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LIABILITY OF INNOCENT PARTY FOR FRAUD OF ANOTHER.

ENGLISH HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, JUNE 10, 1879.

BABCOCK v. LAWSON.

Where of two innocent parties one must suffer from the fraud of a third, the loss should fall on the one who enabled the third party to commit the fraud.

Plaintiffs had lent to D. D. & Sons their acceptances for £11,500, taking a memorandum in this form: "As security for the due fulfilment on our part of this undertaking, we have warehoused in your name sundry lots of flour, and in consideration of your delivering to us, or our order, said flour as sold, we further undertake to specifically pay you proceeds of all sales thereof immediately on their receipt. D. D. & Sons." This undertaking was renewed upon the acceptances falling due. Subsequently the defendants, in entire ignorance of the above facts, and believing the flour to be the property of D. D. & Sons, agreed to advance a sum of £2,500 on the security of the flour, but on the terms that they were to have absolute possession of the flour and to have power to sell it.

D. D. & Sons then fraudulently misrepresented to plaintiffs that they had found a purchaser for the flour and would hand over to them the amount received as the price; whereupon the plaintiffs were induced to part with the possession of the flour, and for that purpose gave a delivery order to D. D. & Sons. The defendants having obtained possession of the flour and sold it, this action was brought to recover its value. *Held*, that as the flour had been given up by the plaintiffs to D. D. & Sons conformably to the contract to sell as their own, the special property vested in the plaintiffs as pledgees, if any, was intentionally surrendered, and though such surrender might have been revoked as having been obtained by fraud so long as the goods remained in the hands of the pledgors, when once the property in them had been transferred for good consideration to a *bona fide* transferee, the latter acquired an indefeasible title. *Held*, also, that the plaintiffs, having put it in the power of D. D. & Sons to commit the fraud, must be the sufferers rather than the defendants, who were merely innocent transferees for value.

This was a special case, stated in an action brought by the plaintiffs against the defendants to recover the value of certain flour.

The facts are fully set out in the judgment of the court.

T. H. James (*Herschell, Q. C.*, with him), for plaintiffs, cited *Halliday* v. *Holgate*, 18 L. T. Rep. (N. S.) 656; L. R., 3 Ex. 299; *Cundy* v. *Lindsay*, 38 L. T. Rep. (N. S.) 573; L. R. 3 App. Cas. 459; *Kingsford* v. *Merry*, 28 L. T. Rep. (O. S.) 236: 1 H. & N. 503; *Roberts* v. *Wyatt*, 2 Taunt. 268; *Hollins* v. *Fowler*, 33 L. T. Rep. (N. S.) 73; L. R., 7 H. of L. Cas. 757.

Cohen, Q. C. (*Warr* with him), for defendants, cited *Knights* v. *Wiffen*, 23 L. T. Rep. (N. S.) 610; L. R., 5 Q. B. 660; *Vickers* v. *Hertz*, L. R., 2 Sc. App. 115; *White* v. *Garden*, 17 L. T. Rep. (O. S.) 64; 10 C. B. 919; *Attenborough* v. *St. Katharine's Dock Co.*, 38 L. T. Rep. (N. S.) 404; L. R., 3 C. P. Div. 450; *Pease* v. *Gloahec*, 15 L. T. Rep. (N. S.) 6; L. R., 1 P. C. 219; *Moyce* v. *Newington*, 39 L. T. Rep. (N. S.) 535; L. R., 4 Q. B. Div. 35; *Root* v. *French*, 13 Wend. 570.

