him with various items for work done. At the opposite side was the words "*contra*," followed by several items with which he charged himself, reducing the amount due to him to a balance which was struck and carried down.

Held (WHITESIDE, C.J., and PIGOT, C.B., dissentients), that the discharging items were not so incorporated or connected with the charging entries as to render the former admissible as part of a statement against interest.—*Whaley* v. *Carlisle*, 15 W. R., 1133.

VENDOR AND PURCHASER—SPECIFIC PERFORMANCE — MISREPRESENTATION.—Where a misrepresentation has been made by a vendor, the Court applies the rule *ceveat emptor* with great caution.

Where a purchaser agreed to buy an estate upon a statement that it lay upon coal, which coal afterwards proved to have been mostly worked out, and subsequently the purchaser entered into an agreement with a third party to sell the colliery at a price implying the existence of a considerable quantity of coal, and then afterwards discovered the exhaustion of the coal.

Held, that the transaction between the purchaser did not invalidate his defence of misrepresentation to a bill by the vendor for specific performance, though

Semble.—It might have been an answer to a claim by a purchaser for an abatement of the purchase money.—*Colby* v. *Gadsden*, 15 W. R., 1185.

NUISANCE—INJUNCTION—PROSPECTIVE INJURY.—Where the defendant had commenced burning a clamp of bricks 480 yards from the plaintiff's mansion, 400 yards from the lawn, conservatories, &c., and a 140 yards from a cottage on the margin of a lake on the plaintiff's grounds, inhabited by an employè of the plaintiff.

Held, under the circumstances, that there was not a sufficient case to warrant the Court in granting a prospective injunction.

Observations on the considerations by which the Court is influenced in granting prospective injunctions against nusiances.

Bamford v. *Turnley*, 3 Best & Smith, is not an authority binding the Court judicially to conclude that a clamp at 180 yards must necessarily prove a nuisance.

Observations on the question whether or no, wherever there has been a verdict of law, the Court of Equity should grant on injunction as of course.—*Luscombe* v. *Steer*, 15 W. R., 1191.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

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

THE QUEEN v. PATRICK BRADY.

False Pretences—Consol. Stat. C., ch. 92, sec. 71.

An indictment for obtaining from A. $1200 by false pretences, is not supported by proof of obtaining A.'s promissory note for that sum, which A. afterwards paid before maturity.

The term "valuable security," used in Consol. Stat. C., ch. 92, sec. 72, means a valuable security to the person who parts with it on the false pretence; and the inducing a person to execute a mortgage on his property is therefore not obtaining from him a valuable security within the act.

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

The indictment against the defendant contained three counts. 1. For that he unlawfully, fraudulently, and knowingly, by false pretences did obtain from one Finlay McGregor $1200, the money of the said Finlay McGregor, with intent to defraud.

2. That he unlawfully, fraudulently and knowingly, by false pretences, did obtain from the said Finlay McGregor a certain valuable security, to wit, a certain mortgage on real estate securing the payment of $2400, and made by the said F. McG. and his wife to the said defendant, the property of the said F. McG., with intent to defraud.

3. That he unlawfully did obtain from the said F. McG. a certain sum of money, to the amount of $1200, the property of the said F. McG., with intent to defraud.

The trial took place at Sandwich, in April, 1866, before *Morrison*, J., when it appeared, in substance, that the prisoner having agreed to lend $5000 to the prosecutor, Finlay McGregor, gave him certain drafts purporting to be drawn by the Clyde Exchange Bank of Ohio on the Fourth National Bank of New York, and received from McGregor as part of the security a mortgage on his farm for $2400, and a note for $1200, which note he paid within four or five days, and before it came due. The prisoner represented that these drafts were good, and would be paid, and that the money was in New York, but it turned out that the Clyde Bank was a swindle and the bills worthless.

It was objected that there was no evidence of getting money from McGregor to support the first count: and as to the second, that the mortgage was not a valuable security within the statute; that what the prisoner did obtain was only a signature to a note or mortgage; that both these objections applied to the third count, and that Consol. Stat. ch. 92, sec. 73, applies to property only, not moneys.

The learned judge directed a verdict for the defendant on the third count, and as to the other counts, he left it to the jury to say on the evidence whether the prisoner did impose upon McGregor when the latter received the drafts, by the false statements that they were genuine, and upon the faith of such false representations induced McGregor to give the $1200 and the mortgage.

The jury found the prisoner guilty.