yet the defendant wrongfully and negligently made excavations in the land so adjoining without sufficiently propping and protecting the said messuage and land, and thereby deprived it of its said support whereby it sunk and swagged, &c.

Held, that the declaration was good, although it did not contain any allegation that the right to the support had been acquired by grant or prescription, since in was to be taken that the defendant was not the owner of the adjoining land, but a stranger.

Argued, that the second and third counts are bad for not alleging that the digging of the excavation, whereby the damage happened, was the act of a stranger. For the plaintiff, it was shown that both are good. The second count alleged that the messuage and land in fact received lateral support from the land adjoining, it is not stated that the defendant was the owner of the adjoining land, and the case of *Jeffries* v. *Williams*, 5 Exch. 192, is an *express* authority that on such a count as this, it must be taken, that the defendant was a stranger and a mere wrong doer, and therefore responsible, although a right to the support for the house had not been acquired against the owner of the adjoining land.

C.P. *Jan.* 15.

STUART AND ANOTHER v. CAWSE AND ANOTHER.

Staying proceedings—Sum under 40s.

A debtor sent his creditor a banker's draft, payable at seven days after sight, for a sum less by 5s. than the whole debt. The creditor retained the draft, which had been presented by his clerk and accepted by the bankers, and subsequently, and before the expiration of the seven days, brought an action for the whole amount of the debt. The Court stayed the proceedings on payment of 5s. without costs.

CROMPTON, J., said this was really an action for 5s. It is contended that this was an action brought for the whole amount of the bill, but the defendants sent a draft on Lubbocks, which the plaintiffs' clerk takes to Lubbocks, where it is accepted. The plaintiffs write to defendants, unless you send me 5s., the draft shall be returned; it was accepted at that time and he does not return it.

EX. TARLINGTON v. STUREY AND OTHERS. *Jan.* 12.

Notice of action—Question of bona fides—New trial when verdict under £20. Statute 59, G. IV., c. 39.

The defendant, to whom a warrant to distrain for rates on the goods of A was directed, distrained on the goods of B, in the house of B, by whom he was informed that the goods were his. Persons acting pursuant to the act under which the warrant was granted, were entitled to notice of action. B having brought an action for the seizure of his goods, without giving notice of action, the judge left the question to the jury whether the defendant was *bona fide* acting under the warrant when he made the seizure, and the jury returned a verdict for the plaintiff, with £5 damages.

Held, that the question having been left to the jury, the rule that a new trial will not be granted when the damages are under £20, on the ground of the verdict being against evidence, applied, and the verdict could not be disturbed.

Q.B. PARR v. WINTERINGHAM. *Jan.* 14

Horse race—Decision of Stewards.

The stewards of a Horse race are not arbitrators in a legal sense, and therefore their decision given apart from each other without previous consultation, is binding.

EX. PHILIPS ET AL v. CLIFT. *Jan.* 24.

Apprentice—Dismissal—Misconduct no justification.

In an action for breach of covenant in an indenture of apprenticeship, the defendant pleaded that the apprentice conducted himself in so improper, unfaithful, and dishonest a manner in the defendant's business, and defrauded and robbed the defendant so that it became unsafe for the defendant to continue him in his service.

Held, that it afforded no justification for dismissing the apprentice before the expiration of the apprenticeship.

EX. ALTER v. WILSON. *Jan.* 21.

Practice—Interrogatories—Fishing application.

In an action for the wrongful detention of a document, the plaintiff applied for liberty to deliver interrogatories with the declaration upon a suggestion that the defendant must have obtained a copy of the original from the plaintiff's Clerk as he had shown it only to him; and a paragraph had appeared on the following day in the defendant's newspaper containing matter leading to the inference that the writer had used the document in writing the paragraph.

Held, that there was not sufficient foundation for the application.

EX.C. SANDON v. JERVIS ET AL. *Feb.* 4.

Arrest—sufficiency of—Sheriff—Escape—Touching by officer—Breaking of dwelling house.

To effect a good arrest it is not necessary to have the power of actual capture, and therefore, where defendant, a bailiff, put his hand through a broken pane in a window of plaintiff's dwelling house, and touched him saying, "you are my prisoner."

Held, (affirming the judgment of the Queen's Bench) a good arrest, the window not having been broken by the Bailiff, and that the Bailiff was consequently justified in breaking open the outer door and taking plaintiff to prison.

Semble, such an arrest is not sufficient to render the Sheriff liable for an escape, should plaintiff under the circumstances, have evaded the ultimate capture.

Q.B. SENIOR v. WARD. *Jan.* 13.

Master and servant—Negligence of both—Liability of Master in case of accident—Right of Servant's representative to sue.

A minor employed in a coal mine was descending the shaft in the morning as usual, when the rope broke and he was killed; the breaking of the rope was owing to a fire at the Colliery the night before. There was a rule of the Colliery, made pursuant to Act of Parliament, that before any one went down in the morning a loaded cage should be run down to test the rope; but this rule was habitually disregarded to defendant's knowledge, who was the owner and manager of the mine, and it had not been done on the morning of the accident to the knowledge of the defendant.

Held, that though the defendant was guilty of great negligence, yet as the deceased by his own negligence had contributed to his death, he could not have maintained this action, nor therefore could his representatives.

Q.B. CARR v. MARTINSON. *Jan.* 21.

Horse Race—Return of Stakes.

The plaintiff agreed with H that the plaintiff should place £7 and H £11 with the defendant, and that both sums should be paid to the winner of a pony race to be run between ponies of the plaintiff and H. They also agreed to trot the match at a named time and place, W. C. to be the starter and J. S. the judge; the money to be given up by the decision of the judge.

The parties met at the time and place, but W. C. was absent, whereupon H refused to run the race, but the judge appointed another starter, and the plaintiff's pony having walked over the course was declared by the judge to be the winner. The plaintiff demanded both sums from the defendant on the ground that the plaintiff's pony was the winner.

Held, that the judge had no right to appoint a starter instead of W. C., and that therefore the race was neither run nor won, and *held*, also, that the plaintiff was entitled to recover his stake.

METROPOLITAN SALOON OMNIBUS COMPANY v. HAWKINS.

Joint Stock Company—Libel, Action against Shareholders.

An Action will lie by a Joint Stock Company Incorporated under 19 and 20 Vic. ch. 47 against a shareholder in same Company for libel.