chapter 11 C. S. L. C., which relates to the affidavits to be made by persons publishing newspapers, and to the penalties to be incurred in default of making such affidavits, is repealed by 40 Vic. (Que.) ch. 15 and amending Acts, as being inconsistent therewith.*

Plaintiff sued defendants for a penalty of $20, alleged to have been incurred under chapter 11 C. S. L. C. This statute provides that every person publishing a newspaper shall make an affidavit as therein prescribed, setting forth the names and additions of the printer or publisher of the paper, and of the owners, or of two of them, if there be more than two in all; and that in default of such affidavit he shall incur a penalty of $20.

Defendants pleaded that they are an incorporated company; that by 40 Vict. ch. 15, and acts amending the same, all incorporated companies (except banks and insurance companies) are ordered, under a penalty of $400, to make a declaration stating the name of the company, when and how incorporated, and the situation of its chief place of business within the Province; and that this act was a virtual repeal of the act under which plaintiffs sued.

The following is the substance of the learned judge's remarks :—

The statute sued on by plaintiff had never been expressly and in terms repealed. But Dwarris says, a statute may be repealed by a subsequent statute in which it is not referred to, if it be inconsistent with the subsequent statute. Was there such inconsistency in this case? The Court thought there was. Defendants are an incorporated company. The later acts apply to all incorporated companies whatsoever, saving special exceptions which did not affect defendants. It prescribed the declaration, on the giving of which such companies may lawfully carry on business. The declaration was intended to attain the same object as the affidavit, viz., to furnish third parties with the proper means of suing such companies, and may, therefore, under the circumstances, well be held to have taken the place of the affidavit. It was not alleged that defendants had not made such declaration. The action could not be maintained.

Action dismissed.

J. H. N. Richard, for plaintiff.

Ives, Brown & French, for defendants.

(D. C. R.)

*COURT OF QUEEN'S BENCH—MONTREAL.**

Patent — Infringement — Measure of Damages.

Held, 1. A patent of invention of machinery may be infringed by the use of a machine dissimilar in appearance, if the principle patented be interfered with.

2. The measure of damages for infringement of a patent of invention, by using a patented machine purchased of a manufacturer of the invention, and not the inventor, is not the profit which the purchaser derived from the use of the patent. The true measure is the loss suffered by the patentee. *Pinkerton et al. & Coté*, Dorion, Ch. J., Monk, Ramsay, Cross, Baby, JJ., June 30, 1886.

Larceny as a Bailee—32-33 Vict., ch. 21—Deposit of sum of money—Evidence.

The prisoner was indicted for larceny, as a bailee, of a sum of money. The complainant produced a receipt, taken at the time of the deposit in the hands of the prisoner, by which it appeared that the deposit was "en attendant le paiement qu'il pourrait faire d'une même somme à R. A. Benoit."

Held:—That this receipt implied that the prisoner was to pay a similar sum, and not actually the same pieces of money, and that there was no larceny.

2. That parol testimony could not be admitted to vary the nature of the transaction. *Reg.* v. *Berthiaume*, Dorion, Ch. J., Ramsay, Tessier, Cross, Baby, JJ. (Baby, J., *diss.*,) Sept. 25, 1886.

Contract—Modification—Evidence—Statement of account by bookkeeper.

The respondent, by notarial agreement, leased to appellant the right to mine for asbestos, on certain property belonging to the respondent. Subsequently, the respondent agreed to reduce the amount of royalty he was to receive; but to what extent, the appellant and respondent did not agree. The appellant kept no regular books, but his son-in-law and agent, at all events for some purposes, kept full accounts, and the appellant was in the habit of referring those who dealt with him to this agent, and he had even paid respondent on the statements of this agent.

HELD:—That the appellant was bound by the statement of account of such agent, the amount so fixed being less than the respondent would be entitled to under the original agreement. *Jeffery & Webb*, Dorion, C. J., Monk, Ramsay, Cross, Baby, JJ. (Cross, J. *diss.*), June 30, 1886.

*SUPERIOR COURT—MONTREAL.**

Droit hypothécaire—Enregistrement—Description—Erreur.

