RECENT ENGLISH CASES.

In the Court of Common Bench.

BRADY *vs.* TODD.

1. Master and servant—Warranty on sale, of horse by servant without authority of master—Principal and agent.
2. The servant of a private person, entrusted to sell and deliver a horse, cannot bind his master by an unauthorized warranty.
3. Secus, in the case of the servant of a horse-dealer or livery-stable keeper whose business is to deal in horses.

This was an action on the warranty of a horse to recover the difference between the amount paid for the horse by the plaintiff and that which the horse brought on sale by the plaintiff. The defendant by his plea traversed the warranty. The cause was tried before Cockburn, C. J., Maidstone summer assizes, and a verdict found for the plaintiff.

It appeared at the trial that the defendant is a potato salesman, living in Bermondsey, and keeping a farm, eight miles distant from London. He bought a horse in Bermondsey, and sent it down to his farm, without any view of a sale. A veterinary surgeon, who had received instructions from plaintiff to buy a horse, seeing the horse at the farm, offered to one Gregg, who was defendant's bailiff on the farm, to sell the horse, which Gregg refused to do, on the ground of want of authority. Thereupon the veterinary surgeon went to plaintiff, and they both subsequently spoke to Gregg about the sale of the horse. Gregg communicated the plaintiff's wish to defendant, who said, "I will not take less than 30 guineas for him." Gregg subsequently sold the horse to plaintiff for 30 guineas, and gave, as alleged, a warranty that the animal was sound and quiet in harness. The plaintiff finding that the horse was a kicker, called on defendant to take him back; the defendant refused, upon which plaintiff sold the horse at Aldridge's Repository for 15 guineas, and sued defendant for the difference.

A rule *nisi* having been obtained in Michaelmas Term, calling on the plaintiff to show cause why the verdict should not be set aside, and a verdict entered for the defendant on the plea denying the warranty, the bailiff, Gregg, having no authority from defendant to give a warranty.

Hawkins, Q. C., and *Barnard*, now showed cause. They admitted that the point was entirely new; but contended that there were in various cases *dicta* expressed *obiter* by the judges, that a warranty by a servant might be binding upon the master. They cited *Helyear* vs. *Hawke*, 5 Esp. 72; *Alexander* vs. *Gibson*, 2 Camp. 555; *Hern* vs. *Nicholl*, 1 Salk. 288; *Cornfoot* vs. *Fowke*, 6 M. & W. 358; *Dingle* vs. *Hare*, 29 L. J. 143, C. P.; Bac. Abr. tit. "Master and Servant," K.; *Fenn* vs. *Harrison*, 3 T. R. 757.

M. Chambers and *G. Denman*, in support of the rule, contended that, as Gregg was not the servant of a horse-dealer or livery-stable keeper, but a mere farm bailiff, there could not be in him an implied authority to warrant, and it was admitted he had no express authority from the defendant to warrant the horse. The case in Espinasse, *Helyear* vs. *Hawke*, relied on by the other side, is not reliable, (for the reports have not a high class reputation,) and cannot be taken as an authority. They cited *The Governor and Company of the Bank of Scotland* vs. *Watson*, 1 Dow. 40 and 45, per Lord Eldon; *Coleman* vs. *Riches*, 16 C. B. 104; Story on Agency, sect. 133; *Hern* vs. *Nicholl*, 1 Salk. 288; Smith's Law of Master and Servant, 104, 157, and 161; *Southern* vs. *Howe*, Cro. Jac. 471; *Langhorne* vs. *Allnutt*, 4 Taunt. 519; *Bolden* vs. *Campbell*, 6 Ex. 889; M. S. case, cited in *Whitehead* vs. *Tucker*, 15 East. 406; Chitty on Contracts, 4th ed. 203; Smith's Mercantile Law, 4th ed. 121; Story on Agency, sect. 59, *in notis*.

Cur. adv. vult.

