

Held, however, that in this case the evidence of such latter promise, set out below, was unsatisfactory; and the jury having found for the plaintiff, a new trial was granted.—*Jackson and wife v. Yeomans*, 27 U. C. Q. B., 307.

TOLLS—ILLEGAL DEMAND OF—CONVICTION FOR—EXEMPTION.—Con. Stat. U. C. ch. 49, sec. 89, which makes it an offence to "take a greater toll than is authorised by law," does not apply to the case of taking toll from a person who is altogether exempt.

If it did, a conviction for such offence should state the ground of exemption, and the fact of such exemption being claimed.

In this case the defendant passed through the gate on the 10th January, the collector giving him credit, as was usual between them. On the 20th they had a settlement, and this toll was then demanded and paid. *Semble* that a conviction for such demand, if legal, could not be supported.—*The Queen v. Campion*, 27 U. C. Q. B. 259.

NORTHERN RAILWAY CO. — OBLIGATION TO FENCE—20 VIC. CH. 143.—The plaintiff, by permission of one H., put his cattle into a pasture field of H., adjoining defendants' railway, and the evidence went to shew that they escaped thence into an adjoining field, occupied by one J., and thence on the track, where they were killed by a train passing. The plaintiff sued, alleging that the horses escaped from the field where they were pasturing by reason of defects in the railway fences.

Held, affirming the judgment of the County Court that he could not recover, for the horses were not in the field from which they escaped by the owner's permission.

The preamble to 20 Vic. ch. 143, which applies to this company the clauses of "The Railway Act" with respect to fences, has not the effect of extending their liability beyond that of other companies subject to the same provisions.—*Wilson v. The Northern Railway Company of Canada*, Q. B., H. T., 274.

Lord Eldon, when he was handsome Jack Scott of the Northern Circuit, was about to make a short cut over the sands from Ulverstone to Lancaster at the flow of the tide, when he was restrained from acting on his rash resolve by the representations of an hotel-keeper. "Danger, danger," asked Scott, impatiently; "have you ever lost anybody there?" Mine host answered slowly, "Nae, sir, naebody has been lost on the sands, the puir bodies have been found at low water."—*Jeaffreson*.

ONTARIO REPORTS.

QUEEN'S BENCH.

Reported by CHRISTOPHER ROBINSON, Esq., Barrister-at-Law, Reporter to the Court.)

MCLEAN AND THE CORPORATION OF THE TOWN OF ST. CATHARINES.

Municipal corporations—Markets—29 & 30 Vic. ch. 51, sec. 296, sub-sec. 12—31 Vic. ch. 30, sec. 32.

The corporation of a town by by-law enacted that no butcher, huckster, or runner, should buy or contract for any kind of fresh meat, provisions, &c., such as were usually sold in the market, on the roads, streets or any place within the town, or within one mile distant therefrom, between certain hours in the day:

Held, clearly unauthorized, for their power (under 29 & 30 Vic. ch. 51, sec. 296, sub-sec. 12, as amended by 31 Vic. ch. 30, sec. 32), extends only to butchers living in the town or within a mile of its limits. The rule nisi to quash the by-law was entitled "In the matter of — appellant, and — respondent;" *Held*, no objection.

[27 U. C. Q. B. 603.]

James Miller obtained a rule calling on the corporation of the town of St. Catharines to shew cause why the second section of their by-law, passed on the 15th April, 1868, entitled a by-law to amend by-law No. 20, relating to the market of the town of St. Catharines, should not be quashed with costs, upon the ground that the corporation had no power to restrain the buying of or contracting for the articles in the said second section mentioned, in the manner therein stated, by all or any of the persons at the places therein stated.

In support of the application the affidavit filed was entitled in this court, and in the matter of *James McLean*, appellant, and *The Corporation of the Town of St. Catharines*, respondents.

The second section of the by-law in question enacted that no butcher, huckster or runner should buy or contract for any kind of fresh meat, provisions, eggs, and all articles required for family use, and such as are usually sold for family use, and such as are usually sold in the market, on the roads, streets, or any place within the town, or within one mile distant from the outer limits thereof, on any day before the hour of nine o'clock, a.m., between the first days of April and November, or before the hour of ten o'clock, a.m. on any day during the remainder of the year.

Harrison, Q. C. shewed cause, referring to *Fennell v. The Corporation of Guelph*, 24 U. C. Q. B. 238; and he took a preliminary objection that the affidavit was improperly entitled as in a cause, and styling the applicant appellant and the corporation respondent.

Kerr supported the rule.

Morrison, J., delivered the judgment of the Court.

As to the preliminary objection the case of *Hargreaves v. Hayes*, 5 E. & B. 272, followed by the judgment of our Court of Common Pleas in *Re Burrows* 18 C. P. 502, disposes of the first branch of the objection, and the case of *In re Imeson and Horner*, 9 Dowl. 651, shews that words such as appellant and respondent may be treated as surplusage.

Then as to the by-law in question, there can be no doubt that the corporation has exceeded its powers. The authority under which the