The Legal News.

Vol. II. APRIL 19, 1879. No. 16.

REMOVAL OF LIEUTENANT-GOVERNORS.

The removal of the Hon. Mr. Letellier from the office of Lieutenant-Governor of the Province of Quebec, being the first instance of the removal of a Lieutenant-Governor under the B. N. A. Act, is deserving of mention, in its aspect as a constitutional precedent. Mr. Letellier in 1878 dismissed his Ministry while enjoying the confidence and support of a considerable majority of the Legislative Assembly. A new Government was formed, under Mr. Joly, a general election took place, and the new Government was sustained during the ensuing session, in some cases by the casting vote of the Speaker only, and sometimes by a majority of one or more. The Speaker had been elected as a member of the opposition.

These events were brought under the notice of the House of Commons of Canada in 1878, but the majority of that House refused to censure the conduct of Mr. Letellier. The Senate, however, passed a vote of condemnation. In September, 1878, a new Parliament was elected, and in the first session the House of Commons passed a vote condemning the course which had been pursued by Mr. Letellier. Thereupon the Government advised the Governor-General (the Marquis of Lorne) to remove the Lieutenant-Governor from office. The Governor-General did not act upon this advice, and at the suggestion of the Premier, Sir John A. Macdonald, the matter was referred to the Colonial Office. The following despatch, from the Secretary of State for the Colonies to the Governor-General, shows the result of this reference :—

"Downing Street, July 3, 1879.

"My Lord,—Her Majesty's Government have given their attentive consideration to your request, for their instructions with reference to the recommendation made by your Ministers, that Mr. Letellier, the Lieutenant-Governor of Quebec, should be removed from his office. It will not have escaped your observation, in making this request, that the constitutional question to which it relates is one affecting the internal affairs of the Dominion, and belongs to a class of subjects with which the Government and Parliament of Canada are fully competent to deal. I notice with satisfaction that, owing to the ability and patience with which the new Constitution has been made by the Canadian people to fulfil the objects with which it was framed, it has very rarely been found necessary to resort to the Imperial authority for assistance in any of those complications which might have been expected to arise during the first years of the Dominion; and I need not point out to you that such reference should only be made in circumstances of a very exceptional nature. I readily admit, however, that the principles involved in the particular case now before me are of more than ordinary importance. The true effect and intent of those sections of the British North America Act, 1867, which apply to it have been much discussed, and as this is the first case which has occurred under those sections, there is no precedent for your guidance. For this reason, though regretting that any cause should have arisen for the reference now made to them, Her Majesty's Government approve the course which you have taken, on the responsibility and with the consent of your Ministers, and I will now proceed to convey to you the views which they have formed on the question submitted for their consideration. The several circumstances affecting the particular case of Mr. Letellier have been fully stated in Sir John A. Macdonald's memorandum of April 14, in Lieutenant-Governor Letellier's letter of April 18, and in communications which I have since received from Mr. Langevin, who, accompanied by Mr. Abbott, has come to this country for the purpose of supporting the advice given by the Government of which he is a member, and from Mr. Joly, who was similarly empowered to offer any explanations that might be required on the part of Mr. Letellier. If it had been the duty of Her Majesty's Government to decide whether Mr. Letellier ought or ought not to be removed, the reasons in favor of and against his removal would, I am confident, have been very ably and thoroughly put before them by Messrs. Langevin and Abbott, and by Mr. Joly. I have not, how-

