and not a threat or promise. The conviction, therefore, must be affirmed.

The other judges concurred.

Conviction affirmed.

QUARTER SESSIONS CASES.

REG. v. LAYARD.

Turnpike—Exemption of clergymen.

The exemption from toll containing in the General Turnpike Act (9 Geo. 4, c. 126, s. 32) of a clergyman going to visit a sick parishioner within his parish does not extend to exempt other members of his family in the same vehicle. *Sed quære*, whether the exemption would not extend to one person required to take charge of the carrage while he was in the performance of his duty.

[Edgeware, Nov. 6, 1867—44 *Law Times*, 64.]

The defendant was summoned for refusing to pay toll at Sheepcote turnpike gate on two occasions. By consent, the two offences were charged and heard together.

Greatorex appeared for the defendant.

The facts were not disputed. The Rev. C. C. Layard was the minister of Sudbury, near Harrow. He had occasion to visit a sick parishioner, at the other extremity of the parish He could go to her by roads running entirely through his parish, but the nearest route by a mile was by the turnpike road, which lay out of the parish, and upon which was the turnpike gate in question. He travelled in a pony carriage. On one day he had with him in the carriage his son only: on another day he was accompanied by his wife and two daughters.

Greatorex for the defendant contended that the language of the statute differed in defining the exemption of volunteers and yeomanry going upon duty and clergymen travelling upon their duties. The Act said that the carriage containing the volunteer, &c., should not be liable; but the exemption of the clergyman ran that *he* should not be liable. Now, the only person liable to toll in a carriage was the owner or driver, and if he was exempt, the toll could not be collected from any of those with him. If, however, the exemption were held not to extend to all, as in the first summons, he could contend that it included one person, for without somebody to take charge of the carriage how could the clergyman perform his duty ?

The CHAIRMAN referred to the *Volunteer case*, in which it had been held that, although the Act exempted the carriage *eo nomine*, such carriagee was liable to toll if it carried any person besides the volunteer; much more where the statute had exempted the clergyman personally, and not the carriage that conveyed him. If any inference were to be drawn from this remarkable difference of terms, it would be what the Legislature designed to make the exemption of the clergyman a personal privelege. The argument that if he was exempt no other person could be liable was ingenious, but the answer to it was that, although he was not liable for himself, *he* was liable *for them*. The charge was not that he had passed the gate, being himself liable for the toll, but that he had driven through it a carriage containing somebody that was liable, and for which toll he thereby, as the driver, was the party responsible, although hew as personally exempt. The Bench had more doubt about the point raised on the other summons, although he was strongly of opinion that even one other person could not be carried under an exemption that was merely personal. But as it was desired that both the points raised should be determined by a Superior Court, the Bench would convict on the first case, and dismiss the second with a nominal penalty, without costs, and would, if desired, state a case for the opinion of the Q. B.

[N. B.—The case is going to the Q. B.—ED. L. T.]

UNITED STATES REPORTS.

SUPREME COURT OF INDIANA.

BLOCH v. ISHAM ET AL.

An agreement between adjoining owners of a town lot, A. and B., that A. might build a party-wall equally upon the land of both, and that whenever B. should build upon his lot so as to use the wall, he would pay one half of the cost thereof, is not a covenant running with the land so as to entitle C. who had purchased A's lot, upon the performance of the condition as to the use of the wall, to sue B. for the money.

[7 Am. Law Register, N. S., 8.]

The opinion of the Court was delivered by

GREGORY, J.—The case made by the complaint is this: Schenck and Isham, being the owners of adjoining lots in Valparaiso, entered into a written agreement whereby Schenck acquired the right to build one of the walls of a brick store, then in process of erection on his own lot, with one-half of its thickness resting on the lot of Isham; and Isham acquired for himself, his heirs and assigns, the right to use the wall by joining a building thereon, and agreed for himself and them to pay one-half of the original cost of the wall when he or they should use it. Schenck completed the brick store on his lot, with one-half the width of one of its walls standing on Isham's lot. Afterward Schenck conveyed his lot and store to Bloch and others, and Bloch subsequently became the sole owner of the lot and its appurtenances; and while he was such owner Isham built a brick building on his own lot, and used the wall in question.

A demurrer was sustained to the complaint. The only question raised below, and here, is, whether Bloch or Schenck has the right to the pay for the wall used by Isham.

The case turns upon the solution of the question as to whether Isham's agreement to pay for one-half of the party-wall is a covenant running with the land.

There is some conflict in the authorities on this point. In *Burlock* v. *Peck*, 2 Duer (N. Y.) 90, the Superior Court of New York held that such a covenant passed to the grantee of the premises on which the building of the covenantor was erected. It is otherwise held in Pennsylvania: *Ingles* v. *Bringhurst*, 1 Dallas 341; *Todd* v. *Stokes*, 10 Barr 155; *Gilbert* v. *Drew*, Id. 219; *Hart et ux.* v. *Kucher*, 5 S. & R. 1. It is claimed that the cases in Pennsylvania turn on a statute. That statute simply provides that "the first builder shall be reimbursed for one moiety of the charge of the party-wall, or for so much as the next builder shall use before he breaks into the wall." There is nothing in this statute which is not embraced in the agreement of the parties in the case in judgment.