

Eng. Rep.]

HILTON V. ANKESSON—CORRESPONDENCE—REVIEWS.

straying upon the property of his neighbours. That which he had a right to set up he has a right to pull down; and no matter how long he has had it up or repaired it, that affords no evidence of a legal liability to repair it. It would really be alarming if the law were otherwise—if a person who once set up a fence were compelled to keep it up. In this case I cannot see a particle of evidence of the liability of the defendant to repair the hedge; and the learned judge was quite right in so holding.

CHANNELL, B.—I also am of opinion that this rule should be discharged. The question is whether there was a fence which the defendant was liable to repair? I really cannot see that there is any evidence whatever of any such liability. It certainly seems that for fifty years at least the fences were kept up by the defendant and his predecessors; but they were kept up for his own purposes, and not for the sake of his neighbours; and it is argued that such repairs are evidence of an obligation to repair, but no such legal obligation is to be inferred from such acts of repairing.

PIGOTT, B.—I am of the same opinion that there was no evidence of a liability on the part of the defendant to repair the fence. When the rule was moved I understood that there were additional facts, such as that the defendant had repaired the fence, when it was not necessary that he should have done so for his own purposes, but now it is quite clear that that was not so. It was certainly necessary that some evidence should have been given of the obligation to repair, such as that he had been called upon by his neighbour to repair, and he had repaired accordingly.

BRAMWELL, B.—I continue of the same opinion that I entertained at the trial. It is quite clear that there is no obligation to fence land that has not been fenced before. Well, if a party is not bound to fence, he may take down any fence that he may have put up, or he may let it fall down. It is said, however, that his repairing the fence is evidence that he is bound to repair it; but as he puts it up for his own purposes he may surely take it down again. Again, it is said that the witness said he thought he was bound to repair his fence, and, therefore, he did repair it. This, however, shows no obligation to repair. There was no requisition to repair, and no repairing in consequence. To hold that a man who erects a fence, and repairs it from time to time, is bound always to continue it, would involve a serious state of things.

*Rule discharged.*

## CORRESPONDENCE.

### *Election of Mayor—Mode of Voting.*

TO THE EDITOR OF THE CANADA LAW JOURNAL.

SIR,—On the election of Mayor for this city, the question was raised as to the proper mode of proceeding, whether by placing all the candidates before the Council at once, as in an ordinary election by the people, and the one receiving the highest number of votes (although not a majority of the whole Council) being declared elected,—or, by the method heretofore followed, namely, by resolutions and amendments consecutively voted upon until some candidate receives a majority of the whole council. The clerk decided upon the latter as the legal mode: that of resolutions and amendments.

Mr. Harrison in his Manual appears to hold differently—see sections 66, 105, 121 and note (d); sec. 129 and note (s).

Will you please give your view of the matter?

Yours truly,

R. R. WADDELL.

Hamilton, 23rd Jan. 1873.

[The references given to the Municipal Manual by you do not shew either dissent from or assent to the mode adopted by the city, which is, we believe, the rule generally followed.—Eds. L. J.]

## REVIEWS.

A TREATISE ON CRIMINAL LAW AS APPLICABLE TO THE DOMINION OF CANADA. By S. R. Clarke, of Osgoode Hall, Barrister-at-Law, Toronto. R. Carswell, 1872. Price \$5.

We have looked through this volume with much interest. It should be the aim of the Dominion Legislature, as soon as possible, to make the laws of the several Provinces homogeneous, and so far as Criminal Law is concerned, it has the power to do so without any reference to the several Legislatures of the Provinces. So far as the laws regulating property and civil rights are concerned no Act of the Dominion Legislature to secure uniformity can have effect in any Province until adopted and enacted as law by the Local Legislature thereof. The Dominion Legislature has already to a great extent