ever, had occasion to call for any arguments from either side on the merits of Mr. Letellier's case. The law does not empower Her Majesty's Government to decide it, and they do not therefore propose to express any opinion with regard to it. You are aware that the powers given by the British North America Act, 1867, with respect to the removal of a Lieutenant-Governor from office, are vested, not in Her Majesty's Government, but in the Governor-General; and I understand that it is merely in view of the important precedent which you consider may be established by your action in this instance, and the doubts which you entertain as to the meaning of the statute, that you have asked for an authoritative expression of the opinion of Her Majesty's Government on the abstract question of the responsibilities and functions of the Governor-General, in relation to the Lieutenant-Governor of a Province under the British North America Act, 1867. The main principles determining the position of the Lieutenant-Governor of a Province, in the matter now under consideration are plain. There can be no doubt that he has an unquestionable constitutional right to dismiss his Provincial Ministers, if from any cause he feels it incumbent upon him to do so. In the exercise of this right, as of any other of his functions, he should, of course, maintain the impartiality towards rival political parties which is essential to the proper performance of the duties of his office; and for any action he may take, he is, under the 59th section of the Act, directly responsible to the Governor-General. This brings me at once to the point with which alone I have now to deal—namely, whether in deciding, whether the conduct of a Lieutenant-Governor merits removal from office, it would be right and sufficient for the Governor-General, as in any ordinary matter of administration, simply to follow the advice of his Ministers, or whether he is placed by the special provisions of the statute under an obligation to act upon his own individual judgment. With reference to this question it has been noticed that while under section 58 of the Act, the appointment of the Lieutenant-Governor is to be made 'by the Governor-General in Council, by instrument under the Great Seal of Canada,' section 59 provides that 'a Lieutenant-Governor shall hold office during the pleasure of the Governor-General:' and much stress has been laid upon the supposed intention of the Legislature, in thus varying the language of these sections. But it must be remembered that other powers vested in a similar way by the statute in the Governor-General were clearly intended to be, and in practice are, exercised by and with the advice of his Ministers; and though the position of a Governor-General would entitle his views on such a subject as that now under consideration to peculiar weight, yet Her Majesty's Government do not find anything in the circumstances which would justify him in departing in this instance from the general rule, and declining to follow the decided and sustained opinion of his Ministers, who are responsible for the peace and good government of the whole Dominion to the Parliament to which, according to the 59th section of the statute, the cause assigned for the removal of a Lieutenant-Governor must be communicated. Her Majesty's Government therefore can only desire you to request your Ministers again to consider the action to be taken in the case of Mr. Letellier. It will be proper that you should, in the first instance, invite them to inform you whether the views, as expressed in Sir J. A. Macdonald's memorandum, are in any way modified after perusal of this despatch, and after examination of the circumstances now existing, which since the date of that memorandum may have so materially changed as to make it in their opinion no longer necessary for the advantage, good government, or contentment of the Province that so serious a step should be taken as the removal of a Lieutenant-Governor from office. It will, I am confident, be clearly borne in mind that it was the spirit and intention of the British North America Act, 1867, that the tenure of the high office of Lieutenant-Governor should, as a rule, endure for the term of years specially mentioned, and that not only should the power of removal never be exercised, except for grave cause, but that the fact that the political opinion of a Lieutenant-Governor had not been, during his former career, in accordance with those held by any Dominion Ministry, who might happen to succeed to power during his term of office, would afford no reason for its exercise. The political antecedents and present position of nearly all the

Lieutenant-Governors now holding office, prove that the correctness of this view has been hitherto recognized in practice; and I cannot doubt that your advisers, from the opinions they have expressed, would be equally ready with the late Government to appreciate the objections to any action which might tend to weaken its influence in the future. I have directed your attention particularly to this point, because it appears to me to be important that, in considering a case which may be referred to hereafter as a precedent, the true constitutional position of a Lieutenant-Governor should be defined. The whole subject may, I am satisfied, now be once more reviewed with advantage, and I cannot but think that the interval which has elapsed (and which has from various causes been unavoidable) may have been useful in affording means for a thorough comprehension of a very complicated question, and in allowing time for the strong feelings on both sides, which, I regret to observe, have been often too bitterly expressed, to subside.

"I have, &c.,

"M. E. HICKS-BEACH.

"The Right Hon. the Marquis of Lorne."

On receipt of this despatch, the Governor-General acquiesced in the suggestion of his Ministers, and Mr. Letellier was removed from office. The following was the notification addressed to him:—

QUEBEC, 25th July, 1879.

To the Hon. Luc Letellier de St. Just,

Spencer Wood, Quebec:

SIR,—I am commanded by His Excellency the Governor-General to inform you that, by order of His Excellency-in-Council, passed this date, you are removed from the office of Lieutenant-Governor of the Province of Quebec, and that the cause assigned for such removal, in conformity with the provisions of the 15th section of the British North America Act of 1867, is that after the vote of the House of Commons of the last session, and that of the Senate during the preceding session relative to your conduct as Lieutenant-Governor, your usefulness as such has ceased.

I have the honor to be,

Your most humble and obedient servant,

EDOUARD J. LANGEVIN,

Under-Secretary of State.