JUGÉ:—1. Que la description d'un immeuble, pour les fins d'enregistrement d'un droit hypothécaire, est complète aux yeux de la loi en mentionnant le lot et le rang, ou partie du lot et le rang;

2. Que, dans l'espèce, l'erreur commise dans l'acte constitutif d'hypothèque, par suite d'une erreur de clerc, quant au numéro de la subdivision du lot, n'affecte point la validité de l'hypothèque, attendu que l'identité de l'immeuble est bien établie et qu'il n'en est résulté aucun préjudice au défendeur;

3. Que, dans l'espèce, le débiteur personnel qui a constitué l'hypothèque étant aussi l'auteur du défendeur, ce dernier se trouverait sans titre à l'immeuble, si celui de son auteur était illégal, insuffisant ou irrégulier, —ce qui ne saurait être, pusique le défendeur lui-même invoque le titre de son auteur comme parfait;

4. Que, dans l'espèce, le défendeur a reconnu lui-même la validité de l'hypothèque et a même gardé entre ses mains, sur le prix de son achat, une somme suffisante pour payer la dite hypothèque au demandeur, à l'acquit de son auteur, et que, partant, sa défense est entachée de mauvaise foi, attendu qu'il a invoqué une prétendue irrégularité dont il n'a souffert aucun préjudice et qu'il a effectivement couverte par sa conduite et ses promesses.—*Boisvert* v. *Johnson*, en Révision, Jetté, Mathieu, Taschereau, JJ., 30 juin 1887.

---

*To appear in Montreal Law Reports, 3 Q. B.

*To appear in Montreal Law Reports, 3 S. C.

RECENT ENGLISH DECISIONS.

Sale—Set-off.—In an action against a purchaser for the price of goods sold through brokers, who, to the knowledge of the purchaser, sold sometimes for themselves and sometimes for principals, the purchaser cannot set off his general account with the brokers (*Isaac Cooke & Sons* v. *Eshelby*, 56 Law J. Rep. Q. B. 505).

Sheriff—Negligence.—An action for the balance of the proceeds of an execution may be brought by execution creditors against the executors of a deceased under-sheriff without waiving a claim for negligence joined with it (*Gloucestershire Banking Company* v. *Edwards*, 56 Law J. Rep. Q. B. 514).

Shipping—"Strike."—A 'strike' in a charter-party held not to include the workmen deserting their work through fear of cholera, for the purpose of exempting from demurrage (*Stephens* v. *Harris*, 56 Law J. Rep. Q. B. 516).

Insurance, Marine.—The co-owner of a ship, insured by another owner and member in a mutual association, not being himself a member, cannot be sued for a contribution (*United Kingdom Assurance, &c., Association* v. *Nevill*, 56 Law J. Rep. Q. B. 522).

Admiralty Law.—In a collision between a vessel in motion and a vessel at anchor, the burden of proof is on the former to show that the collision was not caused by any negligence on her part (*The Indus*, 56 Law J. Rep. P. D. & A. 88).

Collision Rule, Art. 3.—The placing of the side lights so as to be obscured from right ahead to the extent of three degrees, but so as to show otherwise a bright light over ten points of the horizon, held a compliance with the regulation (*The Fire Queen*, 56 Law J. Rep. P. D. & A. 90).

Wills.—An erasure of the testator's and witnesses' signatures with a knife by the testator held a revocation (*The Case of the Goods of Morton*, 56 Law J. Rep. P. D. & A. 96).

Criminal Law—Perjury.—A conviction for perjury committed in the absence of the registrar in bankruptcy, who had sworn the witness and left the evidence to be taken by a sworn shorthand writer, was quashed, as committed *non coram judice* (*Regina* v. *Lloyd*, 56 Law J. Rep. M. C. 119).

Contract—Consideration.—Forbearance by request to sue a debtor without binding contract, held a good consideration for promising to pay the debt (*Crears* v. *Burnyeat*, 56 Law J. Rep. Q. B. 518).

COPYRIGHT IN GOVERNMENT PUBLICATIONS.

THE following Treasury minute dealing with the copyright in Government publications has been issued:—

Treasury Minute, dated August 31, 1887.

My Lords take into consideration the correspondence which has passed between the Treasury and the Stationery Office on the subject of copyright in Government publications.

The law gives to the Crown, or the assignee of the Crown, the same right of copyright as to a private individual. Consequently, if a servant of the Crown, in the course of his duty for which he is paid, composes any document, or if a person is specially employed and paid by the Crown for the purpose of composing any document, the copyright in the document belongs to the Crown as it would in the case of a private employer.