February 25.—WILLIAMS, J., now delivered judgment.—In this judgment my Lord Chief Justice, my brother Keating, and myself agree, and my brother Willes agrees, so far as he heard the argument, he not having heard the whole of it. Upon this rule to set aside the verdict for the plaintiff, and enter it for the defendant, on the plea denying the warranty of a horse, the question has been whether the warranty by the defendant was proved. The jury have found that Gregg, in selling the horse for the defendant, warranted it to be sound and quiet in harness. The defendant has stated—and it must, on this motion, be taken to be true—that he did not give authority to Gregg to give any such warranty. The relevant facts

are, that the plaintiff applied to the defendant, who is not a horse-dealer, but a tradesman with a farm, to sell a horse; that the defendant sent his farm bailiff, Gregg, with the horse to the plaintiff, and authorized him to sell it for 30 guineas. The plaintiff contends that authority to an agent to sell a horse imports an authority to him to warrant. The subject has been frequently mentioned by judges and text writers, but we cannot find that the point has ever been decided. It is therefore necessary to consider it on principle. The general rule that the act of an agent does not bind his principal, unless within the authority given to him, is clear. But the plaintiff contended that the circumstances created an authority in the agent to warrant, on various grounds; and, amongst others, he referred to cases where an agent has, by law, a general authority to bind his principal, though as between themselves there is no authority such as partners, masters of ships, and members of trading businesses would have. Stress was laid on the decisions of several judges, that a servant of a horse-dealer or a livery-stable keeper can bind his master by a warranty, though as between themselves there was no order to warrant: *Helyear* vs. *Hawke*, 5 Esp. 72; *Alexander* vs. *Gibson*, 2 Camp. 555; *Fenn* vs. *Harrison*, 3 T. R. 757. We understand all the judges to refer to a general agent for the purpose of carrying on the business, that is, the business of a horse-dealer, in which case there would be by law the authority here contended for. But the facts of the present case do not bring the defendant within this rule, as he was not shown to carry on any trade or dealing in horses. It has been also contended that a special agent, without any express authority in fact, yet had an authority by law to bind his principal. Where the principal has held out that the agent has such authority, and induces the party to deal with him on the faith that it is so, in such a case the principal is concluded from denying the authority as against the party who believed what was held out and acted on it: see *Bolden* vs. *Campbell*, *ubi supra*. But the facts do not bring the defendant within this rule. The main reliance was placed on the argument that an authority to sell, is by implication an authority to do all that in the usual course of dealing is required to complete the sale, and that the question of warranty is in the

usual course of sale required to be answered; and, therefore, the defendant, by implication, gave Gregg an authority to answer that question, and bind him by his answer. It was a part of this argument, that an agent authorized to sell and deliver a horse is held out to the buyer as having authority to warrant; but on this point, also, the plaintiff has, in our judgment, failed. We are aware that the question of warranty frequently arises upon the sale of horses; we are also aware that sales may be made without any warranty, or even inquiring for a warranty. If we lay down for the first time that the servant of a private owner entrusted to sell and deliver a horse on a particular occasion is thereby to be deemed by law to be authorized to bind his master by a warranty, we should establish a precedent of dangerous consequence; for the liability created by a warranty, extending to unknown as well as to known defects, is greater than is expected by persons inexperienced in law; and as everything said by the seller in the bargain may be evidence of warranty to the effect of what he said, an unguarded conversation with an illiterate man sent to deliver a horse may be found to have created a liability which would be a surprise equally to the servant and the master. We hold, therefore, that the buyer, taking the warranty of such an agent as was employed in this case, takes it at the risk of being able to show that he had the principal's authority, and where he had not any in fact, the law, from circumstances, does not in our opinion create it. When the facts raise the question it will be time enough to decide the liability created by such a servant as the foreman authorized as a general agent or a special agent. A person entrusted with the sale of a horse at a fair or other public mart, where stranger meets stranger, and the usual course of business is for the person in possession of the horse, and appearing to be the owner, to have all the powers of such owner in respect of the sale, the authority to sell may, under such circumstances as last referred to, be implied, though the circumstances in the present case do not create the same inference. It is unnecessary to add that if the seller should repudiate the warranty made by the agent, the sale would be void. That was not the question raised in this case.