COCKBURN, C. J. This was an action for the wrongful conversion of a quantity of flour alleged to be the property of the plaintiffs. The facts were shortly these: The plaintiffs, who are merchants at Liverpool, had lent to the firm of Denis Daly and Sons, also merchants at Liverpool, their acceptances for the sum of £11,500 (for which Denis Daly & Sons undertook to provide at or before maturity), on the security of certain flour, a memorandum as to such security being given by Denis Daly & Sons in these terms: "As security for the due fulfillment on our part of this undertaking, we have warehoused in your name sundry lots of flour, and in consideration of your delivering to us or our order said flour as sold, we further undertake to specifically pay you proceeds of all sales thereof immediately on their receipt." The flour was accordingly warehoused in the name of the plaintiffs in a room let to them for the purpose, and of which they kept the key and paid the rent. Three of the acceptances thus given by the plaintiffs, amounting in the whole to £6,500, having been in due time provided for by Denis Daly & Sons, it was agreed between them and the plaintiffs that the two remaining bills, for £2,500 each, should be renewed, which was accordingly done, a memorandum similar to the former one being again given by Denis Daly & Sons, whereby they undertook to provide for the acceptances at or before maturity, with this addition: "As security for the due

fulfillment on our part of this undertaking, you hold two lots of Baltic whites flour, warehoused in December and January last." The Baltic whites flour thus mentioned consisted of 1,500 sacks, being the flour originally pledged to the plaintiffs. In the interval between the giving of these last-mentioned acceptances and the time of their becoming due, one of the firm of Denis Daly & Sons, on the 13th of May, 1878, applied to the defendants to advance them a sum of £2,500 on the security of 1,500 sacks of flour deposited, as has been stated, with the plaintiffs, but without in any way communicating to them the fact of the flour having been so deposited. The defendants, in entire ignorance of this fact, and believing the flour to be the property of Denis Daly & Sons, agreed to advance the £2,500 on the security of the flour, but on the terms that they were to have absolute possession of the flour, and to warehouse it in their own name, and to have power to sell it. For the fraudulent purpose of obtaining possession of the flour, so as to be able to give possession of it to the defendants, Arthur Daly, one of the firm of Denis Daly & Sons, brought to the plaintiffs, but unknown to the defendants, a memorandum in these terms: "14th May, 1878. We have sold Messrs. R. & J. Lawson 1,500 sacks Baltic whites, payment as follows: "£1,000 upon delivery, £1,000 in fourteen days, £1,000 in a month, which amounts we will hand you as received. D. Daly & Sons." The plaintiffs, by the fraudulent misrepresentation that Denis Daly & Sons had found a purchaser for the flour, and would hand over to them the amount to be received as the price, were induced to part with the possession of the flour, and for that purpose gave, as requested, on the 14th of May, a delivery order to Denis Daly & Sons; and subsequently addressed a written direction to the landlord of the warehouse, which they delivered to Arthur Daly, to transfer the room in which the flour was deposited to Lawson & Co., which was accordingly done. The defendants, on the same day that the delivery order was given by the plaintiffs to Denis Daly & Sons, namely, the 14th May, advanced to Denis Daly & Sons the sum of £1,725, and on the next day the further sum of £775 in cash. It is stated in the case that the fraudulent memorandum of the sale to the defendants, by which the plaintiffs were induced to give the delivery order for the flour, was brought to them by Arthur Daly after banking hours on the 14th, from which it may be inferred that the £1,725 advanced by the defendants to Denis Daly & Sons on that day was advanced before the possession of the flour had been given up to the latter by the plaintiffs. Possession of the flour having been transferred to defendants, they, between the 18th May and the 1st June, by virtue of the right to sell vested in them by the agreement with Denis Daly & Sons, sold the flour in the Liverpool market for sums amounting in the whole to £2,647 10*s.* 3*d.*, and the flour was delivered to the respective purchasers. Of the £2,500 thus advanced by the defendants to Denis Daly & Sons, £500 was paid by the latter to the plaintiffs, as part of the price received on the sale of the flour. But the plaintiffs have received no further payment, and Denis Daly & Sons have become bankrupts. We have in this case to discharge the unpleasant duty of deciding on which of two innocent parties the loss, occasioned to one or other of them by the fraud of a third, shall fall. In discharging such a duty, a court, to use the words of Lord Cairns in *Cundy* v. *Lindsay*, (1 L.N. 351) "can do no more than apply rigorously the settled and well-known rules of the law." Unfortunately, however, some difficulty presents itself in the present case in applying the law. For the case is, so far as we are aware, *sui generis*, the contract out of which the claim of the plaintiffs arises being of an altogether exceptional character. The contract is not one in which goods are deposited upon the ordinary terms incidental to a bailment of pledge, namely, that the thing pledged shall remain in the possession of the pledgee until the engagement of the pledgor, which it was given to insure, has been fulfilled. Here the pledgors, when they find a purchaser, are to have possession of the thing pledged, in order to sell it, not in the name, or even on behalf of the pledgees, but as their own, subject only to the condition of handing over the proceeds in liquidation of the debt. It may be doubted whether under such a contract any special property, however limited, vested in the pledgees, or whether their right was not limited to the possession and custody of the goods, so as to secure to them the knowledge of any sale which the owners might be able to make, and so to afford them the oppor-

