of a gun was a wanton excess of violence, would have been for the jury to determine; but it is to be observed that a man engaged in such a struggle cannot measure very nicely the force of a blow, and it was admitted by the prosecution that the man did not think he had killed the officer. It appeared also that he ran away, as soon as he could. The question is whether, under these circumstances, it was a conclusion of law that the effect of striking those blows was manslaughter.

No doubt the sufficiency of provocation is a question for the Judge. And the learned Judge treated it as a question of provocation. But was it not according to the authorities a question of justification? If so, then unless there was wilful excess the man was entitled to an acquittal. As it was, he had a sentence of fifteen years' penal servitude for a homicide in self-defence, just the same sentence which the learned Judge inflicted at Maidstone in a case of deliberate homicide out of revenge. Both cases were treated as cases of mere provocation, and the distinction as to the use of a deadly weapon with intent to kill was apparently overlooked. In the poacher's case, however, according to the authorities, there was a question of justification arising out of self-defence against illegal violence. If so, it is manifest that there is an inconsistency in the judicial *dicta* on this most important subject.—*The Law Times.*

CANADA REPORTS.

ONTARIO.

PRACTICE COURT.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

County of Frontenac v. City of Kingston.

Judgment Roll—Form of—Where issues of law and fact, and declaration held bad.

Where defendant obtains judgment in demurrer because of the insufficiency of plaintiff's declaration, although there are also issues in fact and demurrers to pleas, the judgment roll should contain only the declaration, demurrer and judgment, omitting all intermediate proceedings.

[Prac. Court, Mich. Term, 1870:—Hil. Term, 1871.]

During Michaelmas Term, 1870, *Harrison*, Q C. obtained a rule to set aside the judgment and judgment roll in this cause, on the ground that the roll was not a transcript of the pleadings, omitting the first, third, fifth and sixth pleas of the defendants and the issues in fact joined thereon: that those issues were never tried, and were still subsisting, nor were they struck out or disposed of, or in and by the judgment decided or determined; and that until the same were decided, defendants had no right to enter judgment on the said pleas; and also that as judgment was given against the plaintiffs on demurrer for insufficiency of their declaration, no judgment was given in favour of defendants on the demurrers to their pleas, the rule for judgment in no manner authorising judgment to be entered for defendants for sufficiency of their pleas; and that judgment for defendants should have been entered simply for insufficiency of declaration.

During the same Term, *D. B. Read*, Q. C., obtained a cross-rule to amend the judgment roll by inserting therein a full transcript of the pleadings, and a suggestion that the plaintiffs' declaration being held insufficient in law, it became unnecessary to try any of the issues in fact, and that the same ought not to be tried, and that defendant do go thereof without day, &c., or to that effect, or why the issues of fact in the record should not be expunged.

Both rules were argued at the same time.

Harrison, Q. C., for plaintiff.

Read, Q. C., for defendant.

Morrison, J.—It appears from the affidavits and papers filed, that the defendants demurred to the plaintiffs' declaration, and also pleaded several pleas. The plaintiffs took issue on all the pleas, and also demurred to the second, fourth and seventh pleas. Judgment was given for the defendants on the demurrer to the declaration, and a rule for judgment for defendants on demurrer was taken out and judgment entered. The judgment roll only contained the declaration, demurrers thereto and joinder, the pleas demurred to (omitting the first, third, fifth and sixth pleas,) the replication, taking issue on all the pleas, and the demurrers to the second, fourth and seventh pleas, and the joinder in demurrer. The roll ended thus: "It appears to the court here that the said declaration is, and the several counts therein are bad in substance," and these words were interlined, "and also that the second, fourth and seventh pleas are good in substance. Therefore it is considered that the plaintiffs take nothing, &c.;" and then follows award of costs of defence.

Now, it is clear that the judgment roll should be a transcript of all the pleadings; and although the books of practice and forms do not give any practical directions as to the way of making up the roll and entering judgment, in a case like this, when the court have determined that the plaintiff's declaration shows no cause of action, at the same time expressing their opinion that if the plaintiff had shown a cause of action, certain of defendants' pleas demurred to were good pleas. Yet it appears to me that, as the rule and practice is that the judgment shall be against the party who makes the first default, that where the plaintiff fails, as here, in his declaration, and judgment is against him, the same being final, no matter what may be the state of the subsequent pleadings, the final entry on the roll should be judgment for the defendant, on account of the declarations being bad in substance, taking no notice of the subsequent pleadings demurred to.

Then as to the issues in fact, as they appear on the roll, it seems to me that the mode of entry adopted in the case of *Robins* v. *Crutchley*, 2 Wils. 118, is the proper and most convenient way of disposing of them. In that case the roll, after stating that plaintiff's replication was insufficient, proceeds: "Therefore, no respect being had to the issues aforesaid above joined between the parties to be tried by the country; it is considered that the plaintiff take nothing by her said writ, &c." I therefore think that the entry on the roll, as to the second, fourth and