

though the contributors to the salary may have intended to support a bishop with coercive jurisdiction over his clergy, and subject to coercive jurisdiction of his metropolitan. — *Colenso v. Gladstone*, 2 U. C. L. J. N.S. 332.

BILLS AND NOTES—WAIVER OF DEMAND AND PROTEST.—A waiver of presentment and demand of payment of a negotiable note would imply and include a waiver of protest and of notice of non-payment, but a waiver of notice only would not be a waiver of demand. A "waiver of protest" would imply a waiver of presentment, demand, and notice. The waiver is a matter between the holder of the note and the indorser to be charged, and the agreement must be made between them. — *Jaccard v. Anderson*, 37 Mo. (U. S.)

USURY.—The mere fact that a promissory note, payable in the city of New York, is made and discounted in the country, and a portion or the whole of the proceeds paid to the borrower, in a draft upon the city, at the usual price or charge for city drafts, does not render such note usurious.

Perhaps the note might be held to be usurious if both the place of payment thereof, and the purchase of the draft, were made the condition of the loan. But where nothing of that kind is shown, and for aught that appears in the finding of facts, the borrower desired a draft on the city for his own convenience, if the fact was otherwise it is for the defendant alleging the usury to prove it. — *The Union Bank of Rochester v. Gregory*, 46 Barb. (U. S.)

DEED—EFFECT OF ITS DESTRUCTION.—When a deed has been delivered, so as to divest the grantor of the title and vest it in the grantee, the subsequent destruction of it by the parties will not change the title back to the grantor, and reinvest him with it. — *Fonda v. Sage et al.*, 46 Barb. (U. S.)

INSURANCE—CAUSE OF LOSS.—A policy of insurance upon a building is an insurance upon the building as such, and not upon the materials of which it is composed. If from any defect of construction or overloading, the building fall into ruins, and subsequently the materials take fire, the insurer is not liable for the loss — *Nave et al. v. Home Mutual Insurance Co.*, 37 Mo. (U. S.)

RAILROAD COMPANIES—POWER TO EXCLUDE IMPROPER PERSONS FROM THE CARS.—The conductor of a street railway car may exclude or expel therefrom a person who, by reason of intoxication or otherwise, is in such a condition as to

render it reasonably certain that by act or speech he will become offensive or annoying to other passengers therein, although he has not committed any act of offence or annoyance. — *Vinton v. Middlesex Railroad Co.*, 11 Allen. (U. S.)

TELEGRAPH COMPANY—CONTRACTS LIMITING LIABILITY.—Telegraph companies, whether regarded as common carriers or bailees, may specially limit their liabilities, subject to the qualification that they will not be protected from the consequences of gross carelessness. A telegraph company may reasonably require that, for the purpose of avoiding errors, the message shall be repeated, or that the company shall not be liable for any error in the transmission of the message. — *Wann v. Western Union Telegraph Co.*, 37 Mo. (U. S.)

TENDER.—To make a tender of payment of money valid, as a general rule, the money must be actually produced and proffered unless the creditor expressly or impliedly waive its production. The creditor may not only waive the production of the money, but the actual possession of it in hand by the debtor. Nor is the debtor bound to count out the money if he has it and offers it, when the creditor refuses to receive it. A tender puts a stop to accruing damages or interest for delay in payment, and gives the defendant costs when sued for the debt. — *Berthold v. Reyburn et al.*, 37 Mo. (U. S.)

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(Reported by C. ROBINSON, Esq., Q. C., Reporter to the Court.)

IN THE MATTER OF THE AWARD BETWEEN JOHN CAMERON AND THOMAS KERR.

Fence viewers—Award.

This court has no authority to set aside an award of fence viewers made under Consol. Stat. U. C. ch. 57.

[Q. B., T. T., 30 Vic., 1866.]

Robert A. Harrison applied for a rule, calling upon John Cameron to shew cause why the award of John Menzies, John Ward, and Peter Fisher, fence-viewers in the township of Bathurst, in the matter of dispute between him and Thomas Kerr, should not be set aside with costs, because—

1. The fence-viewers had no power to make the award so as to bind Kerr, or his rights or interests.

2. The award does not direct Cameron to contribute to the expense of making the drains already upon the land of Kerr before giving to Cameron a right to use the same.

3. That the award permits Cameron to put a pipe into Kerr's land, which will have the effect of destroying the under draining of Kerr's land and render it unfit for cultivation.