tunity of insisting on the price being handed over to them as soon as paid. Assuming, however, that under the contract with Denis Daly & Sons the plaintiffs acquired as pledgees, a special property in the flour deposited in their name, it was subject to the right of the pledgors to have the flour given up to them on their finding a purchaser for the purpose of the sale by them as owners, without any intervention on the part of the pledgees. If, having obtained the goods for the purpose of selling them, and having sold them, the pledgors had kept the price instead of handing it over to the pledgees, the latter could not have disputed the title of the buyer, and would have had no remedy except by action against the pledgors for breach of contract. In compliance with the agreement, the flour was delivered by the plaintiffs to Denis Daly & Sons, the pledgors, with the full intention that they should sell it as their own and make a good title to it to their vendees. It is true that the possession of the goods was obtained by the fraud of the pledgors, but this appears to us to make no difference in the result. The flour having been given up by the plaintiffs to Denis Daly & Sons, conformably to the contract, to sell as their own, the special property vested in the plaintiffs as pledgees, whatever it may have been, was intentionally surrendered; and the possession having been parted with, the contract of pledge was, at all events for the time being, at an end. The abandonment of the property in, and the surrender of, the thing pledged might, as between the pledgees and pledgors, have been revoked as having been obtained by fraud, so long as the goods remained in the hands of the pledgors. But when, prior to any such revocation, the property in the goods had been transferred by the owners for good consideration to a *bona fide* transferee, the latter acquired, as it appears to us, an indefeasible title. The analogy to a case of sale where the vendor is induced to part with his property by fraud appears to us complete; and the principle laid down by the Court of Common Pleas in *White* v. *Garden*, *ubi sup.*, and by the House of Lords in *Cundy* v. *Lindsay*, *ubi sup.*, and acted upon by this court in *Moyce* v. *Newington*, *ubi sup.*, is, we think, applicable to the case before us; and we are therefore of opinion that the defendants acquired a good title to the flour by their contract with Denis Daly & Sons. Our view of the case being founded on the assumption that the property in the goods became, by the act of the pledgees, revested in the pledgors, it makes no difference that the goods, having been parted with by the plaintiffs with a view to their being sold, were, instead of being sold, pledged. The property having, by the act of the pledgees, become revested in the pledgors, the latter were as competent to dispose of the goods by way of pledge as by that of sale. Nor in this view of the case is it in any way material that the larger portion of the money advanced by the defendants to Denis Daly & Sons was paid (if we are to take the fact to have been so) before the possession of the flour was given up by the plaintiffs. The property in the flour was made over to the defendants, and the possession of it given up to them, by Denis Daly & Sons, for good consideration, when the full property in it was, as we think, in the latter, and the transfer took place by virtue of a contract whereby the money was to be advanced on the pledge of the goods. That the money was paid down before the goods were delivered, provided the property in the goods was in Denis Daly & Sons when, in fulfillment of the contract, they transferred the property in, and gave possession of, the flour, can make no difference. But there is a further ground on which we are of opinion that the defendants are entitled to our judgment. We are prepared to hold, as we intimated in *Moyce* v. *Newington*, *ubi sup.*, that where one of two innocent parties must suffer from the fraud of a third, the loss should fall on the one who enabled the third party to commit the fraud. It has been so held by the Supreme Court of Judicature of the State of New York in a case of *Root* v. *French*, 13 Wend. 570. In *Vickers* v. *Hertz*, L. R., 2 H. of L. Sc. 115, Lord Chancellor Hatherley says: "If one person arms another with a symbol of property, he should be the sufferer, and not the person who gives credit to the operation and is misled by it." It is on this principle that the legislation with reference to fraudulent sales made by factors or agents entrusted with the possession of goods or of the documents of title to goods has been based. It was on this ground that the Court of Session in *Pochin* v. *Robinow*, 3d Series, vol. 7, p. 622, and in *Vickers* v. *Hertz*, L. R., 2 H. of L. Sc. 115, independently of the

