

## GENERAL CORRESPONDENCE.

*Unpatented lands—Liability to assessment and sale.*

TO THE EDITORS OF THE LAW JOURNAL.

Gentlemen,—If it would not be against the rules which govern your published answers to correspondents, I would like to know, if *unpatented lands*—on which some instalments are due the Crown by the purchaser, and on which no one resides—can be assessed, or sold for taxes? Sec. 138, cap. 55, C. S. U. C. says, the *interest* of the defaulter may be sold, while Judge Draper, in *Street v. The Corporation of Co. Kent*, 11 U. C. C. P., says exactly the contrary. What is your opinion? Assessors and Municipal Councils through the country have no doubt at all on the subject, for they assess all lands on which an instalment may be paid. Your answer will confer a favor on many of your readers.

I am, your obedient Servant,

A LAW STUDENT.

Ottawa, Feb. 23, 1863.

[We do not understand Draper, C. J., in *Street v. County of Kent*, 11 U. C. C. P. 255, to say that no *unpatented lands* can be sold for taxes. All he does say is, that *Street*, the plaintiff in that case, was not either "the grantee or lessee of the lands in question, nor was there any license of occupation granted to him in respect thereof" (p. 258).

The section of the Assessment Act to which our correspondent refers was neither cited in the argument nor adverted to by the court. It provides that "if the sheriff sells any land of which the fee is in the crown, he shall only sell the interest therein of the *lessee* or *locatee*," and that "the conveyance shall give the purchaser the same rights in respect of the land as the *original locatee* or *lessee* enjoyed, &c."

Now, if the fee be in the crown, and the land though sold be neither *granted*, *leased*, nor *located*, it is not liable to be either taxed or sold for taxes. This is what we understand Draper, C. J., to have decided, and nothing more. Had *Street* been either *grantee*, *lessee* or *locatee*, we apprehend the decision would have been very different.

True it is many people suppose that Draper, C. J., has decided that no *unpatented lands* can either be taxed or sold for taxes. But there is nothing in the language of that learned judge to warrant such a conclusion. The general rule is, that lands vested in Her Majesty cannot either be taxed or sold for taxes. The exception is where the land is leased or located, in which case the interest of the lessee or locatee in the land may not only be assessed but sold for nonpayment of assessment, and the sale "be valid without requiring the assent of the Commissioner of Crown Lands."

Such is the express language of the legislature in the section to which our correspondent refers. Its meaning is clear and unmistakable. The decision to which our correspondent refers, so far from being in conflict with it, in our opinion supports it.—Eds. L. J.

## MONTHLY REPERTORY.

## COMMON LAW.

## Q. B. STALLARD V. GREAT WESTERN RAILWAY CO.

*Bailment—Luggage—Railway Station—Cloak Room—Hours of Attendance—Reasonable—Question for the Jury.*

A passenger arrived at the up terminus of a railway station on Saturday, and deposited his luggage in the cloak-room. On Sunday he proceeded to the cloak-room for his luggage but found no one in attendance, and in consequence of delay in obtaining his luggage, he missed the train by which he intended to leave the station.

*Held*, that the luggage was not deposited with the company as ordinary warehousemen, but that the contract on the part of the company was to deliver the luggage at a reasonable time, on a reasonable request.

## C. C. R. REG. V. JOHN JENNISON.

*False pretences—Money obtained by a false representation of an essential fact with false promises.*

A false representation by a married man—whereby a single woman is induced to part with her money to him—that he is a single man; that he will furnish a house with the money, and marry the woman, is sufficient to support a conviction for obtaining money under false pretence; for although the two latter statements are mere false promises to do something in future, and, as such, are insufficient, the pretence of being a single man is a pretence of an essential fact.

## C. P. PHENE V. POPPLEWELL AND ANOTHER.

*Landlord and Tenant—Surrender by operation of law.*

A was B's tenant of a house from year to year. A, being in insolvent circumstances during a current quarter, sold his effects, and sent the keys to B's office, who refused to accept them, but they were left at his office. In the next quarter B put up a board on the house, giving notice that it was to let, and used the keys for the purpose of shewing it to persons with a view to letting it. In the quarter after that B painted out A's name, which had before been painted on the premises, and had some cleaning and repairing done to the house, and the day after the last mentioned quarter expired demanded possession.

*Held*, that what took place before the last quarter might be coupled with the acts done in the last quarter, and the act demanding the premises, which referred back to the first quarter; that the whole constituted an acceptance by the landlord of the tenant's offers that it amounted to a surrender by operation of law, and A was consequently not liable for rent for the two last quarters.

## EX. HOLME V. CLARK AND ANOTHER.

*Practice—New Trial—Surprise.*

A party to a cause, who has not been called as a witness, cannot have a new trial on the ground of surprise in regard to the effect of any conversation with himself; at all events, if he admits some conversation to have occurred, and the effect of it is not necessarily decisive of the case.

## WEBBER V. SHAW.

*Practice—Costs—County Court—Bill of Exchange—Indorsement.*

In an action by a party as endorsee of a bill of exchange, after judgment by default for a sum less than £20, it is no answer to an application for costs, on the ground of the parties not residing within twenty miles of each other, that the bill was endorsed to the plaintiff to sue upon, as residing beyond that distance from the defendant, for the purpose of obtaining costs on that ground.