LIBEL—FAIR COMMENT ON PUBLIC ACTS.—The alleged libel purported to be founded on information given to the defendant by "a resident of this city, yesterday" (meaning the day before the publication). One of the pleas sought to be pleaded, alleged that the gravemen of the charge was matter of "public notoriety and discussion" and that the words used were a fair comment, &c., and making other statements which, it was alleged, would enable defendant to introduce evidence of irrelevant matters.

Held, that a general plea that the publication was a fair *bona fide* comment, &c., might be pleaded, but the plea as now framed, was inconsistent with the words used in the alleged libel, and could not be allowed.—*Devlin* v. *Moylan*, 3 U. C. L. J. N. S. 317.

SURETY AS MAKER OF JOINT PROMISSORY NOTE.—To an action on a joint promissory note of three persons payable one month after demand, one of the makers pleaded on equitable grounds that he made the note as surety for another of the makers without consideration, of which the holders had notice, and that the holders did not make any demand from any of the joint makers of the note within a reasonable time, but delayed for an unreasonable time, to wit, ten years.

Held, a bad plea.—*Belfast Banking Co.* v. *Stanley*, 15 W. R. 989.

NUISANCE—FOULING OF A STREAM—PRESCRIPTIVE RIGHT.—The defendant occupied paper mills on the banks of a stream, into which he discharged the refuse of his manufacture. A prescriptive right to foul the stream had been acquired by the defendant's predecessors in the occupation of the mills. Those predecessors used rags in the manufacture of paper. Soon after the defendant came into occupation of the mills he introduced into, and employed in the manufacture a new raw material called *esparto grass*. Upon a suit by a neighbouring occupier to restrain the defendant from fouling the stream to the plaintiff's injury, it was contended that, independently of any increased fouling of the stream, the plaintiff had a right to an injunction by reason of the nuisance caused by the use of *esparto grass* being a new kind of nuisance in respect of which no prescriptive right had been acquired by the defendant.

Held, that it was not sufficient for the plaintiff to show that the defendant used in his manufacture a new raw material, but that he must show further a greater amount of pollution and injury arising from its use, and that the *onus* of showing this lay on the plaintiff. The plaintiff not having shown this, his bill was dismissed with costs.—*Baxendale* v. *McMurray*, 16 W. R. 32.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

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

PAYNE v. GOODYEAR ET AL.

Sale for taxes—Redemption of part—C. S. U. C., ch. 55, sec. 113.

An entire lot having been sold, one C. paid the redemption money on the east half, and one P. on the west half, but it was afterwards represented to the council that P.'s payment had been made by mistake, and the Treasurer being ordered to refund, applied the money by P.'s authority to another lot.

Held, that under Consolidated Stat. U. C. ch. 55, sec. 113, the owner of part of a whole lot sold for taxes might redeem such part on paying the proportionate amount chargeable against it: and that the clause did not merely allow such payment before sale. The east half was therefore held have been properly redeemed, but.

Quære, if redemption of the whole had been necessary, as to the effect of P.'s payment by mistake.

Trespass for breaking and entering the plaintiff's land, being the east half of lot No. 18, on Water street, in the town of Chatham, destroying plaintiff's crops, sowing seed, digging holes, planting blocks of wood, erecting a wooden building, and with weapons and a vicious dog, assaulting the plaintiff, and driving him and his servants off the land—*per quod*, &c., &c.

Second count, for breaking and entering plaintiff's land, being the east half of lot 13 on Water street, in the town of Chatham, throwing open gates, and ploughing up the plaintiff's potatoes, and the plaintiff claimed a writ of injunction.

Pleas.—1. Not guilty. 2nd. To the first count, land not the plaintiff's. 3rd, To the first count, that at the time of the alleged trespass the land belonged to John Hooper, one of the defendants, and the defendants Watson, Holmes, and Longwell entered as his servants by his command.

Similar plea to the second count.

The trial took place in October, 1866, at Chatham, before Hagarty, J.

There was proof of the alleged trespass against four of the five defendants, but none against Goodyear. The plaintiff to prove his title put in three deeds, the execution of which was admitted.

1. A deed from John Mercer, Esq., Sheriff of the County of Kent, dated the 26th of August, 1861, witnessing that in consideration of $20 57, paid by Charles Greenwood at public auction, on the 17th of December, 1858, under the Assessment Act, 16 Vic., for arrears of taxes, under a writ to him directed, he sold and conveyed to Charles Greenwood, his heirs and assigns, the lot No. 13, on the south side of Water street, in the town of Chatham, containing one acre; *habendum* in fee.

2. A deed from Charles Greenwood to John Miller, consideration $200, for the east half of the same lot, containing half an acre; *habendum* in fee.

3. A deed from John Miller to the plaintiff, consideration $250, for the east half of the same lot; *habendum* in fee.

The Treasurer proved that this lot was sold in October, 1858. The amount of taxes in arrear was $16 87. The taxes had not been paid for the years, 1851 and 1857; for the intermediate years they had been paid. The sale actually