factors acts, and proceeding on general principles, decided in favor of an innocent purchaser. And though in *Vickers* v. *Hertz*, in the House of Lords, the case was decided in favor of the defendant, as coming under the factors acts, Lord Colonsay expressly says that the judgment appealed from was well founded independently of those acts. Now, in the case before us, Denis Daly and Sons were allowed by the plaintiffs to appear as the ostensible owners of the flour, and to exercise uncontrolled dominion over it, without the plaintiffs, by intervening themselves in the transaction, as they might have done, securing themselves against any fraudulent conduct on the part of Denis Daly & Sons. It would therefore be in the highest degree unjust and inequitable that the defendants, Lawson & Co., who have innocently advanced money on the goods in the ordinary course of commercial dealing, should be sufferers through the improvident contract of the plaintiffs with Denis Daly & Sons, or want of proper caution on their part. We therefore on both grounds give judgment for the defendants.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[CROWN SIDE.]

MONTREAL, April 22, 1879.

REGINA v. PAQUET.

Larceny as a clerk—Cashier—Larceny of money in legal tender notes—Property of Bank in shares held as collateral security.

Three indictments were presented against the defendant, who had been cashier of the Bank of Hochelaga. Motions having been made to quash the following judgment was rendered :—

RAMSAY, J. Indictment, No. 134; larceny, as a clerk. This is a motion to quash, founded on two reasons :—First, that as the indictment contains the word "cashier" in brackets after the word "clerk," it discloses the fact that the indictment should have been for a misdemeanor, under Sect. 82 of the Larceny Act, and not as a felony; second, that as the sum of money, said to be stolen, is described, also in brackets, as "legal tender notes," that the description of the money is not sufficiently precise. It seems to me it is a sufficient answer to these objections to say, that the words in brackets might be struck out as surplusage, and the indictment would remain good. But in addition to this, the Court cannot presume that a cashier is not a clerk. That is a question for the jury, under the guidance of the Court, when the evidence shall have established what the duties of the particular cashier were. Again, I am not prepared to adopt the view expressed by the learned counsel for the prisoner, that even those officers enumerated in Sect. 82 cannot commit the offence of larceny as a clerk, while acting in the named capacity. It may be one thing for a director "to take and apply fraudulently" and another for him to steal while acting in his capacity of director. But it is not necessary to decide this point now. With regard to the second point, Sect. 25 of the Crim. Pro. Act (32 and 33 Vic., chap. 29), meets the difficulty. It is not necessary to state the particular coin or note. The motion to quash is therefore rejected.

