Therefore, where the question was, whether the defendant was the lawful sister of a testatrix whose will was in question, a statement in a deed made by the testatrix, describing the defendant as her sister, is evidence of the fact, and (in the absence of anything to the contrary) it will be presumed that the word "sister" means "legitimate sister."—*Smith and Others* v. *Tebbitt*, 15 W. R. 562.

MORTGAGEE IN POSSESSION.—If a mortgagee in that character enters into the receipt of the rents and profits of the property mortgaged, he will be bound in a suit for redemption to account not only for what he has received, but for what, without wilful default, he might have received. But when a person becomes possessed of a property, under an erroneous supposition that he is a purchaser, if it afterwards turns out that he is not to be treated as a purchaser, but only as a person who has a sort of lien upon the property, that does not make him a mortgagee in possession within the meaning of the rule which charges him with wilful default. It is essential to that rule that the party taking possession must have known that he was in possession as mortgagee.

In order to set aside or open a stated and settled account, so as to have liberty to surcharge or falsify, it is necessary in the bill to charge specially some, at least one, definite and important error, and support that charge with evidence confirming it as laid. — *Parkinson* v. *Hanbury*, 15 W. R. 642.

LANDLORD AND TENANT.—Where a lease contains a general covenant to repair, and also a covenant to repair within three months after notice, with a condition of re-entry on the breach of any of the covenants, a notice given to the lessees to repair "in accordance with the covenants," is not a waiver of the forfeiture under the general covenant to repair, and does not deprive the landlord of his right of re-entry before the expiration of the three months from the date of the notice. — *Few* v. *Perkins and others*, 15 W. R. 713.

RAILWAY—NEGLIGENCE.—This was an action brought by a passenger on the defendants' railway, to recover damages for an injury he had received owing to the breaking down of the carriage in which he was travelling. The carriage when attached to the train was to all outward appearance reasonably fit for the journey; the tire of the wheel being of proper thickness and apparently of sufficient strength but an air bubble having formed in the welding, rendered the tire much weaker than it appeared, so that it was not reasonably fit for the journey: the tire broke and occasioned the accident. The defect was one which could not be detected by inspection nor by any of the usual tests, as it would ring to the hammer as if perfectly welded; there was no neglect on the part of the defendants, who took every reasonable precaution in examining the carriage.

For the defendants it was contended that as the accident was not occasioned by any neglect on the part of the defendants, but was occasioned by a latent defect in the wheel, which no skill or care on the part of defendants could have detected, they were not liable.

For the plaintiff it was contended that the defendants, as carriers of passengers, were bound at their peril to supply a carriage that really was reasonably fit for the journey, and that it was not enough that they made every reasonable effort to secure that it was so.

Held, by Mellor and Lush, JJ., that the duty of a carrier of passengers is not absolutely to carry safely, but to exercise the utmost care and diligence in performing his contract of carriage, and that the defendants were not liable to the plaintiff for an injury caused by reason of the latent defect in the tire of the wheel.

Held, by Blackburn, J., that there is a duty on the carrier of a passenger to supply a vehicle in fact roadworthy—that is, reasonably sufficient for the journey—and that defendants were responsible for the consequences of their failure to do so, though occasioned by what no care could have prevented.—*Readhead* v. *Midland Railway Company*, Weekly Notes, June 1, 1867.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(*Reported by* C. ROBINSON, Esq., Q.C., *Reporter to the Court.*)

THE UNITED BOARD OF GRAMMAR AND COMMON SCHOOL TRUSTEES OF THE VILLAGE OF TRENTON, AND THE CORPORATION OF THE VILLAGE OF TRENTON.

Schools—Union of Grammar and Common Schools—C. S. U.C. ch. 63, sec. 25, sub-sec. 7—Ch. 64, sec. 79, sub-sec. 9.

"The United Board of Grammar and Common School Trustees of the Village of Trenton," applied for a mandamus to the Corporation of Trenton to levy a sum of money required by them for Grammar School purposes, as mentioned in the estimate; supporting the application by an affidavit of their Secretary, who stated that the Trustees of the Village of Trenton Grammar School had united with the Board of School Trustees of the Village of Trenton, and the same became and had ever since been the United Board of Grammar and Common School Trustees of the village.

Held that such Union of the two Boards of Trustees was not authorized by the Statutes—Con. Stat. U. C., ch. 63, sec. 25, sub-sec. 7, and ch. 64, sec. 79, sub-sec. 9; and the application was therefore refused.

[Q. B., Hilary Term, 1867.]

In last Michaelmas term, D. B. Read, Q.C., obtained a rule *nisi*, calling on the corporation of the Village of Trenton to shew cause why a peremptory writ of mandamus should not be issued