SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

PROMISSORY NOTE—PRESENTMENT AND NOTICE.—In an action by endorsee against endorser of a note, an averment of presentment and notice is supported by proof of a subsequent promise to pay, although it appears that there was in fact no proper presentment or notice.

So held, in accordance with *Kilby* v. *Rochussen*, 18 C. B. N. S. 357.—*McCarthy* v. *Phelps and Hellems*, 30, U. C. Q. B. 57.

GOODS SOLD AND DELIVERED—RESCISSION OF CONTRACT.—Defendant bought from plaintiff a quantity of oil at four months' credit. Plaintiff delivered oil, but defendant refused to accept a four months' draft for the price, alleging that it was not according to sample. Plaintiff assented and requested defendant to return oil, which defendant promised, but failed to do within a reasonable time. Before the four months had expired plaintiff sued for goods sold and delivered.

Held, that the original contract had been rescinded, and that plaintiff might sue upon a new contract arising out of the retention of the oil by defendant.—*Thompson* v. *Smith*, 21 U. C. C. P. 1.

ARBITRATOR — APPLICATION TO REVOKE. — The particulars in an action on the common counts were headed "Detailed statement of extra work performed by P. R. (plaintiff) on sections 3 and 4, Bruce Gravel Roads, under contract of 1866:" *Held*, that this did not necessarily restrict the plaintiff to work done under the sealed contract of that year entered into between the parties, but that he might shew that any work mentioned in the particulars was done outside of such contract, and under a wholly separate and independent one

Held, also, that under the declaration the plaintiff clearly could not recover for damages of any kind; and the plaintiff's counsel having admitted this, the court would not revoke the submission on the ground, amongst others, that such a claim was being entertained by the arbitrators.

The reference was expressed to be "subject to such points of law as will properly arise on the pleadings and evidence;" *Held*, that this rendered it imperative on the arbitrators to state for the Court any legal point raised, and to distinguish, if required, the subject for which they awarded in plaintiff's favour, if any legal question was raised applicable thereto.—*Ross* v. *The Corporation of Bruce*, 21 U. C. C. P. 41.

RAILWAY COMPANY—PASSENGER'S LUGGAGE—NEGLIGENCE OF PASSENGER.—A passenger by the G. W. Railway from Cheltenham to Reading took his portmanteau into the carriage with him at Swindon. Having left the train for refreshment, he failed to find his carriage, and continued his journey in another carriage. When the train arrived in London, the portmanteau was found in the carriage in which it had been placed at Cheltenham, but it had been cut open, and the contents were gone.

In an action by the passenger against the company for the value of the articles, the jury found that there had been negligence on the plaintiff's part, but not on that of the company.

Held, that the general liability of the company was, under the circumstances, modified by the implied condition that the passengers should use reasonable care, and that as the loss was due to his neglect alone, the verdict was to be entered for the company.—*The Great Western Railway Company* v. *Talley*, C. P., 19 W. R. 154.

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

INSOLVENCY—CLAIM AGAINST A FIRM, AND ONE PARTNER SEPARATELY—The appellants, in the matter of C. and Co., insolvents, had a claim upon a note made by C. and Co., payable to C., one of the firm, and by him endorsed to the appellants. They proved against the firm on the 3rd July, 1869, but afterwards withdrew it, and proved on the 11th January, 1870, under sec. 60 of the Act of 1869, specifying and putting a value on the separate liability of C.

Held, affirming decision of the County Judge, that the appellants, under the Act of 1864, could not rank both on the separate estate of C. and on the estate of the firm, but must elect; but that they might prove against the joint estate for their whole claim, without deducting from it the value of C.'s separate liability

Held, also, that the appellants could treat the payee and endorser as having incurred a separate liability by his indorsement, distinct from his joint liability as a maker.

Held, also, that the Act of 1869 could not apply, for the case was pending before it, and the question in dispute as to the right to prove was not a matter of procedure only, exempted