No. 143. Taking and applying for his own use the property of a body corporate. The indictment charges the accused with having taken and applied certain property of the Hochelaga Bank, to wit:—"75 shares of the stock of the Montreal Telegraph Company." Now, it is urged firstly, that the Hochelaga Bank could not hold such shares as its property. The question is not without difficulty, but it appears to me that it may be satisfactorily solved by a careful reading of two clauses of our Banking Act of 1871. By section 40, every bank may deal in gold and silver bullion, bills of exchange, discounting of promissory notes and negotiable securities, and in such trade generally as appertains to the business of banking. Now it is certainly part of the business of banking to lend on the deposit of shares as security; and so it was held in the Bank of India's case (L. R., 4 Ch., p. 252) by the Lords Justices of Appeal. Giffard, L. J., said:—"There was a *bona fide* loan upon the deposit of shares. That unquestionably is a transaction within the scope and objects of the company, being one within the scope of every ordinary banking business," and in the same case it was held that the bank could become liable as owner of these shares as a contributory. Perhaps our law is

not the same on this point, but with us the title of the Bank has been held to be that of an owner, liable to be dispossessed. I am, therefore, of opinion that the Bank may have such a right of property in the shares as to maintain an indictment charging the unlawful taking of these shares as being the property of the Bank. The Court is not now in a position to say how far the Bank may be qualified in holding these particular shares. The decision goes no further than to state that the Bank may hold such shares. Allusion was made to the latter part of Sect. 51. It is negative and does not limit the dispositions of Sect. 40. In order to avoid any possible difficulty with regard to the second point of the indictment it will be amended by adding after the words "Montreal Telegraph Company" the words "a body corporate." With regard to the third point, I do not think it is necessary to allege how the accused took and applied to his own use; nor do I think that under Sect. 82 of the Larceny Act the taking and applying must be of a thing subject to asportation. Except as to the second point, the motion will be dismissed.

No. 138. Making a false bank statement.—All the points raised on the motion to quash were settled in Cotté's case,* except the first, namely, that the Bank of Hochelaga is not described as "a body corporate." As its corporation is created by a public statute, I do not think there is much in the objection, but to avoid difficulty the words had better be added as in the other case, and the indictment so amended will stand. Motion rejected, except as to this point to be amended.

F. X. Archambault, for the Crown.

Carter, Q.C., and *Chapleau, Q.C.*, for prisoner.

SUPERIOR COURT.

MONTREAL, April 30, 1879.

ROBERTSON et al. v. SMITH et al., and FAIR, opposant.

Insolvent—A seizure of goods by unpaid vendor in hands of vendee, after the latter has been put into insolvency, is invalid, and a judgment maintaining such seizure may be set aside on opposition by the assignee.

A *saisie-conservatoire* had been issued by the plaintiffs, as unpaid vendors, under which certain goods were seized in the hands of the defendants, the very day the latter were put into insolvency. The case went on to judgment, and the seizure was maintained. The assignee, Fair, then filed a *tierce* opposition, on the ground that he was duly vested with the estate of the defendants, including the goods seized, prior to the seizure under the writ of *saisie-conservatoire*.

RAINVILLE, J., held the *tierce opposition* to be well founded, and the judgment maintaining the *saisie-conservatoire* was set aside.

Abbott, Tait, Wotherspoon & Abbott, for opposant.

Macmaster, Hall & Greenshields, for plaintiffs.

ARCHAMBAULT v. THE CITY OF MONTREAL.

Corporation—Liability for dangerous place on street—Flaw in axle of plaintiff's vehicle.

This was an action by the plaintiff, a professional gentleman, to recover for the value of a horse fatally injured by a street accident, and also for damages to vehicle.

JOHNSON, J., who rendered the judgment, allowed $150 for the horse, and $20 for repairs of the vehicle, the reasons of the judgment being in the following terms:—

"Considering that on or about the 3d of November, 1878, the plaintiff was driving a horse to him belonging and harnessed to a vehicle along the course of Craig street in the city of Montreal, to wit, a public street under the defendant's control and management; considering that in the said street there had been then recently made by lawful authority a tunnel under ground and of large dimensions, and that the excavations therefor had not been sufficiently or properly filled in so as to ensure the safe passage of vehicles;

"Considering that at the particular spot alleged in the declaration as that at which the accident complained of occurred, owing to such insufficient filling up and defective ramming of the earth into the excavation made for the said tunnel, a part of the surface earth had caved in;