The majority of publications issued under the authority of the Government have no resemblance to the works published by private publishers, and are published for the information of the public and for public use, in such manner as any one of the public may wish, and it is desirable that the knowledge of their contents should be diffused as widely as possible.

In other cases the Government publishes at considerable cost works in which few persons only are interested, but which are published for the purpose of promoting literature and science.

These works are of precisely the same character as those published by private enterprise.

In order to prevent an undue burden being thrown on the taxpayer by these works, and to enable the Government to continue the publication of works of this character to the same extent as heretofore, it is necessary to

place them, as regards copyright, in the same position as publications by private publishers. If the reproduction of them, or of the most popular portions of them, by private publishers is permitted, the private publisher will be able to put into his own pocket the profits of the work, which ought to go in relief of the general public, the taxpayers.

The question, then, is, what are the classes of works the reproduction of which is to be restricted, or to be left unrestricted?

Government publications may be classified as follows:—

1. Reports of select committees of the two Houses of Parliament, or of royal commissions.
2. Papers required by statute to be laid before Parliament—*e.g.* Orders in Council, rules made by Government departments, accounts, reports of Government inspectors.
3. Papers laid before Parliament by command—*e.g.* treaties, diplomatic correspondence, reports from consuls and secretaries of legation, reports of inquiries into explosions or accidents, and other special reports made to Government departments.
4. Acts of Parliament.
5. Official books—*e.g.* Queen's regulations for the army or navy.
6. Literary or *quasi*-literary works—*e.g.* the reports of the Challenger expedition, the Rolls publications, the forthcoming State trials, the *Board of Trade Journal*.
7. Charts and Ordnance maps.

As respects the first five classes of publications, the reproduction of them, with certain exceptions, should not be restricted in any form whatever. Indeed, in most cases it is desirable that they should be made known to the public as widely as possible.

The first exception is, that Acts of Parliament and official books should not, except when published under the authority of the Government, purport on the face of them to be published by authority.

The second exception is, where a work of a literary or *quasi*-literary character comes accidentally within these classes. For example, the reports of the Historical Manuscripts Commission would, but for the fact that they were produced under the direction of a commission instead of under the Master of the Rolls, be published in the ordinary manner like the Rolls publications, and come within class 6.

So, again, a report to a Government department may be laid before Parliament made by a person of eminent scientific knowledge who is willing to give the Government and the public the advantage of his knowledge, but not to allow it to be reproduced for the private benefit of an individual publisher. Mr. Whitehead's reports on injurious insects are an instance of this case.

Other exceptions will, no doubt, from time to time occur, which can only be dealt with as they arise.

As regards the sixth and seventh classes above mentioned, it seems desirable that the copyright in them should be enforced in the interests of the taxpayer and of literature and science. For, as pointed out above, unless copyright is enforced, cheap copies of the works, or of the popular portion of them, can be produced by private publishers, who reap the profit at the expense of the taxpayer. And as such works are in any case a burden on the taxpayer, the greater the burden the fewer works can the Government, with justice to the taxpayer, undertake.

Notice of the intention to enforce the copyright in any work should be given to the public. In the case of future works this notice can be given by prefixing to the work a notice to the effect that the rights of copyright are reserved. In the case of past works it will be desirable to inform the publishing trade of the works the reproduction of which, without permission, is forbidden.

As respects Acts of Parliament, the Government, in obedience to the wishes of Parliament expressed by select committees, are bound to publish an edition of them by authority as cheaply as practicable, and a nearly similar remark applies to official publications. For this purpose the controller of the Stationery Office shall be appointed her Majesty's printer, but care will be taken not to infringe on any existing privileges granted by the Crown.

Let instructions be given to the controller of the Stationery Office and to the solicitor, in pursuance of this minute.

SALVAGE AND LIFE POLICIES.

The case of *Falcke* v. *The Scottish Imperial Insurance Company*, 56 Law J. Rep. Chanc.

