

been otherwise provided for in the whole or in part, not abrogated, repealed or become obsolete, are hereby declared to be in full force within the state."

Vermont: ch. 32, General Statutes of 1870. "So much of the common law of England as is applicable to the local situation and circumstances, and is not repugnant to the constitution or laws of this state, shall be deemed and considered law in this state, and all courts are to take notice thereof and govern themselves accordingly."

Virginia: Code 1860, p. 112, sect. 1. "The common law of England, so far as it is not repugnant to the principles of the Constitution of this state shall continue in force within the same, and the right and benefit of all writs, remedial and judicial, given by any statute or Act of Parliament made in aid of the common law prior to the fourth year of the reign of James I., of a general nature and not local to England, shall still be served so far as the same may consist with the Constitution of this state."

Wisconsin: Constitution, sect. 13. "Such parts of the common law as are now in force in the territory of Wisconsin not inconsistent with this Constitution, shall be and continue part of the law of this state until altered or suspended by the legislature."

RICHARD C. DALE.

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## RECENT ENGLISH DECISIONS.

### *High Court of Justice. Queen's Bench Division.*

#### WALKER v. MATTHEWS.

The *bona fide* purchaser in market overt of stolen cattle acquires a property therein, good until conviction of the thief, and, therefore, cannot set up against the owner after conviction a claim for keeping the animals before that event, still less for wrongfully keeping them afterwards.

#### APPEAL from the Huntington County Court.

The plaintiff claimed the delivery of two cows and two calves, valued at 45*l*. The defendant counter-claimed for the keep of the cows and calves during the time they were in his possession.

At the trial before the county court judge the following facts were proved: The two cows, then in calf, were, on the 7th of June 1880, stolen from the plaintiff. On the 11th of June, the

thief sold them in market overt to a cattle dealer who, on the 16th of June, sold them to the defendant, a *bona fide* purchaser, who had no notice of the felony. The plaintiff traced the cows and, on the 21st of June, claimed them of the defendant, but he refused to give them up. On the 5th of April 1881 the thief was convicted of having stolen the cows, and on the 9th of April the defendant received notice of such conviction, and the cows were again demanded of him. The cows both calved while in defendant's possession. The jury, under the direction of the county court judge, found a verdict for the plaintiff on the claim, and for the defendant on the counter-claim. A rule having been obtained to enter judgment for the plaintiff on the counter-claim,

*Cockerell*, for the defendant, showed cause.—On the conviction of the thief the property in the goods reverted in the plaintiff: 24 & 25 Vict. c. 96, § 100; *Scattergood v. Sylvester*, 15 Q. B. 506; but until that time the defendant did not wrongfully detain the cattle, and he is entitled to deduct the expenses of their keep during such period. [LOPES, J.—He cannot recover the expenses of keeping his own property; still less can he those of keeping that which he held wrongfully.]

*W. Garth*, for the plaintiff, was not called on.

The court, GROVE and LOPES, JJ., held that the defendant could not recover on his counter-claim, but that judgment thereon must be entered for the plaintiff.

Rule absolute.

As the law of market overt does not obtain in this country, as is well known, the purchaser of stolen property does not, with us, acquire any title as against the lawful owner, even before the conviction of the thief. Therefore, as the buyer never becomes the owner, the precise question involved in *Walker v. Matthews* never could arise with us; but a similar question may arise upon other state of facts, viz. : whether services rendered by A. in keeping, preserving or improving property in which he has a special, limited or temporary ownership or

interest, ordinarily furnish ground for a claim of payment against the general or absolute owner; and second, whether such services bestowed upon property to which one has no title whatever, but to which he made a *bona fide* claim of title, and rendered the service because of such claim and belief, furnish any better cause of action.

An illustration of the first occurs where A. sells goods to B. and retains possession until paid for, and in the meantime incurs expense in keeping or storing the same. Does this give him any claim,