"Considering that while the plaintiff was driving as aforesaid the front wheel of his carriage suddenly sank and fell into a cavity caused by the fault and negligence of the defendants and their servants, in so insufficiently

* 22 L. C. J. 141.

filling in the excavation, and the axle of his carriage was thereby broken, and the horse ran away and was so badly injured that it had to be destroyed; and the plaintiff suffered damage not only to the extent of the value of the horse, which alone is proved to be $150, but also by breaking his carriage, the necessary repairs of which cost him $20;

"Considering that the defendants have, among other things, pleaded that they had no notice of any cavity or dangerous place in said street, but that the evidence shows the bad state thereof to have endured so long that they must be reasonably held to have known of it;

"Considering that there was a flaw in the axle of plaintiff's carriage, but unknown to him, and for which he cannot be held responsible, the said flaw consisting in a defective welding of the iron, not readily discoverable while it was in use, and which, in fact, was only discovered after it had been broken;

"Considering that the said axle was sufficient and safe for ordinary use, but not able to withstand a great shock or strain such as was caused by the said cavity;

"Considering that the liquid state of the mud in the said street pervaded and concealed the said cavity so that the plaintiff could not see it, and that, therefore, without his fault, but solely by the fault of the defendants, the said damage was caused to plaintiff as aforesaid, doth adjudge and condemn the defendants to pay and satisfy to the plaintiff the sum of $170, interest and costs."

[The above judgment was confirmed in Review, 29 Nov. 1879, RAINVILLE, JETTÉ, LAFRAMBOISE, JJ.]

Archambault & Co., for plaintiff.

R. Roy, Q.C., for defendants.

FULLER v. FARQUHAR et al.

Surety—Defence to suit on bond—Insolvency of surety and of party for whom he is surety.

JOHNSON, J. Action on a bond for an appeal. One of the sureties pleads that he was insolvent, and the plaintiff ought to have had another surety named in his stead. He pleads, secondly, that the appellant in the case in which the bond was given, was himself insolvent, and the respondent proceeded with the case without having the assignee of the appellant's estate called in. Neither of these pleas is good for anything. In the first, the defendant who pleads is setting up a right that belonged to the plaintiff, and not to himself. In the second he contends for the obligation of the assignee to represent him in the case—a position which is negatived by the case of *Plessis dit Belair* v. *Lajoie*,* in which it was held that the assignee, under the 39th section of the Act, cannot be compelled to take up the *instance*. Judgment for plaintiff.

Trenholme & Maclaren, for plaintiff.

R. A. Ramsay, for defendants.

WATSON v. THOMPSON.

Procedure—Consolidation of causes.

JOHNSON, J. It appears that since the hearing on the merits, the plaintiff has taken attachments, both simple, and in the hands of third parties, for the same sum as he is seeking to recover in the first suit. The defendant moves under these circumstances to discharge the case from *délibéré*, with a view to having the two cases or proceedings united. This is generally done, on the principle of not accumulating actions and costs, unless some clear ground of objection exists, founded on right, or on the liability to injury or confusion; but I see nothing of that kind here. On the contrary, I think it is desirable to unite the cases, and the defendant's motion is granted.

Hutchinson & Co., for plaintiff.

F. W. Terrill, for defendant.

RECENT UNITED STATES DECISIONS.

Attorney.—The attorney for a defendant against whom judgment had been rendered, in consideration that the defendant would appeal from the judgment, and pay the attorney a certain fee for prosecuting the appeal, agreed to pay any judgment that might finally be recovered against the defendant. *Held*, that the contract was against public policy, and not enforceable by either party.—*Adye* v. *Hanna*, 47 Iowa, 264.

Bank.—An executor who was president of a bank, to which he was indebted, and which he knew to be insolvent, caused stock in the bank owned by him to be transferred to himself as

*1 Legal News, 327; 23 L. C. J. 213.

executor at par, and paid for the same by check on his account as executor, which he deposited to the credit of his individual account; which was overdrawn to an amount less than that of the deposit; but he owed the bank in other ways a sum much greater than that of the deposit. *Held*, that the bank was affected with notice of the fraud, and liable to refund the whole amount of the deposit, with interest from the time of deposit.—*Holden* v. *New York & Erie Bank*, 72 N. Y. 286.