Rule absolute.

In Vice Chancellor Wood's Court.

HORNE *vs.* ANGLO-AUSTRALIAN INSURANCE COMPANY.

Where there is no provision in a policy upon the life of the assured, that it should be void if the party whose life was insured should die by his own hands, &c., the Court will not declare such policy void if the party assured commits suicide.

A policy for £300 upon the life of a Mr. Horne had been effected by himself in the office of the British Provident Insurance Company, which had been amalgamated with the Anglo-Australian Insurance Company, of which company Mr. Horne had been a director.

No provision was contained in the policy that in case the assured should die by duelling, or by his own hands, or the hands of justice, it should become void.

Mr. Horne committed suicide in November, 1857, and the effect of the verdict of the coroner's jury was, that he had destroyed himself whilst in a state of mental derangement.

A bill was subsequently filed by his personal representative, to have an account taken between Mr. Horne and the Anglo-Australian Company of all the dealings and transactions between them.

Another policy had been effected by Mr. Horne on his own life, which did contain the proviso against duelling, &c.

It appeared by the bill that Mr. Horne had from time to time advanced money upon loan to the Anglo-Australian Company, and that various sums were at the time of his death due to him from the company for interest on these loans, for his salary as director, &c.

The principal question turned upon the point, whether the first-mentioned policy had become void on the grounds of general public policy, it not containing any provision against suicide, &c., as above mentioned.

Willcock, Q.C. and *Jolliffe* for the plaintiffs, the representatives of Mr. Horne.

Sir *H. Cairns*, Q.C. and *Shebbeare* for the Anglo-Australian Company.

Cole for the British Provident Company, who had repudiated the amalgamation with the Anglo-Australian Company.

The principal cases cited were: *Dufaur* vs. *The Professional Life Assurance Company*, 25 Beav. 602; *Borradaile* vs. *Hunter*, 5 Man. & Gr. 640; *Vyse* vs. *Wakefield*, 6 Mee. & W. 442; *Moore* vs. *Woolsey*, 4 Ell. & B. 243; *Pritchard* vs. *Merchants' and Tradesmen's Life Assurance Company*, 27 L. J. 169, C. P.; *Wainwright* vs. *Bland*, 1 Moo. & Rob. 480.

The Vice-Chancellor, after stating shortly the facts of the case, said that, as to the £300 policy, which contained no provision against duelling, suicide, &c., he was of opinion that the death of Mr. Horne by his own hands, while in a state of mental derangement, had not the effect of vitiating the policy. In *Fauntleroy's* case, 2 Dow. & Cl. 1, it was held by the H. of L. that a policy was, by necessary inference vacated, and no longer payable when the assured had died by the hand of justice; and this on the ground that it was against public policy that any assurance should be extended to provide against such an event, and thus afford encouragement to crime. The same argument might be urged in a case of *felo de se*, where a man in a perfectly sane state committed suicide. But no such case arose here. The deceased was found to have been of unsound mind, and therefore had committed no legal offence. Where there was an express contract that in the event of suicide no payment should be made upon the policy, then the question might arise whether suicide in a state of mental derangement was contemplated in the exception. But this was quite distinct from considerations of public policy. Again, if the particular event, "while in a state of insanity," had been excepted in the policy, there would have been nothing irrational or morally unreasonable in such a contract. But, in the absence of this provision, there was no principle of public policy to forbid payment upon a death which arose from no crime, but from a mere accident, just as much as if the person had fallen from a house or been drowned. There was nothing to induce him (the Vice-Chancellor) to say that the policy was void upon this death, which had taken place while the assured was in a state of mental derangement; nor was there