The Legislative Assembly of Quebec, which was in session at the time, on being informed of the removal, adjourned, on motion of the Premier.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 14, 1878.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER and CROSS, JJ.

M., O. & O. RAILWAY Co., appellants, and BOURGOIN, respondent.

Award of Arbitrators — Vagueness of Award—A monthly payment cannot be awarded.

The appellants, in the construction of their railway, found it necessary to take possession of a portion of a quarry which was under lease to the respondent. Proceedings in expropriation were adopted under the Railway Act, 1868, and the rights of both proprietor and lessee were valued by commissioners. The award in favor of the lessee was alone in question. He was awarded the sum of $35,013, and, in addition, the sum of $100 a month until the Company should have opened the water course by which the adjacent quarries were drained, and constructed a culvert to protect the water course.

This award was set aside in appeal (Tessier, J., *diss.*), the reason being that the amount of the award was not fixed and determined, but consisted in part of a monthly rent, or the doing of certain work. The judgment of the Court below, which had sustained the award, was reversed.

DeBellefeuille & Turgeon, for appellants.

Doutre & Doutre, for respondent.

COURT OF QUEEN'S BENCH.

[In Chambers.]

MONTREAL, Feb. 27, 1879.

BORROWMAN et al., appellants, and ANGUS et al., respondents.

Appeal in Insolvency cases—No appeal lies to the Supreme Court from final judgment of the Court of Queen's Bench since the passing of 40 *Vict.* (Can.) *ch.* 27.

The appellants moved to be allowed to appeal to the Supreme Court, from a judgment of the Court of Queen's Bench, confirming the judgment of the Superior Court (*ante*, p. 92.)

The CHIEF JUSTICE, before whom the application was made in Chambers, refused leave to

appeal, on the ground that under 40 Vict. ch. 27, s. 28, the judgment of the Court of Queen's Bench in insolvency cases is final.

Kerr & Carter, for appellants.
Bethune & Bethune, for respondents.

SUPERIOR COURT.

MONTREAL, Feb. 8, 1879.

UNION BANK OF L. C. v. ONTARIO BANK.

Bill of Exchange—Drawer is bound to notify drawee of drafts—One branch of a bank paying a draft drawn on it by another branch is bound by such payment as regards an innocent third party, though the amount of the draft was increased.

One Deton, on the 19th of September, 1877, obtained from the Union Bank at Quebec a bill of exchange for $25, drawn upon the agency of the bank at Montreal. The draft was payable on demand, with or without further advice, to Deton's order. The amount was altered from $25 to $5,000, and it was then offered by Deton on deposit to the Ontario Bank at Montreal. The latter bank received it on deposit, stipulating that Deton was not to draw against the amount until the draft had been accepted by the Union Bank. It was sent over to the branch of the Union Bank, at Montreal, which had received no advice of the draft, and the officers supposing that it was all right, paid the amount to the Ontario Bank. The latter then cashed a check of Deton for $3,500. Subsequently, the forgery was discovered, and Deton escaped from the country. The question was, which bank should lose the $3,500, (the Ontario Bank offering to refund the $1,500 which remained on deposit with them.)

JETTÉ, J., held that the Ontario Bank had taken all necessary precautions for its protection, and the fraud was successful only because the Union Bank office at Quebec had failed to notify its agency at Montreal of the draft which had been drawn on it. Under these circumstances the claim of the Union Bank to be repaid the amount by which the draft had been increased, must be rejected.

G. B. Cramp (with him *T. W. Ritchie, Q.C.*,) for plaintiffs.

Abbott, Tait, Wotherspoon & Abbott, for defendants.

MONTREAL, Feb. 22, 1879.

DESMARTEAU v. PEPIN, and PEPIN, opposant.

Venditioni Exponas—Opposition—C. P. 664.

The opposant had filed an opposition *afin de distraire* to an execution. This opposition having been withdrawn (on plaintiff's motion that it be rejected) on account of irregularities, the plaintiff sued out a *venditioni exponas*. The opposant then filed another opposition *afin de distraire*, for which a judge's order had been obtained.

The plaintiff, under C. P. 664, as amended by 34 Vict., c. 4, s. 8, moved to reject this opposition, on the ground that it was not for reasons subsequent to the proceedings by which the sale had been stopped in the first instance.