Bill of Lading.—The owner of wheat *in transitu* from the West to Buffalo obtained a loan from the plaintiffs, bankers in that city, on the security of the bill of lading of the wheat; on arrival of the wheat in Buffalo the owner, without the plaintiff's knowledge, caused it to be shipped on canal boats to defendants, merchants in New York, from whom he had previously obtained advances on the security of fraudulent bills of lading, which falsely certified the shipment of the wheat on the canal boats by which it was afterwards actually sent. *Held*, that defendants could not hold the wheat against plaintiffs.—*Marine Bank* v. *Fiske*, 71 N. Y. 353.

Bills and Notes.—The acceptor of a bill of exchange bought it of the payee before maturity. *Held*, that he was not a *bona fide* holder as against the maker, and that the maker might defend an action on the bill on the ground of failure of consideration between himself and the payee.—*Stark* v. *Alford*, 49 Tex. 260.

Bond.—An office was tenable by law for a a year, and until a successor should be appointed and qualified. The person appointed to the office gave a bond conditioned for the faithful performance of his duties generally. *Held*, that it was binding only during the year, and during a reasonable time thereafter for the appointment and qualification of a successor.—*Rahway* v. *Crowell*, 11 Vroom, 207. So where the holder of a like annual office gave a bond for the performance of his duties until "another" officer should be chosen, *held*, that it was binding only during the year, though the same person was re-elected the next year.—*Citizen's Loan Association* v. *Nugent*, 11 Vroom, 215.

Burglary.—The lower floor of a building consisted of shops which were occupied by the firm of A. and B.; the upper, of sleeping-rooms, one of which was inhabited by A., one of the firm. There was no interior communication between the floors; but the upper was reached by passing from the lower into an enclosed yard, and from thence up stairs. The prisoner broke and entered the shops. *Held*, burglary. *Held*, also, that the building was rightly described in the indictment as the dwelling-house of A. and B.—*Quinn* v. *The People*, 71 N. Y. 561.

Carrier.—A passenger by rail carried on his person, without notice to the railroad company, bonds of great value, which were taken from him by robbers on the train. *Held*, that the railroad company was not liable for the value of the bonds.—*Weeks* v. *New York, New Haven & Hartford R. R.*, 72 N. Y. 50.

Confession.—At a criminal trial, the written statement of the prisoner's declarations before the magistrate who committed him for trial was offered in evidence, but not admitted, because not duly attested. *Held*, that oral evidence of the same declarations was competent.—*State* v. *Simien*, 30 La. Ann. 296.

Contract.—1. A newspaper establishment was sold, the purchaser assuming the payment of all the outstanding liabilities of the newspaper. At the time of the sale, an action for libel was pending against the seller, in which judgment was afterwards recovered against him. *Held*, that the purchaser was not bound to pay the judgment.—*Perret* v. *King*, 30 La. Ann. 1368.

2. Defendant contracted that a third person should sing at plaintiff's theatre. *Held*, that sickness of such third person, without defendant's fault, at the time agreed on for the singing, excused defendant from a performance of his contract.—*Spalding* v. *Rosa*, 71 N. Y. 40.

Damages.—The agent of a sewing machine company sold a machine, to be paid for by instalments, with an agreement that on any default of payment the seller might enter on the buyer's premises and retake the machine. Payments were duly made to the agent, who omitted to credit them to the buyer; and thereupon other agents of the company entered the buyer's dwelling-house, and forcibly removed the machine, which was detained one day and then returned. *Held*, that the company was liable in exemplary damages.—*Singer Mfg. Co.* v. *Holdfodt*, 86 Ill. 455.

