his superior was a traitor, and all that joined with him in that act were traitors, and did by that approve the treason; and where the command is traitorous, there the obedience to that command is also traitorous;" and in pursuance of the above judgment, Colonel Axtell was hanged.

The trial and execution of Colonel Axtell, and many others of the so-called regicides, whose participation in the king's death had only been of a ministerial character, was unquestionably a proceeding which most persons in these days will deplore and condemn, as the death of these men was not required by justice or even by "political expediency," but was the result of an insatiable craving for political vengeance and retaliation. There is, however, no doubt that, whatever may be thought of the policy and humanity of the proceedings, the trial and execution of these men were not only strictly, but even technically, legal. Our ancestors did not try their political antagonists by courts-martial; they did not shrink from or evade a trial by jury, and if British subjects were, as has been, alas! too often the case, sacrificed to political vengeance, they at least had the lawful judgment of their peers, and the protection, such as it was, of the law of the land. Hence it is that the case we have referred to is of peculiar value. It is plain that, whatever may be the case under the military institutions of foreign countries, the immunity of soldiers formed no part of the ancient institutions of this country, either in feudal times or in the days of arbitrary power; and unless it is to be contended that the execution of Colonel Axtell was not only a vindictive act (which it undoubtedly was), but also positively illegal, the civil liability of officers and soldiers for all their actions, whether done in pursuance of orders or not, must be considered as beyond doubt.

The position of a soldier may be stated in a few words. He is the Queen's hired servant, and is bound like other servants by the terms of his engagement to obey the orders of his employer, under pain, in any case, of losing his situation, and, in some special cases, of severer punishment. In this his position is much the same as that of the servant of a railway company. It is one of the contingencies of every service, that the servant is liable to be ordered by his employer to do an illegal act, and that a refusal to do so, even if not punishable by law, may ultimately lead to the loss of his situation, and much consequent injury or inconvenience. It is doubtless a great misfortune to a servant to be placed in a position where he has to choose between his duty and his interest. There cannot, however, be a shadow of a doubt as to which he ought to prefer. If, by refusing to obey an illegal command, he suffers loss, he will have the sympathy of all good men, and must hope that the performance of his duty will ultimately obtain its reward; if, on the other hand, he violates the law to save himself from present inconvenience or loss, he does so at his own risk, and under the same responsibilities as any other subject of the realm. He may, if he is fortunate enough to obtain the active support of the authorities, escape or evade punishment; but such escape or evasion can never amount either to a legal immunity or to a justification for similar acts.—*Solicitors' Journal.*

IMPLIED COVENANT FOR TITLE BY LESSOR.

Stranks v. *St. John*, C P., 15 W. R. 678.

In the recent case of *Stranks* v. *St. John*, the Court of Common Pleas has cleared up a point of law which was involved in some obscurity, but yet must have been of almost every day occurrence.

The declaration was on an agreement, not under seal, by which the defendant was to let, and the plaintiff to take, a farm of the defendant, for a term of seven years, to commence *in futuro*, and the breach laid was "that the defendant never had any right or title to let the said farm to the plaintiff for the said term."

To this breach there was a demurrer, which raised the important question whether on a parol agreement to grant a lease the intended lessor impliedly stipulates for title. The agreement not being under seal was void as a lease by the operation of 8 & 9 Vict. c. 106, s. 3. but it might still enure as an agreement: *Tidey* v. *Mollett*, 12 W. R. 802, 16 C. B. N. S. 298. The defendant contended that on such an agreement the plaintiff could only sue for not granting the lease, and that if damages could be recovered against him for not having title to lease for seven years, it would in effect be treating the parol agreement as a lease, and so rendering nugatory the provisions of the statute. On the other hand it was argued that on a contract for the sale of an existing lease there was an implied stipulation for title, *Souter* v. *Drake*, 5 B. & Ad. 992; and that there was no difference in principle between the two cases. The real question was, as put by Mr. Justice Willes, whether the agreement was to execute what purported to be a lease, or to grant a good and valid lease, and we cannot doubt that common sense, with which the law should, as far as possible, accord, would lead the unprofessional mind to the latter conclusion. The case of *Gwillim* v. *Stone*, 3 Taunt. 433, says his Lordship, by no means bears out the marginal note, which would seem an express authority against the plaintiff, for Lord Mansfield in that case only decided that the plaintiff could not recover the money he had spent in building operations on the defendants land by his permission before the lease was granted; and the *dictum* of Mr. Justice Lawrence, that in purchases of land the rule is *caveat emptor*, was an error of the reporter. Then, as now, judges sometimes uttered hasty and inaccurate *dicta*, and it is no doubt an obvious course when such inaccuracies are subsequently brought to light, to make a scapegoat of the reporter, and say that he must