

C. P.]

NOTES OF CASES.

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vate earth from a bank below, while others were loosening it from above. Whilst so engaged, a quantity of earth fell down upon him and broke his leg.

Held, that defendants were not liable, and a nonsuit was ordered to be entered.

H. Cameron, Q.C., and Martin for plaintiff.

Kerr, Q.C., and Barrow, contra

SUPERIOR LOAN AND SAVING SOCIETY V. LUCAS.

Mortgagor and mortgagee—Reformation of mortgage—Absence of redemise clause—Ejectment.

Defendant applied to plaintiffs, a money-lending company, for a loan of \$2000, and was shewn by their manager a circular and loan table, the former declaring that the loan table was for the inspection of all, rendering borrowers free from the possibility of extortion, deception or fraud, *the loans being made at a fixed and uniform rate*, etc. The loan table shewed that the amount payable quarterly for 20 years on a loan of \$1,000 was \$26.85, defendant then signed an application for \$2,000 repayable in 20 years quarterly according to the defendant's scale of repayments. This application was submitted to and passed by the board of directors, the manager then endorsed upon the application the quarterly repayment at \$57.60 instead of \$53.70, and sent it to the solicitors of the company who prepared a mortgage accordingly, for defendant's execution, and defendant executed it supposing it to be correct. The manager swore that he had told defendant the quarterly payment would be \$57.60, but at the same time admitted that he had not informed him that the amount differed from the loan table, while the defendant positively denied the manager's statement. Defendant paid the first quarterly payment under the impression that it was correct, and the second was paid for him by one of the company's directors, but the third payment defendant refused to pay, when the plaintiffs brought ejectment; but

Held, that they could not recover, but that the mortgage must be reformed.

The mortgage contained no redemise

clause, but the Court considering it beyond doubt both from the terms of the mortgage and the rules and regulations of the company that it was the intention of both parties defendant should retain possession until default, and there being in their opinion no default, refused to give effect to the objection that the estate was absolute in plaintiffs—and that they were therefore in any event entitled to possession.

COMMON PLEAS.

VACATION COURT.

FEBRUARY 21.

KELLY V. EARL.

Action for goods sold and delivered—Sale of liquors to persons accustomed to sell without license—Pleading—Evidence.

This was a special case submitted by an arbitrator for the opinion of the Court, under the terms of an order of reference, by consent of the parties.

The action was on the common counts for goods sold and delivered, to which, amongst other pleas pleaded, was the following one, allowed to be added by the arbitrator: that as to so much of the plaintiff's declaration as is for intoxicating liquors furnished after the month of August, 1876, the defendant says that he was not the holder of a license authorizing him to sell spirituous and malt liquors, but was accustomed to sell and did sell such liquors without license; and the plaintiff, well knowing that the defendant was so selling illegally, and with the intention of aiding and enabling the defendant to carry on such illegal traffic as aforesaid, sold to the defendant large quantities of spirituous and malt liquors, which liquors are part of the goods for the price of which the plaintiff seeks to recover in this action. The arbitrator found, that subsequent to such month of August, while defendant was not the holder of such license, but was accustomed to and did sell such liquors without license, the plaintiff knowing that the defendant was so accustomed to sell such liquors without license, sold to the defendant intoxicating liquors to the value of