The judge was of the opinion that if all these outrageous things had been done to drive the plaintiff away, the defendant might (in order to mitigate damages) have shown that the plaintiff and his family were bad lodgers and that he did these acts to get rid of them.

In a tenement house the landlord must keep the stairs in order. In a Scotch case a child fell through the railing on the staircase, where a bannister was wanting and was killed; the house was occupied by twelve different families, all of whom had access by this one common stair to the various landings on which were their respective apartments. The Court of Session held that it was the landlord's duty to keep the bannisters in repair, and that he could not escape responsibility for the consequences of their being left in a dangerous condition. The owner had to pay damages to the child's father; here however the factor in charge of the property had been warned of the state of the railing. *McMartin* v. *Hannay*, 10 Ct. of Sess. Cas. (3d ser.) 411.

Hedges was the landlord of a house in Red Lion street, Wapping, which he let out to several tenants, to each of whom he said (in effect if not in words): I let you certain rooms, and if you like to dry your linen on the roof you may do so; the roof was flat and covered with lead, having a wooden railing on the outer edge, and one got to it through a low door at the stair-head, about two feet from the rail. Ivay, one of the tenants, went on the roof to remove some linen, he slipped against the railing, and it being out of repair (to the landlord's knowledge) gave way and let him down to the courtyard below, whereby he was injured. Lord Coleridge agreed with the County Court Judge, and was unable to see any liability on the part of the defendant—the landlord; he said that under the contract the tenant took the place as he found it, if he chose to use the roof he did so *cum onere*. If there had be an absolute contract for the use of the roof in a particular way, it might have been that Hedges would have been liable for not keeping it in a safe condition. *Ivay* v. *Hedges*, L. R., 9 Q. B. Div. 80.

The plaintiff's counsel did not quote the law of Moses on this point, Deu. 22, 8, but then on many points the law of Moses does not now hold good in England.—*Albany Law Journal.*

Applications to the Chancery Division for the opinion of the Court under *The Vendors' and Purchasers' Act*, are hereafter to be made on petition, which is to be set down for hearing in Court on a Wednesday; the Judges of that Division having announced that they will not hereafter hear such applications in Chambers.

REPORTS.

ONTARIO.

MUNICIPAL CASES.

TENTH DIVISION COURT—COUNTY OF YORK.

CORPORATION OF BROCKTON v. DENISON.

Arbitrator's fees—No action lies where no award.

Where a corporation brought an action for arrears of taxes, and defendant claimed a set-off of arbitrator's fees for acting as third arbitrator in an arbitration, under a by-law passed by plaintiffs, *Held*, that as no award had been made no action would lie, either at Common Law or under our statute (R. S. O. cap. 64, sec. 12), to recover arbitrator's fees.

[Toronto, Feb. 1, 1884.

The facts of the case sufficiently appear in the judgment of

MCDOUGALL, J. J.: This is an action brought by the corporation of the village of Brockton against the defendant to recover the amount of certain arrears of taxes due by him to the municipality. The amount claimed is $96, but, upon the evidence, the plaintiffs admit that this sum should be reduced to $68; and the defendant does not seriously contest their right to recover the latter sum. The defendant, however says that he has a set-off, or counter claim, against the municipality for $54, being certain charges for arbitrator's fees, and contends that the plaintiffs' claim of $68 should be further reduced by deducting this amount from their claim. The defendants' alleged claim arises in this way. It appears that the municipality proposed opening a new street within their limits, and to that end passed a by-law, No. 39, on the 26th June, 1882. The by-law provided that the width of the proposed new street should be *sixty* feet instead of *sixty-six* feet, as required by section 545 of the Consolidated Municipal Act of 1883. This by-law the council of Brockton passed without first obtaining the permission of the County Council, as required by the Act whenever a local municipality desires to open a street of less width than sixty-six feet. The by-law was consequently bad. Acting, however, upon the assumption that the by-law was valid, the plaintiffs passed a second by-law, No. 42, on the 28th August, 1882, appointing an arbitrator on behalf of the municipality; and the principal property owner on the line of the proposed street, a Mr. Mallon, also appointed an arbitrator. These appointments were made under the provisions of