TORRANCE, J., granted the motion, referring to the report of *Abbott* v. *Montreal & Bytown Railway Co.*, 1 L. C. J. 1, and 6 L. C. R. 128.

De Montigny, for plaintiff.
Roy, for opposant.

MONTREAL, Feb. 28, 1879.

In re FAUTEUX, insolvent, BEAUSOLEIL et al., assignees, and FISHER et al., petitioners.

Insolvent—Unpaid vendors cannot recover possession of goods which have been delivered to the insolvent before the issue of the writ of attachment.

The petitioners, unpaid vendors, asked that certain goods which had been delivered by them to the insolvent the day before the writ of attachment issued, be given back to them.

MACKAY, J., said that the Court had been asked to keep back the judgment in this case until the report of the case of *Henderson & Tremblay*, 21st Jurist, had been examined. When he came to look at that case, he found that it arose in 1874, before the present Insolvent Act was passed, and it was decided under the Coutume de Paris. Reference had also been made to the case of *Hatchett & Gooderham*, reported in the same volume of the Jurist. But that case was not like this. There Hatchette, the bankrupt, never had possession of the goods. They were sent to him, but at the time of his insolvency were in bond, and were never properly delivered to him. Here the goods were delivered to the insolvent the day before the attachment issued. Subsequently, the insolvent, desiring to do justice to the vendors, told them that the goods had not

been unpacked, and advised them to take steps to recover them. What were the rights of the unpaid vendor now in Canada? Section 82 of the Insolvent Act had settled the matter: "In the preparation of the dividend sheet due regard shall be had to the rank and privilege of every creditor, which rank and privilege, upon whatever they may legally be founded, shall not be disturbed by the provisions of this act, except in the Province of Quebec, where the privilege of the unpaid vendor shall cease after the delivery of the goods sold." Here was a special exception which provided that in the Province of Quebec there shall be disturbance of the privilege: so that the claim of the petitioner was weak. Since the Act of 1875 there had been no case before the courts in which such a pretension as his had been maintained. By the judgment, therefore, the petition would be rejected with costs, on the ground that the goods in this case had been delivered, and the vendee not having notified the vendors that they were not accepted, the property in the goods passed to the assignee, and the vendors had no right to get them back, seeing that Sect. 82 of the Insolvent Act of 1875 is positive, that in this Province the privilege of the unpaid vendor ceases from the delivery of the goods.

Macmaster, Hall & Greenshields, for petitioners.
Geoffrion & Co., for assignee.

SHERIDAN v. HENNESSEY.

Affidavit for capias—Place and time of incurring indebtedness.

The defendant petitioned to quash the *capias* on the following, among other grounds:—1. The plaintiff's affidavit did not state that defendant was *personally* indebted to him. 2. The affidavit did not state where or when the cause of action arose. 3. The conclusions of the declaration did not ask that defendant be condemned in any sum whatever.

JETTÉ, J., held that the omission of the word personally was not fatal, where it appeared otherwise by the affidavit, as in this case, that the debt of the defendant was a personal one; —7 L.C.R. 425.

As to the second point, it was not necessary to allege where or when the debt was contracted;—*Hurtubise & Bourret*, 2 L.N. 54; 22 L.C.J. 130. Lastly, as to the differences between the affidavit and the declaration, it was true that the declaration did not conclude for any sum whatever against defendant, but this was an objection which could not be urged on a petition to quash;—C. P. 819. The petition was, therefore, rejected.

Keller & McCorkill, for plaintiff.
Doherty & Doherty, for defendant.

MARSAN dit LAPIERRE v. TESSIER; FARMER, T. S., and DUPUY, opposant.

Service of Saisie-arrêt, unless judgment has been rendered, maintaining it, before insolvency of defendant, does not prevent monies from vesting in assignee.

The opposant Dupuy, who had been duly appointed assignee to the defendant's estate, made a *tierce opposition*, asking that the judgment maintaining the *saisie-arrêt* be set aside. The *saisie-arrêt* was served on the defendant and the *tiers-saisi* before the writ of attachment issued, but the judgment validating the *saisie-arrêt* was not rendered until some time afterwards.

MACKAY, J. The question was whether the service of a *saisie-arrêt*, attaching monies due to the insolvent, gave the plaintiff a title superior to that of the assignee. The Court was of opinion that it did not. The return of the writ of attachment, before any judgment was rendered on the *saisie-arrêt*, had the effect of vesting in the assignee the debt due by the *tiers-saisi*. The *tierce opposition* of the assignee must, therefore, be maintained, and the *tiers-saisi* must be ordered to pay over to the assignee the amount of the judgment which was obtained against him.

