DISTURBANCE IN CHURCH—CHURCHWARDENS.—A disturbance created by an attempt to take possession of seats in a church which had been allocated to other persons by the churchwardens is not an offence under the Toleration Act, where no malicious design is alleged; nor is it a misdemeanour involving a breach of the peace, and entitling a magistrate to act on view.

Semble, that the churchwardens might have expelled the person creating the disturbance, doing no more.—*King* v. *Poe*, 14 W. R. 660.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

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

THE LAW SOCIETY OF UPPER CANADA v. THE CORPORATION OF THE CITY OF TORONTO.

Taxes paid under mistake of fact—Right to recover back—C. S. U. C. ch. 55, sec. 61.

The plaintiffs had for several years appealed from the assessment of their property to the Court of Revision, who had decided against them, and from thence to the County Court judge, who had reduced it about one-third, on the ground that a large portion of their building was occupied by the courts. In 1864, the same assessment being repeated, they appealed to the Court of Revision, who said they would consult the City Solicitor, and that the plaintiffs need not appear again. The plaintiffs' solicitor was told by the clerk of the Court of Revision that no judgment had been given, and found none in the book where their decisions were entered. The collector, in October, called upon the plaintiffs' secretary, who, supposing all was right paid the sum assessed. The mistake having been discovered in the following year.

Held, that they might recover it back, for the Court of Revision not having determined the appeal, the roll, as regarded the plaintiffs, was not "finally passed" within sec. 61 of the Assessment Act, so as to bind them. *Hagarty*, J., dissenting, on the ground that the return of the roll unaltered as regarded the plaintiffs' assessment, was in effect a decision against them.

A person seeking to recover money paid under a mistake of fact is not now bound to shew that he has been guilty of no laches; the only limitation is that he must not waive all enquiry.

[Q. B., H. T., 1865.]

The declaration contained the common money counts and an account stated.

Pleas—Never indebted, and payment.

The case was tried at the assizes for York and Peel, in January, 1866, before *Morrison*, J.

The action was brought to recover back from the city the sum of $432, which had been paid to the collector for one of the wards of the city under the following circumstances:

The assessor for John's Ward left the usual assessment paper at Osgoode Hall for the plaintiffs, by which the plaintiffs were assessed for Osgoode Hall, and the land attached thereto at the annual value of $1,920. A similar assessment had been made of the same property for some years preceding, against which an appeal had been made in each year on behalf of the plaintiffs to the Court of Revision, who had decided against the appeal, which was then carried before the judge of the County Court, who had reduced the assessment about one-third, on the ground that a large portion of the building was used and occupied by the three superior courts for the administration of public justice.

On becoming aware of the assessment of 1864 the plaintiffs' solicitor appealed to the Court of Revision, and appeared before them to sustain his objection on the 25th of May, 1864. He was told they would consult the city solicitor. He objected to any delay in deciding, but they gave no judgment then, and he was told he need not appear again. He watched the matter, and enquired two or three times of the clerk of the Court of Revision, who stated to him that no judgment had been given. He also examined the book in which entries were made of the decisions of the Court of Revision, but found no entry of the decision of this appeal, and there was none up to the time of the trial. The object of this watching was to carry the appeal before the judge of the county. After the time for appealing had passed, the solicitor told one of the members of the Court of Revision the situation of the case, and thought no more of the matter.

In October, 1864, the collector called upon the secretary of the plaintiffs at Osgoode Hall, and presented to him the ordinary paper shewing the amount of rate imposed on the plaintiffs The secretary presumed the charge ($432) was right and paid it. The clerk of the Court of Revision to whom the appeal was made in May, 1864, stated that no decision had ever been given, and said he had made out the collector's book from the assessment roll as it stood at first and as appealed against.

In the following year (1865) the assessment was again appealed against, but the Court of Revision on being informed of the decision of the judge of the County Court acquiesced in it, and reduced the assessment accordingly. The plaintiffs' solicitor then for the first time learned what the secretary had paid in 1864. He wrote on the subject on the 29th of June and on the 29th of July, but got no answer. On the 2d of Aug., 1865, he wrote to the mayor, saying an action would be brought, and referring for the facts of the case to his letter of the 29th of June. Still no answer. He wrote again on the 13th of October to the Chamberlain, but could get no satisfaction; and so this action was brought in November following.

The defendants' counsel objected that the plaintiffs could not recover, as it appeared that the assessment roll had been finally passed, under sec. 61 of the Assessment Act: that the payment by the secretary was voluntary, and therefore the money could not be recovered back.

Leave was reserved to the defendants to move to enter a nonsuit, and the plaintiffs had a verdict for the sum claimed.

McBride obtained a rule, calling on the plaintiffs to shew cause why a nonsuit should not be entered on the following grounds:—1. That the roll under which the money was paid was finally passed by the Court of Revision for the city, for the year 1864, and no appeal was made therefrom to the judge of the County Court; and that moneys paid to the defendants by virtue of said roll cannot be recovered back, notwithstanding any defect or error in or with regard to such roll. 2. That the payment of the moneys was voluntary, and made with a full knowledge of the facts, or it was a payment, if made in ignorance of the facts, yet accompanied by such