Our best reflection upon it, aided by the reasonings and conclusions of many more cases than we have cited, has brought us to the conclusion, that as he had jurisdiction of the person and of the subject-matter, and as his act was not without the inception of jurisdiction, but was one no more than in excess of, or beyond jurisdiction, the act was judicial.

We are not unmindful of the considerations of the protection of the liberty of the person, and the staying of a tendency to arbitrary exercise of power, urged with so much eloquence by the learned and accomplished counsel for the appellant. Nor are we of the mind of the court in 2 Mod. 218, 220, that: "These are mighty words in sound, but nothing to the matter." They are to the matter, and not out of place in such a discussion as this. Nor have we been disposed to outweigh those considerations with that other class, which set forth the need of judicial independence and of its freedom from vexation on account of official action, and of the interest that the public have therein. See *Bradley* v. *Fisher*, *supra*; *Taafe* v. *Downs*, in note to *Calder* v. *Halket*, 3 Moore's P. C. C. 28, 41, 51, 52.

These are not antagonistic principles; they are simply countervailing. Like all other rules which act in the affairs of men, preponderance may not be fondly given to one to the disregard of the other; each should have its due weight yielded to it, for thus only is a safe equipoise reached.

We have arrived at our decision upon what we hold to be long and well-established principles, applied to the peculiar facts of this interesting case.

The judgment of the General Term should be affirmed. All concur.

—*Sprague* v. *W. U. Tel. Co.*, p. 200: A failure to send a telegraph message at all is not a "mistake or delay in delivery or non-delivery," within the meaning of the usual stipulation in blanks for telegraph messages. *Devlin* v. *O'Neil*, p. 305: A sale of goods to be disposed of by the vendee at retail if conditional, is fraudulent and void as to creditors of vendee. *Leviness* v. *Post*, p. 321: A blacksmith was held liable for the unskilfulness in shoeing a horse, of his servant, who was not employed to shoe horses, but who undertook the work.—[From *Daly's Reports*, C. P. N. Y.

GENERAL NOTES.

PRESCRIPTION OF PROMISSORY NOTES.—In *Schindel* v. *Gates*, 46 Md. 604, it is held that the payment, by the principal in a joint and several promissory note, of the interest from year to year will prevent the statute of limitations from attaching to the note in favor of the surety. In the State of Maryland, the rule on this subject, as laid down in *Ellicott* v. *Nichols*, 7 Gill, 86, is accepted as the law, which the court says is not to be questioned in the absence of legislation to the contrary. It is not, however, the general rule. There are, in regard to the power of one joint maker of a note to deprive the other of the defence of the statute, three distinct and irreconcileable theories: (1) That there is such a power and it exists indefinitely. (2) That there is no such power. (3) That there is such a power, but it ends when the term prescribed by the statute has elapsed. The first theory was at one time adopted in England (*Channell* v. *Ditchburn*, 5 M. & W. 494; *Goddard* v. *Ingram*, 3 G. & Dav. 46), in Massachusetts (*White* v. *Hale*, 3 Pick. 392), in Maine in New Hampshire, and in New York, but it has been of late years done away with by statute, or by the decisions of the courts. The second theory is the one in favor at the present time in most of the States and in the Federal courts. *Bell* v. *Morrison*, 1 Pet. 351; *Exeter Bank* v. *Sullivan*, 6 N. H. 124; *Palmer* v. *Dodge*, 4 Ohio St. 21; *Coleman* v. *Fobes*, 22 Penn. St. 156; *Levy* v. *Cadit*, 17 S. & R. 126; *Searigh* v. *Craighead*, 1 Penn. 135; *Bush* v. *Stowell*, 71 Penn. St. 208; *Van Keuren* v. *Parmalee*, 2 N. Y. 523; *People* v. *Slite*, 39 Barb. 634; *Shoemaker* v. *Benedict*, 11 N. Y. 176; *Winchell* v. *Hicks*, 18 Id. 558. The third doctrine is adopted in Maryland and some other States. *Ellicot Nichols*, *supra*; *Newman McComas*, 43 Md. 70; *Emmons* v. *Overton*, 18 B. Monroe, 643; *Walton* v. *Robinson*, 6 Iredell, 341. The second theory appears to be the more equitable one and the one most in accordance with the prevailing view in regard to the statute of limitations, which is that it is a beneficial statute and one of repose on which a defendant has a right to rely with the same confidence as on any other statute, and that its force should be extended rather than restricted. Ang. on Lim. 283; *Shoemaker* v. *Benedict supra*; *Green* v. *Johnson*, 3 G & J. 394; *Fisher* v. *Hamden*, Paine, 61.—*Alb. L. J.*