Doutre & Co., for opposant.
Duhamel & Co., for plaintiff.

MONTREAL, March 31, 1879.

VENTINI v. WARD et al.

Capias by one alien against another, for debt incurred abroad.

The parties in this cause, plaintiff and defendants, were domiciled in the United States, and were temporarily in Montreal on a professional tour as travelling actors. The *capias* was issued by an employee of the *troupe* under a contract

entered into in the United States, and the affidavit alleged that defendants were immediately about to depart with intent to defraud.

On motion to quash,

RAINVILLE, J., (in chambers) set aside the *capias*, holding that an alien who is here temporarily cannot issue a *capias* against another alien who is going back to his own country, on an affidavit alleging departure with intent to defraud, &c.

Hutchinson & Walker, for plaintiff.
Davidson, Monk & Cross, for defendants.

COURT OF REVIEW.

MONTREAL, March 31, 1879.

LORANGER, JOHNSON, JETTÉ, JJ.

[From S. C., Montreal.

In re GÉNÉREUX, insolvent, GORDON et al., claimants, and LA SOCIÉTÉ DE CONSTRUCTION MÉTROPOLITAINE, contesting.

Hypothecary creditor is not entitled to interest after date of adjudication of property.

The question in this case was whether the claimants were entitled to be collocated for interest on their hypothecary claim after the date of adjudication. In giving the judgment which was now brought under Review, Torrance, J., remarked that the general rule, C.P. 734, is that interest is collocated only up to the day on which the immoveable is adjudged. But the claimants answered that this rule was not applicable here, because the party contesting the collocation of the claimant for interest was the *adjudicataire*, who did not pay the purchase money at the time, but gave a bond that it would be paid on the day fixed in the dividend sheet, with interest from the date of the adjudication. As there appeared to be no other claimant, if the claimants did not get interest after the date of the adjudication it would go to the contestant, who would thus have had both the enjoyment of the land and interest on the price of it. Under these circumstances the collocation in favor of Gordon was maintained.

In Review, Art. 734 C.P. was held to preclude the claim of the hypothecary creditor to be collocated for interest after the date of the adjudication. The judgment was in the following terms :—

" La cour, etc....

" Considérant qu'en vertu de l'article 734, du Code de Procédure Civile et la pratique suivie avant comme depuis la promulgation de ce Code, dont la clause 77 de l'acte de faillite de 1875 a appliqué la disposition aux distributions en faillite, nul créancier hypothécaire ne doit être colloqué pour des intérêts subséquents à l'adjudication sur le capital de sa créance ;

" Considérant que sur l'expropriation immobilière le créancier hypothécaire qui se porte adjudicataire et qui, au lieu de donner son prix, donne le cautionnement qui lui est loisible en pareil cas, ne doit pas *de plano* et de plein droit d'intérêt sur son prix d'adjudication, et que dans le cas où sur son cautionnement il aurait promis payer semblables intérêts, supposant que cette promesse fut conclusive contre lui, ce qui est douteux, tels intérêts ne devraient pas être imputés sur les intérêts des capitaux des créanciers colloqués devenus dus ou prétendus être dus subséquemment à l'adjudication, mais que ces intérêts devraient être attribués aux créanciers non colloqués pour la totalité de leurs créances ;

" Considérant que dans le jugement contre lequel les contestants se sont inscrits en révision, savoir le jugement du trente décembre dernier (1878) qui a accordé aux dits Dame Grace Gordon et consort la somme de $66.15 pour intérêts devenus dus sur leur créance depuis la date de l'adjudication jusqu'à la date du projet de distribution, en rejetant la contestation de la dite Société Métropolitaine de Construction et confirmant la feuille de dividende du syndic, il y a erreur, infirme et annulle le dit jugement, et procédant à rendre celui qu'aurait dû rendre la dite Cour en cette instance, retranche de l'item de la collocation accordée aux dits Dame Gordon et consort, la dite somme de $66.15, qui sera par le syndic distribuée suivant les droits des créanciers et le principe ci-haut énoncé contre les dits Gordon et consort, avec dépens dans la dite Cour Supérieure contre les dits Dame Grace Gordon et consort en faveur de la dite contestante, et avec les dépens de cette Cour de Révision contre les dits Dame Grace Gordon et consort en faveur de la dite contestante."

