RIPARIAN PROPRIETOR—RIGHTS OF PUBLIC.—Every one who buys property upon a navigable stream, purchases subject to the riparian rights of the commonwealth to regulate and improve it for the benefit of all her citizens. If, therefore, he chooses to place his mills or his works, for the qualified use which he may make of the water, within the limits or influence of high water, he does so at his own risk, and cannot complain when the commonwealth, for the purpose of improvement, chooses to maintain the water of the stream at a given height within its channel.—*McKeen* v. *Delaware Division Canal Company*, Phil. Leg. Intel.

RAILROAD LAW—NEGLIGENCE.—The violation, by a passenger, of a rule of the railroad company of which he had no notice, is not negligence in him, if he conformed to it as soon as he had notice thereof. In an actlon against a railroad company for negligence, the burden of proof is on the defendant to show that its rules were brought to the plaintiff's notice.—*McAuliffe* v. *Eighth Avenue R. Co.*, N. Y. Transcript.

LOSS OF PASSENGER'S LUGGAGE.—A railway company is liable for the loss of a passenger's luggage, though carried in the carriage in which he himself is travelling.—*Le Couteur* v. *L. & S W. R. W. Co.*, 14 W. R. 80.

DEED—ALTERATION AFTER EXECUTION.—If a deed which is complete in form, with the exception of the omission of the name of the grantee, is in that condition signed and sealed, the subsequent insertion of the name of the grantee and the change of a qualified covenant into an absolute one, in the absence of the grantor, though by his parol authority, will make the deed invalid as to him, and no action will lie against him upon any of the covenants therein contained. And it is immaterial that such alterations are made by the co-grantor, and that a description of the occupation of the contemplated grantee had been inserted at the time of such signing and sealing.—*Basford* v. *Pearson*, 9 Allen; 5 Am. Law Reg. N. S. 124.

UPPER CANADA REPORTS.

COMMON PLEAS.

(*Reported by* S. J. VANKOUGHNET, Esq., M.A., *Barrister-at-Law, Reporter to the Court.*)

FRIEL v. FERGUSON ET AL.

Magistrate—Trespass—Information—Warrant, evidence of—Joint tort—Evidence—Notice of action—Direction to jury—General verdict—Restriction to one count—Verdict against two defendants on separate counts.

(Continued from Vol. I., p. 189.)

There was no evidence of any joint act by both the defendants. Ferguson cannot be liable for anything that took place after the making of the warrant; nor for the arrest, because that took place under the backing by Moulton in the county of Leeds; nor for the plaintiff having been sent by Moulton up to Kingston. Moulton did take and could take these depositions, and adjudicate upon the charge himself: Con. Stats. for Canada, c. 102, secs. 47—48. Nor can he be liable for refusing to accept of the plaintiff and to try the case in Kingston, and for the plaintiff's being conveyed back to Moulton in Leeds.

The question of malice should not have been left to the jury under the count in trespass, although it might properly have been left to them in the count on case; and this shews the objection to the joinder of these counts, for the plaintiff was making a cause of action upon one count, while he was going to the jury for damages upon the other count. The plaintiff should have been nonsuited: Con. Stats U. C. c. 126, s. 16; *Warner* v. *Gouinlock*, 21 U. C Q. B. 260.

If he gave evidence of malice he should have boen confined to the count in case only; nor should it have been left to the jury to say whether there had been an information in fact or not, and to infer malice if there had not been, for the warrant recited there had been an information, and it was not competent to the plaintiff to contradict it after he had put it in evidence as part of his case. The notice to produce, also, which he served, called for the production of the information, and he could not be permitted to call for the information, and then to assert there was not one.

The venue should have been laid in Frontenac and not in the county of Leeds.

A. WILSON, J., delivered the judgment of the court.

The first part of the rule raises the questions, whether the defendant Ferguson was entitled to notice of action; and, if he was, then, whether the notice, which was served upon him, was sufficient.

It is contended he was not entitled to the notice:

1st. Because he acted without having taken any information, or having had any charge made before him against the plaintiff; and

2nd. Because he made and issued his warrant to arrest the plaintiff in the city of Kingston, in which place he was not a magistrate.

By the Consolidated Statutes for Canada, (c. 102, s. 8,) it is enacted, that "in all cases, when a charge or complaint for an indictable offence is made before any Justice of the Peace, if it be intended to issue a warrant in the first instance against the party charged, an information and complaint thereof in writing, on the oath or affirmation of the informant, or of some witness in that behalf, shall be laid before such justice."

There should have been a charge or complaint made before the warrant issued, and it should have been in writing.

The only evidence of there having been a charge made to justify the issuing of the warrant, is the recital of it in the warrant itself, which states that, "whereas John Friel and Benjamin Friel, of the township of Leeds, in the