been actually paid or not. They referred to *Rice* v. *Rice*, 2 W. R. 139, 2 Drew. 73.

*Glasse, Q C.*, and *Berkeley*, for the plaintiff, were not called upon.

James, L. J., said that the Vice-Chancellor, in his judgment, had gone so fully and elaborately into the matter that it was not necessary to say much. It was quite clear that when the legal estate in the property was conveyed to Hopkins it was within the knowledge of Mr. J. R. Cobb, who was acting as solicitor to his father, that the purchase-money had not been paid or secured to the vendor, and it was not sufficient to say afterwards that as the deed had been handed to Hopkins he was entitled to assume that the purchase-money had been paid. His Lordship agreed with the Vice-Chancellor that it was an act of the grossest negligence on the part of Cobb not to have gone to Hopkins to inquire whether any receipt had been given for the purchase-money.

Mellish, L J., also agreed with the judgment of the Vice-Chancellor, and in the reasons which he gave for it.

## CORRESPONDENCE.

To the Editors of the Law Journal.

Gentlemen,—I desire to report, through the Law Journal, the particulars of a suit lately decided in the Division Court of Peterborough, before Judge Dennistoun, and to ask your opinion upon it.

During the year 1861 the defendant went into occupation of the plaintiff's shop as a sub-tenant of another tenant of the plaintiff, whose term expired in May, 1862, and who was bound to pay all taxes assessed during his term. The assessment is always made before the month of May. In October, 1861, defendant took a lease of plaintiff of the same premises for three years from May, 1862, covenanting to pay, as in the previous lease, all taxes assessed during his term, as well as all taxes then assessed. At the termination of defendant's lease in May, 1865, after the assessment for that year, he left, giving plaintiff his note for a portion of the rent then due, which note was placed in suit for a balance due thereon. To this the defendant claimed to set-off the taxes on the premises, paid by him between May, 1865, and the end of that year, $29 32. On the trial the Judge allowed this set-off. Plaintiff thereupon applied for a new trial, which application the Judge refused.

In his judgment upon the trial of the cause the Judge says—"I cannot believe that defendant ever had intention of paying four years' taxes of premises held by him under a demise for three years." The covenant in defendant's lease was, as already stated, to pay all taxes, &c., assessed *during his term*, as well as all taxes *then* assessed upon the premises. The taxes for 1862 were assessed during the continuance of the former lease, and under which the then tenant was bound to pay them for that year. If defendant paid any portion of these taxes, that was a matter between him and his immediate landlord, and with which the plaintiff had nothing to do. The defendant's taxes did not begin under plaintiff's lease until the year 1863, and, of course, he was bound to pay them for that and the two following years. Yet, notwithstanding these express covenants on the part of defendant and of the former tenant, the Judge says that defendant did not intend to pay these taxes. It will be observed that defendant had no taxes to pay under plaintiff's lease until the year 1863, the previous tenant being bound to pay them up to that year. In the same manner the taxes of the tenant who went in after defendant did not commence until the year 1866, the rule as to taxes being the same with all the tenants, each getting the benefit of the first year's taxes.

I make no comments upon this case, leaving them to the judgment of an impartial public.

A Suitor.

Peterborough, June 16, 1871.

[We publish this letter as requested, but are not prepared to say that the learned Judge may not have decided the case according to an interpretation of the contract agreeable to equity and good conscience, though possibly not construing it with legal strictness. The notes in Smith's Leading Cases to *Lampleigh* v. *Brathwait*, *Spragne* v. *Hammond*, 1 Bro. & Bin. 59, *Stubbs* v. *Parsons*, 3 B. & Ald. 516, and *Wade* v. *Thompson*, 8 U. C. L. J. 22, are all authorities upon the question. The giving and taking a promissory note would *primâ facie* seem to indicate a waiver of a previously existing right of set off, if any such existed. More than this we cannot say from the above material, even were we inclined (which we are not) to sit in judgment on decisions given after proper consideration and with a desire to act impartially and fairly, and this we must take for granted unless the contrary appears most clearly beyond the possibility of explanation. —Eds. L. J.