no defence; but on appeal this decision was reversed. Fry, L.J., who delivered the judgment of the court, having after an examination of the dicta of judges and the statements of text writers, come to the conclusion that charity is an excuse for maintenance, and while observing that no case could be found in which the defence of charity had been previously set up in any such action, he proceeds to say at p. 513:—

But if the law be correctly laid down in the passages we have cited, it appears to us to follow that the limitation put on the meaning of the word "charity" by Wills, J., cannot be maintained. He requires that charity shall be thoughtful of its consequences, shall be regardful of the interests of the supposed oppressor as well as of the supposed victim, and shall act only after due, and upon reasonable and probable cause. If we were making new law and not declaring old, it would, in our opinion, be well worthy of consideration whether such a limitation of the doctrine that charity is an excuse for maintenance would not be wise and good. But is it not an anachronism to suppose any such view of charity to have been present to the minds of the judges of the reign of Henry VI.—a view which even now is present only to the minds of a select few, and does not commend itself to a large portion of the kind-hearted and charitable amongst mankind? To say that charity is not charity unless it be discreet appears to us to be without foundation in law.

CRIMINAL PRISONER - IMPRISONMENT UNDER ORDER—STATUTORY OFFENCE HOW FAR A "CRIME."

The case of *Osborne* v. *Milman*, 17 Q. B. D. 514, is useful as throwing light on a question often discussed as to how far a statutory offence can be regarded as a "crime." The plaintiff in the action had been imprisoned under an order made against him upon a summary application for practising as a solicitor without being duly qualified. The defendant, who was the gaoler into whose custody the plaintiff had been committed, treated him as a criminal prisoner—a class of prisoners which a statute defined as being "any prisoner charged with, or convicted of, a crime." The present action was brought for false imprisonment and trespass, and the question was whether under the circumstances the plaintiff was "a criminal prisoner." Denman, J., came to the conclusion that though the offence was one for which the plaintiff might have been indicted and convicted, in which case he would have been "a criminal prisoner," yet as his imprisonment had been ordered upon a summary application without indictment he was not a criminal prisoner.

MASTER AND SERVANT—MISCONDUCT OF SERVANT—DISMISSAL OF SERVANT.

In *Pearce* v. *Foster*, 17 Q. B. D. 536, the Court of Appeal affirmed the judgment of Grove, J., holding that the defendants, who were merchants, were justified in dismissing the plaintiff from their employment as a confidential clerk, before the term of service for which he had been engaged had expired, on the ground of their having discovered that he had been engaged in gambling to an enormous amount in "differences" on the Stock Exchange.

INTERPLEADER—RIGHT OF EXECUTION CREDITOR TO SET UP A JUS TERTII.

The case of *Richards* v. *Jenkins*, 17 Q. B. D. 544, is a decision of a Divisional Court, composed of Wills and Grantham, JJ., on appeal from a county court judge, in an interpleader issue. The question for the court was whether an execution creditor was entitled to defeat the claim of the claimant to certain goods seized in execution, by showing that the claimant had become bankrupt, and that his right to the goods in question had passed to his assignee. The court, after a careful review of the authorities, held, reversing the judgment appealed from, that the execution creditor was so entitled. In Mr. Cababe's book on Interpleader the rule he deduces from an examination of the authorities is "that although the execution creditor can set up a *jus tertii* against the claimant, yet the claimant cannot set up a *jus tertii* against the execution creditor." This view is to a certain extent supported by the present case, and we doubt not that it is the correct rule whenever the goods in question are seized in the possession of the execution debtor. We are disposed to doubt, however, whether that is the rule when the goods are seized in the possession of the claimant, *e.g.*, where goods in the actual possession of A are seized in execution as being the goods of B, in such a case we should be inclined to think A would be entitled to set up a *jus tertii* as against the execution creditor.

If, as Wills, J., puts it in *Richards* v. *Jenkins*, the decision in that case and in the other cases cited, is in substance a legitimate application of the maxim, *potior est conditio defendentis*, it would seem to follow that the rule stated by Mr. Cababe is subject to the limitation we have suggested.