windows. There had been unity of possession and ownership of the two lots from 1834 till 17th March, 1840. On the latter date the common owner sold one lot to the person from whom defendant subsequently purchased and on the 25th March, 1841, he sold the other lot to the person from whom plaintiff subsequently purchased.

Under the provisions of chapter 44 of the Acts of 1860 (N.S.) as extended by c. 39 of the Acts of 1863, no person or corporate body shall be restricted or prevented from building to any height he or they may judge necessary by any right acquired by any adjacent proprietor by reason of any lights, windows, etc. But no rights of ancient lights acquired prior to the passage of the Act (12th May, 1860) were destroyed or diminished thereby.

Held, 1. It was not sufficient for plaintiff to show that he had enjoyed the easement of light for 20 years prior to May 12th, 1860, but that any inference that might be drawn from the continuous enjoyment of such an easement for 20 years could be rebutted and disproved.

2. It having been shown that there was unity of possession and ownership in 1840, that defendant had rebutted and disproved any inference to be drawn in plaintiff's favor by the twenty years enjoyment, and that plaintiff therefore had not shewn a prescriptive right. *Cross* v. *Lewis* 2 B. & C. 686, *Bright* v. *Walker* 1 C.M. & R. 211, *Mounsey* v. *Ismay* 3 H. & C. 486, 496, *Norfolk* v. *Arbuthnot* L.R. 5 C.P.D. 390, *Dalton* v. *Angus* 6 App. Cas. 740, *DeLaWarr* v. *Miles* L.R. 17 Ch. D. 590, *Bass* v. *Gregory* L.R. 25 Q.B.D. 481, *Wheaton* v. *Maple* (1893) 3 Ch. D. 48.

3. The Court would, under the evidence, not infer a lost grant, and there being a doubt whether the windows at the time of the application occupied the same position as in 1840, (without deciding that the plaintiff had no easement) that the balance of convenience was in favor of allowing the erection of the building to proceed. Injunction refused.

H. McInnes, for plaintiff. *R. E. Harris*, Q.C., for defendant.

Province of New Brunswick.

YORK COUNTY COURT.

Wilson, J.] TURNER *v.* CONNELLY. [July 3

Arrest for medical services—Affidavit to hold to bail.

Defendant was arrested on a capias for services performed and medicines supplied by the plaintiff as physician, surgeon and apothecary.

Held, that the affidavit on which the capias was founded was insufficient for not alleging that the plaintiff was a duly registered physician.

Arthur R. Slipp, for plaintiff. *J. D. Phinney*, Q.C., for defendant.