of March, 1870, or before the 14th day of June, in that year.

But supposing the foregoing not to be the correct view of the respective powers of our Legislature, and supposing Con. Stat. U. C. cap. 124 not to be fitly classed with the criminal law or criminal procedure, then I should assume the position, that by the 91st section of the B. N. A. Act, 1867, general powers of legislation are conferred upon the Dominion Parliament, "to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces;" and without restricting those general terms, it is therein declared, "for greater certainty," to what the exclusive legislative authority of the Parliament of Canada extends. I think, therefore, that by that general power, the Dominion Parliament had the exclusive right to alter, amend or repeal Con. Stat. U. C. cap. 124, and to substitute other enactments in its place; because there is no subsection of the 92nd section, under which it may be held that the exclusive power to legislate upon that subject is conferred upon the Provincial Legislatures; for I cannot see how it belongs to the subject of "property and civil rights" (subsec. 13), or to "the administration of justice" (subsec. 14), or "the imposition of punishment, by fine, penalty or imprisonment, for enforcing any law of the Province made in relation to any matters coming within any of the classes of subjects enumerated in that section" (subsec. 15); nor is it concerning a matter of a merely local or private nature in the Province (subsec. 16). The rule to arrest the judgment must therefore be made absolute.

Rule absolute to arrest judgment.

ENGLISH REPORTS.

EXCHEQUER CHAMBER.

Makin v. Watkinson.

Lessor and lessee—Covenant to repair—Notice to lessor of want of repair.

In an action by a lessee against his lessor for breach of covenant to repair the main timbers and roofs of the demised premises.

Held, that the lessee could not recover against the lessor for breach of covenant without having given him notice of repairs being required; that being a matter within the knowledge of the lessee, and not of the lessor (Martin, B., *dissentiente*).

[Nov. 22, 1870.—19 W. R. 286.]

Declaration—That defendant by deed let plaintiff a mill. Defendant covenanted to keep the main walls, main timbers, and roofs in repair, which he neglected to do, whereby plaintiff incurred great loss.

Third plea—That no notice was given by plaintiff to defendant of any want of repair, or that the main walls, main timbers, and roofs were not in good order.

Demurrer and joinder in demurrer.

Wills, for the defendant, contended that the plea was good, and that the plaintiff being the lessee, and having exclusive possession of the premises, was bound to give the lessor notice of any repairs that were required. He cited the case of *Moore* v. *Clark*, 5 Taunt. 96, where Mansfield, C J., and Gibbs, J., said the lessor may charge the lessee without notice, for the lessor is not on the spot to see the repairs wanting; the lessee is, and therefore the lessee cannot charge the lessor for breach of repairs without notice, for the lessor may not know that the repairs are necessary. He also cited *Harris* v. *Ferrand*, Hardres, 42, and *Vyse* v. *Wakefield*, 6 M. & W. 442, and contended that the defendant could not enter the premises to see what repairs were wanted, as there was no such right of entry reserved to him by the lease.

Kemplay, for the plaintiff, contended that the defendant had a clear right of entry on the premises to see what repairs were necessary in accordance with the maxim, *quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud*, Broom's Maxims, 5th ed. 485; and argued that as the knowledge of what repairs were wanted was not, or, at any rate, need not have been in the exclusive knowledge of the plaintiff, there was no necessity for any notice from the plaintiff, for which he cited *Cole's case*, Cro. Eliz., p. 97, where Anderson, C. J., says:—"If one be obliged to make such assurance as J. S. shall advise, he ought to take notice of the assurance advised at his peril, because a certain person is appointed to do it. But if it be such assurance as my counsel shall advise, I ought to give notice of the assurance, for he cannot take notice who is my counsel." He also cited *Coward* v. *Gregory*, 15 W. R. 170; L. R. 2 C. P. 153.

Channell, B.—In my opinion this is a good plea. The declaration is good upon the face of it, and states in a compendious way that the defendant had been requested to repair. The question then is whether the plea is good. I agree that the observations which have been cited from the case of *Moore* v. *Clark*, 5 Taunt. 96, cannot be considered as more than *obiter dicta*, and that those observations do not carry the weight they would have borne had they been made with reference to any ascertained materials present to the mind of the Court; but looking at the case upon principle, I think that *Vyse* v. *Wakefield*, 6 M. & W. 442, is an authority for the doctrine that where a covenant is unreasonable or unconscientious, there you must supply words to make it reasonable and conscientious, although I quite agree that where a covenant is simply absurd, you cannot remedy that absurdity by introducing words which are not found there.

The covenant in this case was to repair the roof, and the main timbers. It might perhaps be possible for the defendant to ascertain the condition of the exterior portion of the roof without entering the premises, but it is clear that he could not ascertain the condition of the interior timbers without going into the premises, and I do not see that he had any power reserved to him by the lease to enter and view the condition of the premises. It appears to me, therefore, there being no authority against my view of the case, that the plea is good.

Bramwell, B.—I think that the plea is good, and, of course, to hold it good, we must in effect insert the words "upon notice" in the covenant, and I agree that, as a general rule, it is objectionable to interpolate words in a contract which the parties themselves have not made use of.