707, reported in the September number of the Law Journal Reports, will help to dispel some not unnatural notions about the efficiency of paying the premiums on a policy of insurance. There is a certain natural justice about giving a special privilege to a person who keeps up the premiums. If he does it at the request of the person entitled to the policy, of course, he can recover what he has paid in respect of premiums. If, in consideration of such request, the policy is given to him, no doubt the law would imply that he was to be entitled to hold it until he was recouped—in other words, that he has a lien upon it. Whether he ever has a lien on a policy which is not in his hands is a question which, if decided in the negative, would have disposed of the present case at the outset. Lord Justice Fry touches upon it, but does not decide it, although the bent of his opinion is undoubtedly against the lien. The cases in which the policy is at large and is in the hands of the person fully entitled, and can be delivered to the person paying the premiums, are simple cases, but further difficulties arise under more complicated conditions such as existed in the case in question. There could hardly be a case where the policy upon which such lien was claimed played so slight a part, because the policy appeared all the time when events of any import were occurring to have been comfortably reposing in the strong-box of the office of its own origin, which had a first charge on it for advances.

The policy in question was for a large sum on the life of a French duchess, with a premium of over £1,000 a year. Having run two years, it was bought by one Emanuel for £100, and he appears immediately to have mortgaged it to the Scottish Imperial Insurance Company, the defendants, whose policy it was, for £1,000, and subsequently for more. Emanuel had a friend named Benn Davis, a solicitor, who had as a client Mr. Falcke, whose executrix and widow the plaintiff was. Benn Davis was entrusted with £6,500 to invest for Mr. Falcke, and one of the securities he took for £6,000 of this was a second charge on the policy covenanting to pay the premiums. Then came the crash. Emanuel filed his petition for liquidation in 1882, and obtained his discharge, one of the terms being that the equities of redemption of securities remained in him. None of the incumbrancers would pay the premiums; but Emanuel paid two through Davis, as he alleged at the request of Davis acting on behalf of all the incumbrancers, and also under an arrangement with Benn Davis to buy the policy for £50. Two years afterwards, Falcke died, and Benn Davis absconded. The plaintiff's action was brought against the company, Emanuel, and others to enforce her charge. The policy was sold, and the salvage, after paying off the company's mortgage, amounted to something like two thousand pounds. This was claimed by Emanuel in virtue of his having paid the premiums. The way in which it was put was that Emanuel had an interest in the policy, or thought he had, under the inchoate agreement, and that if he paid the premiums, he was entitled to be recouped by the incumbrancers. There were many difficulties about this contention. In the first case, it was not shown that Benn Davis had any authority to make the request from Falcke; and if he had, Emanuel's claim would be a debt against Falcke's estate, and not a lien. It was not a case in which Emanuel could plead a set-off, as the produce of the policy was in no sense in his hands. The value of the case, however, depends on the fact that many things were assumed for the purposes of argument by the Lords Justices, and the law laid down. Lord Justice Cotton enters into a full explanation of the authorities on the question. The cases cited on behalf of Emanuel all turned out to be cases in which the inference of request was or might have been drawn, while in this case there was no suggestion of a request, except from Benn Davis. The only case which told the other way was a decision in *Shearman* v. *The British Empire Mutual Life Assurance Company*, 41 Law J. Rep. Chanc. 466, in which Lord Romilly had allowed premiums made by a mortgagor as in the nature of salvage money as against the mortgagee. Lord Justice Cotton is unable to agree with this case, if that was the ground of its decision. Lord Justice Bowen and Lord Justice Fry concurred in the view of Lord Justice Cotton and Lord Justice Bowen took occasion in the course of the argument to state what should be noted—namely, that in his opinion the note to *Lampleigh* v. *Brathwait* in Smith's 'Leading Cases' is too broadly expressed when it says that, if a man takes the benefit of payments made, he must be taken to have adopted them and ratified them. The breadth of this proposition is such that it would impose a liability on a man who was asked to dinner to pay his host's butcher's bill.

On principle there was not much to be said for the contestation set up. The analogy of salvage at sea was picturesque but hardly seriously made, although Lord Justice Bowen takes the trouble to dispose of it by showing that goods at sea are different from goods on land, and that the law of salvage does not arise from general principles, but from special circumstances of the sea, and from maritime custom. At the same time the case is of considerable value as disposing of an idea which certainly does run through certain cases and books, that a volunteer who incidentally confers some benefit on another or his property is entitled to be recouped, apart from the ordinary laws of contract. — *Law Journal* (London).