SELECTIONS.

NEGLIGENCE — TRESPASS — LANDLORD — TENANTS.

Carstairs v, *Taylor*, Ex., 19 W. R. 723.

In this case the attempt was made to push the rule laid down in *Rylands* v. *Fletcher* (14 W. R. 799, L. R. 3 H. L. 330) to an unwarrantable length. The plaintiff had hired of the defendant the ground-floor of a warehouse, the defendant himself occupying the upper part of the premises. A rat gnawed a hole in a box, into which the gutters of the roof collected the rainwater, and from which it was discharged into the drains; and through this hole the rainwater entered the warehouse, and penetrated to and damaged the plaintiff's goods. The contention that there was any obligation on the defendant, as landlord, to keep the premises water-tight in all events, was not very strenuously urged, and there was no ground to impute negligence; but the principal argument used for the plaintiff was that the defendant had collected the water in an artificial mode, and that it was by reason of his so collecting it that the mischief had happened. It was in this way that the plaintiff sought to take advantage of *Rylands* v. *Fletcher;* but an obvious distinction was pointed out by Bramwell, B., namely, that in that case the defendants had done what they did for their own purposes entirely, whereas here the collection of the rainwater by the customary apparatus was for the benefit of the plaintiff as much as of the defendant. Much reliance was placed on *Bell* v. *Twentyman* (1 Q. B. 766), and particularly on some expressions used by the court in delivering judgment. But it seems not to have been noticed that in that case the declaration averred, and the plea did not deny, the existence of a duty on the defendant to cleanse the watercourse, the obstruction of which was complained of, and this was the basis of the whole of the plaintiff's argument. The only point for the decision of the court (besides one which does not concern us) was, whether the allegation in the plea that defendant cleansed within a reasonable time after notice was an answer. The court would have been going very much out of their way if they had considered and decided the question of whether the alleged duty did or did not exist; indeed there were no materials before them for doing so. Yet this is what they are supposed to have done at p. 774. If, however, the passage about the middle of that page is examined, it will, we think, be evident that the whole difficulty arises from an error of punctuation. The court having disposed of an argument by which the defendant atempted to throw the burden of the obstruction upon the plaintiff, and so escape from the liability which the admitted duty would have cast upon him, said, "If the defendant was liable, on general principles he was bound to cleanse and keep open the watercourse at all events." By the omission of the comma after "liable" and its insertion after "principles," the court is made by the report to intimate an opinion that the owner of a watercourse is at common law bound to keep it clear at all events; a proposition clearly untrue, and so startling that it ought at once to excite suspicion.

LOCAL BOARD. — LIABILITY FOR NEGLIGENCE.

Foreman and Wife v. *Mayor of Canterbury*, Q. B. 19 W. R. 719.

The plaintiffs sued the defendants in respect of injuries sustained by them through the overturning of their car by a heap of stones, left at night on the road, unguarded and unlighted, by men employed by the defendants, (acting as a Local Board of Health) to repair the road. Since the decision in the *Mersey Docks* v. *Gibbs*, (14 W. R. 872, L. R. 1 H. L. 93), it would seem that the liability of the defendants was clear; and in fact the only point raised was, that the defendants must be taken to have acted not as a Local Board, but as surveyors under s. 117 of the Public Health Act, 1848, and as such they were not liable. This was a transparent absurdity; and the case of *Young* v. *Daviest* (10 W. R. 524), which was cited in support of it, was wholly inapplicable, for it decided nothing but that a surveyor was not liable to an action for damage caused by non-repair. No one ever suggested, and certainly no case has decided. that if a surveyor himself employed servants to do work, whether on a public road or elsewhere, he could not be liable for their negligent acts. The utility of the present case is perhaps confined to the express discrediting of the decision in *Holliday* v. *St. Leonard's*, *Shoreditch* (9 W. R. 694); there could be no doubt that that case was in effect overturned by *Mersey Docks* v. *Gibbs*, but so apt are lawyers to cite cases already dead and twice killed, that it is useful to have the distinct declaration of an authoritative tribunal upon any such case, that it is dead indeed.—*Solicitors' Journal.*

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

STATUTE OF LIMITATIONS.—A person who has been in possession of lands for upwards of 20 years wrote to the heir of the true owner, acknowledging his title as such heir:

Held, that such acknowledgment having been made after the title by possession was complete, did not take away the statutory right which possession gave.

An acknowledgment to a party's trustee is sufficient to take a case out of the Statute of Limitations.