oaths of these persons of what Hatherly had said would not be legal evidence against the defendant;" and that this court could only grant an information on evidence that would support a bill of indictment. That case seems to have been acted upon in *Ex parte Williams*, 5 Jur. 1133. Secondly, comes another point. Can the deficiency, if it does exist, be supplied by the affidavits on the other side? In *R.* v. *Mein*, 3 T. R. 596, there was an application for a *quo warranto*, and it was permitted to look into the affidavits on the other side. Cole cites it and attempts to distinguish it [Cole on Criminal Information, p. 52], from the later case. He says that the distinction is that in one the case is civil, in the other criminal—but such distinction is not sound. There is the same Act applied, whether to a civil or a criminal case. The question is the same as to the satisfaction of the Court on the same fact. I own that it seems to me that the rule in *R.* v. *Mein* seems sounder, but in *R.* v. *Baldwin* quite a contrary course is taken. Here, however, it is not necessary to decide this point, for the facts are solely that the defendant does not answer the affidavits as to the deponent's belief of his being the publisher—he is not bound to answer, *R.* v. *Willett*. There is, therefore, no statement in his affidavits which can supply what is wanting in the affidavits of the prosecutor. The rule must be discharged.

MELLOR and HANNEN, JJ., concurred.

Rule discharged.

CORRESPONDENCE.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—I desire to report, through the L. C. GAZETTE, 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*, *Sprague* v. *Hammond*, 1 Bro. & Bin. 59, *Stubbs* v. *Parsons*, 8 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 *prima 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