pleaded and ought not to be struck out. This decision seems to be the converse of *Pursley* v. *Bennett*, 11 P.R., 64, in which it was held that facts in mitigation of damages may be pleaded by a defendant, though the contrary was held in England in *Wood* v. *Durham*, 21 Q.B.D., 501.

PRACTICE—INFORMATION—CONVICTION—ALTERNATIVE STATEMENT OF OFFENCE.

Cotterill v. *Lempriere*, 24 Q.B.D., 634, is a case in which, to use the language of Lord Coleridge, C.J., the Court, "with extreme reluctance," gave effect to a technical objection as to the sufficiency of an information and conviction for an offence against a by-law, which provided that "no smoke shall be emitted from the engines so as to constitute any reasonable ground of complaint to the passengers or the public." The information stated that the defendant did permit smoke to escape from his engine contrary to the by-law, and the conviction was to the same effect. On a case stated by the convicting magistrates, it was objected that the offence being stated to have been committed contrary to the by-law, without specifying whether the offence was a reasonable ground of complaint to the passengers or the public, or both, the offence was stated in the alternative, and was therefore bad, although the same penalty was imposed by the by-law whether the passengers or public were injured.

SALE OF GOODS—CONTRACT TO MANUFACTURE EQUAL TO SAMPLE—LATENT DEFECT IN SAMPLES—IMPLIED WARRANTY.

In *Jones* v. *Padgett*, 24 Q.B.D., 650, upon an objection to the charge of the judge at the trial, a question of law was decided by a Divisional Court (Lord Coleridge, C.J., and Lord Esher, M.R.), on appeal from a County Court. The plaintiff carried on two businesses, that of a woollen merchant, and that of a tailor. The defendants, not knowing that he carried on the business of a tailor, contracted to manufacture cloth for the plaintiff according to sample. The plaintiff intended to use the cloth in his business of a tailor for making into liveries, but he did not communicate this to the defendants. There was evidence that cloth of the kind in question was ordinarily employed in making liveries. The cloth was made according to the samples, but owing to a latent defect in the sample, it was unsuitable for making into liveries, but there was no evidence that it was unsuitable for other purposes for which such cloth was ordinarily employed. The action was for breach of an implied warranty of merchantableness. The judge left it to the jury to say whether the cloth was merchantable as supplied to woollen merchants, and refused to leave the question to them whether an ordinary and usual use of such cloth was the making of it into liveries. The plaintiff objected, but the Court of Appeal held the trial judge was right. It was contended by the plaintiff that the doctrine established by *Jones* v. *Bright* 5 Bing., 533, that where goods are sold which the vendor knows are to be used for a particular purpose, there is an implied warranty that they are fit for that purpose, had been extended by *Drummond* v. *Van Ingen*, 12 App. Cas., 284, so as to create an implied warranty that goods are fit for the purpose which the vendor ought to know that such goods are ordinarily used, but the Court refused to accede to that proposition.