Easement. — Defendant having acquired by deed a right to lay down and keep in repair an iron pipe through plaintiff's land, to convey water from a spring which also supplied plaintiff's land, laid down a two-inch pipe and used it several years. *Held*, that the extent of the easement thus became fixed, and that defendant could not substitute a four-inch pipe.—*Onthank* v. *Lake Shore & Michigan Southern R. R. Co.*, 71 N. Y. 194.

Evidence.—In an action to recover for personal injuries. *Held*, that the plaintiff might be required to submit to a medical examination by physicians appointed by the Court.—*Schroeder* v. *Chicago, Rock Island & Pacific Railroad Co.*, 47 Iowa, 375.

Homicide.—The prisoner snapped a pistol at a woman to frighten her, not knowing that it was loaded; and it went off and killed her. *Held*, manslaughter.—*State* v. *Hardie*, 47 Iowa, 647.

Indictment.—Indictment for breaking and entering the storehouse of the Oxford Iron Company, with intent to steal the goods of that Company, then there being. *Held*, that it was to be presumed that the Company was a corporation, and that no averment of the fact was required; and that the ownership of the building and of the goods was sufficiently stated.—*Fisher* v. *The State*, 11 Vroom, 169.

Innkeeper.—Plaintiff left his horse at defendant's inn, and went to stay with a friend. The horse was killed by an accident. *Held*, that defendant was not liable as an innkeeper, but only for want of ordinary care.—*Healey* v. *Gray*, 68 Me. 489.

Insurance (Fire).—A policy of insurance on partnership property was conditioned to be void if any change should take place in the title or possession of the property. In a suit to wind up the partnership one partner was made receiver. *Held*, that the policy continued in force.—*Keeney* v. *Home Ins. Co.*, 71 N. Y. 396.

Larceny.—The prisoner took and carried away a horse, with intent to keep it concealed till the owner should offer a reward for its return, and then to return it and obtain the reward. *Held*, larceny.—*Berry* v. *The State*, 31 Ohio St., 219.

Lien.—Plaintiff delivered to defendant a horse, to be trained to run in illegal races. *Held*, that the defendant had a lien on the horse for his services and expenses.—*Harris* v. *Woodruff*, 124 Mass., 205.

Master and Servant.—A city employed a contractor to build a sewer; in the course of the work it was necessary to blast a rock; and the contractor did it with all due care, but a piece of stone was thrown out by the blast against a house, and injured it. *Held*, that the city was liable.—*Joliet* v. *Harwood*, 86 Ill. 110.

Negligence.—The posts and wires of defendants' telegraph, lawfully erected in a street, were broken down in a heavy snow-storm, and plaintiff was injured by their fall. *Held*, that defendants were not liable at all events, but only if they were negligent in not building and keeping their line sufficiently strong to stand any storm that might reasonably be expected. —*Ward* v. *Atlantic and Pacific Telegraph Co.*, 71 N. Y. 81.

Partnership.—A sale by a partner, in payment of his own debt, of goods which are in fact goods of the partnership, but which the partnership has so intrusted to him as to enable him to deal with them as his own, and to induce the public to believe them to be his, and which the creditor receives in good faith and without notice that they are the goods of the partnership, is valid against the partnership and its creditors.—*Locke* v. *Lewis*, 124 Mass., 1.

Prohibition.—The Supreme Court of Tennessee, having by the Constitution appellate jurisdiction only, refused to grant a writ of prohibition.—*Memphis* v. *Halsey*, 12 Heisk. 210.

Promissory Note.—A note was indorsed by the payee and another person. The maker in good faith, but without the knowledge of the endorsers, inserted the name of the second endorser in the body of the note, and discounted it. *Held*, that both indorsers were discharged. *Aldrich* v. *Smith*, 37 Mich., 468.

Sale.—Defendants sold and delivered seed to plaintiffs in response to an order for "Bristol cabbage-seed." *Held*, that a warranty was implied that the seed would produce Bristol cabbage; and also a warranty that it was free from any latent defect arising from the mode of cultivation.—*White* v. *Miller*, 71 N. Y. 118.