Bethune & Bethune, for claimants.
F. O. Rinfret, for contestant.

LORANGER, TORRANCE, JETTE, JJ.

BETHUNE et al. v. CHARLEBOIS.

[From S. C., Montreal.

Prescription—Arrears of rentes constituées—Proof of interruption of prescription.

The judgment under review was rendered by the Superior Court, Montreal, Mackay, J., noted at p. 13 of this volume.

The judgment had simply maintained the defendant's tender of five years' arrears of *rentes*, and had held all previous to the five years to be prescribed.

In Review, this judgment was reformed. The prescription applicable to arrears of *cens et rentes* (now *rentes constituées*) before the Code was held to be the thirty years prescription, and since the Code that of five years. The plaintiffs were therefore allowed all arrears before the Code, besides the five years' arrears tendered. On the question of interruption, the Court of Review confirmed the judgment of the Court below, that interruption of prescription as respects arrears amounting in the aggregate to more than $50, cannot be proved by verbal testimony.

M. B. Bethune, for plaintiffs.

Geoffrion & Co., for defendant.

RECENT ENGLISH DECISIONS.

Shipping and Admiralty.—1. A ship having been illegally arrested and brought back to port while on a voyage, on a warrant, *held*, that a new warrant to detain her, sued out by parties acting in the interest of the previous plaintiffs, was illegal, and must be vacated.—*Borjesson* v. *Carlberg*, 3 App. Cas. 1322.

2. A foreign ship, while on her voyage from a Scotch port, but still within the land jurisdiction, was arrested on an action, and brought back and dismantled, without the consent of the captain. *Held*, invalid.—*Borjerson* v. *Carlberg*, 3 App. Cas. 1316.

Slander.—An editor had been convicted of stealing feathers and had been sentenced to twelve months' penal labor as a felon, which sentence he had duly served out. Afterwards a brother editor called him a "felon editor," and justified by asserting the above facts. Replication, that as he, the convict, had served out his sentence, he was no longer "felon." On demurrer, *held*, a good reply.—*Leyman* v. *Latimer*, 3 Ex. D. 352; s. c. 3 Ex. D. 15.

Solicitor.—1. W. held a mortgage for £4,600 on land, and made a further advance of £400 on condition that an adjoining piece of subsequently acquired land should be included in the mortgage. A lien on this piece for £46 was overlooked by W.'s solicitor, and W. had to pay this sum to clear the title upon a sale of the property. *Held*, negligence in the solicitor, and the measure of damages was £46.—*Whiteman* v. *Hawkins*, 4 C. P. D. 13.

2. Where a suit was compromised, and each party was to pay his own costs, the plaintiff complained that, by the negligence of his solicitor, his costs had been unnecessarily increased. *Held*, that such a question could not be considered on a motion for taxation of costs.—*The Papa de Rossie*, 3 P. D. 160.

3. The undertaking of a solicitor to conduct the matters of a creditor in bankruptcy proceedings is not necessarily an entire contract on which, according to the old rule, he may receive nothing except actual disbursements, until the business is finally concluded.—*In re Hall*, 9 Ch. D. 538.

Tax.—A stamp duty on insurance policies, with a provision that the policies may be declared void if the stamp is not affixed, is not a direct tax. Calling it a "licence" does not change its character.—*Quebec* v. *Queen Ins. Co.*, 3 App. Cas. 1090.

Trademark.—W. was an English cotton manufacturer, G., a merchant in Rangoon, and R., a commission merchant at Manchester. They made an agreement by which W.'s goods should be shipped through R. to G., and introduced into India. W. was to pay G. a commission, and G., in turn, allowed R. one. R. superintended the bleaching and finishing of the goods, but at W.'s expense. They agreed on a mark to distinguish the goods. This was made up of R.'s arms and name, a symbol of an elephant before used by G., and some lettering purporting to have come from W. The arrangement was quite new. After seven years' business under these arrangements, W. ceased sending goods through R., and sent them through F., who retained the same device, except that the name of F. stood in place of that of R. R. continued to export, using the old device. On cross-actions for injunction, *held*, that nobody was entitled to the exclusive use of the device

first used under the agreement between R., G., and W.—*Robinson* v. *Finlay*. *Finlay* v. *Robinson*, 9 Ch. D. 487.

Trespass.—Appellants were fox-hunting, and, attempting to pursue the fox upon the land of the respondent, he resisted, and they committed an assault upon him, for which they were fined. *Held*, correct. A man has no right to go on the land of another *in invitum* for such a purpose. *Gundry* v. *Feltham* (1 T. R. 334), and remark of BROOK, J. (Year Book, 12 Hen. VIII. p. 10), discussed.—*Paul* v. *Summerhayes*, 4 Q. B. D. 9.

Vendor and Purchaser.—The plaintiff, J., employed L. to make one hundred wagons at £18 each, according to a sample. Plaintiff had previously contracted with W. to furnish him the wagons at £21 10*s.* each. L., in turn, employed the W. Co. to make the wagons at £17 each. Subsequently, the W. Co. arranged with the plaintiff to charge him direct for the wagons. L. assented to this. Some wagons were afterwards delivered by the W. Co. to the defendant railway company to the order of the plaintiff. The plaintiff wrote the W. Co. that the customers complained of the wagons, as not up to sample. Later, while thirty-eight wagons were lying at the station to plaintiff's order, he wrote the W. Co., enclosing a letter from him to L., in which he said he would dispose of the wagons at the best price obtainable, as they were unsatisfactory to the buyers, and hold L. responsible. L. had previously written the W. Co. that, as the wagons were unsatisfactory and not according to sample, he would have nothing more to do with them, and hold the W. Co. answerable. The jury found that L. rejected the wagons. The wagons were held by the railway company to the order of the plaintiff, but, in spite of express notice to deliver them to no one else, the company delivered them to the W. Co. In an action for conversion against the W. Co. and the railway company, *held*, that the property in the goods and the right to possession being in the plaintiff, he could recover against both defendants ; and the measure of damages was the full value of the goods, according to the general rule in trover against strangers.—*Johnson* v. *The Lancashire & Yorkshire Railway Co. and The Wigan Wagon Co. Limited*, 3 C. P. D. 499.

RECENT UNITED STATES DECISIONS.

Deposit.—The cashier of a national bank received bonds on special deposit; afterwards they were stolen, through the gross negligence of the bank. *Held*, that the bank was liable to the depositor for the loss.—*First National Bank of Carlisle* v. *Graham*, 85 Penn. St. 91.

Insurance, Life.—1. Plaintiff procured defendants to insure for his benefit the life of his nephew. In an action to recover the insurance, *held*, first, that plaintiff had not, merely by virtue of his relationship, an insurable interest in his nephew's life; secondly, that the burden was on him to show a pecuniary interest.—*Singleton* v. *St. Louis Mut. Ins. Co.*, 66 Mo., 63.

2. A policy was conditioned to be void if the assured died of a disease induced or aggravated by intemperance. On the issue whether the policy was forfeited by reason of a breach of this condition, *held*, that the burden of proof was on the insurers.—*Van Valkenburg* v. *American Popular Life Ins. Co.*, 70 N. Y., 605.

Insurance, Marine.—A policy of insurance on a vessel by its terms was to be in force for a year, "unless sooner terminated or made void by conditions hereinafter expressed; with permission to navigate" certain rivers named. There was no express condition defeating the insurance if the vessel went elsewhere. She went on another river, returned to one of the permitted rivers, and was afterwards destroyed by fire. *Held*, that the insurers were liable.—*Wilkins* v. *Tobacco Ins. Co.*, 30 Ohio St., 318.

Jury.—Indictment for murder, in two counts. The jury brought in a general verdict of guilty, and were told that they were discharged; but, before they had all left their seats, were called back by the Court, and told to amend their verdict by finding on each count separately, which they did. *Held*, regular.—*Levells* v. *The State*, 32 Ark., 585.

Landlord and tenant.—A tenement house had a fire escape attached to it, as required by city ordinance. A tenant's child, without license o the landlord, went upon the fire-escape, and was injured by reason of its unsafe condition. *Held*, that the landlord was bound, as between himself and the tenant, to keep the fire escape in proper repair for use as such, but not for use as a balcony; and that he was not liable for the child's injury.—*McAlpine* v. *Powell*, 70 N.Y., 126.