The Examiner.

A WEEKLY JOURNAL OF POLITICS, LITERATURE AND NEWS.

"This is true Liberty, when Freeborn Men, having to advise the Public, may speak free."---Euripides.

VOL. XXII.] CHARLOTTETOWN, PRINCE EDWARD ISLAND, MONDAY, MAY 29, 1871. [NO. 22.

The Examiner

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P. R. BOWERS,

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WE will send the "Examiner" for 1871, and any one of the following periodicals at the annexed rates, payable in advance:

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We can supply any of the English, American, or Colonial Publications, at the lowest cash rates.

P. R. BOWERS.

ALMANAC FOR MAY.

MOON'S CHANGES.

Full Moon, 4th day, 6h. 48m even., E.
Last Quarter, 11th day, 10h. 11m. morn., W S W.
New Moon, 19th day, 6h. 33m. morn., S. S E
First Quarter, 27th day, 8h. 50m., morn., N. E.

D M	DAY WEEK	SUN rises	SUN sets	Sun fast clock	Moon S ts	High Water	Day's length
		h m	h m	m s	h m	h m	h m
1	Mon	4 51	7 4	3 1	3 26	7 36	14 13
2	Tues	49	5 3	3 8	4 6	8 33	16
3	Wed	47	6 3	3 15	4 27	9 43	19
4	Thur	4	7 3	3 22	rises	10 4	22
5	Frid	4	8 3	3 27	8 15	11 5	24
6	Sat	44	9 3	3 33	9 3	11 52	25
7	Sun	1 43 7	10 3	3 37	10 43	even	27
8	Mon	42	11 3	3 42	11 54	1 34	30
9	Tues	4	12 3	3 4	morn	2 28	32
10	Wed	40	14 3	3 4	0 44	3 26	34
11	Thur	39	16 3	3 50	1 26	4 27	37
12	Frid	3	17 3	3 5	2 0	5 30	39
13	Sat	36	18 3	3 5	2 2	6 30	42
14	Sun	1 35 7	19 3	3 54	2 56	7 30	44
15	Mon	34	20 3	3 58	3 16	8 20	46
16	Tues	33	21 3	3 58	3 34	9 7	49
17	Wed	31	23 3	3 52	3 35	9 50	52
18	Thur	30	24 3	3 50	4 15	10 3	54
19	Frid	29	25 3	3 47	sets	11 9	56
20	Sat	28	26 3	3 43	11 47	morn	58
21	Sun	1 27 7	27 3	3 42	0 41	morn	15 0
22	Mon	26	28 3	3 38	0 32	0 25	2
23	Tues	25	29 3	3 34	1 21	1 10	4
24	Wed	24	30 3	3 29	1 59	1 50	7
25	Thur	23	31 3	3 23	morn	2 34	10
26	Fri	22	32 3	3 17	0 36	3 21	11
27	Sat	21	33 3	3 11	1 10	4 9	13
28	Sun	1 20 7	35 3	3 4	1 38	5 5	15
29	Mon	19	36 2	57 2	1	6 2	17
30	Tues	18	37 2	49	6 59	2 58	18
31	Wed	17	39 2	41	2 52	7 55	20

Business Cards.

HENRY J. GAFFNEY, M. D.

PHYSICIAN & SURGEON,

OFFICE IN

North American Hotel,

KENT STREET.

Charlottetown, Aug 3, 1870.

MR. A. SMYTHE,

PROFESSOR OF MUSIC,

Has Removed his Academy to Water St.,

(Opposite the late Telegraph Office.)

Pianoforte and Melodeon Tuning punctually attended to.

July 25, 1870. 1y

CARVELL BROTHERS,

AUCTIONEERS,

Commission Merchants,

AND

GENERAL AGENTS,

BANK BUILDING, QUEEN STREET,

Charlottetown, P. E. Island

A. McNEILL,

Reading Room Proprietor

COMMISSION MERCHANT

AND

AUCTIONEER.

CHARLOTTETOWN.

March 21, 1870. 1yr

WILLIAM DODD,

Commission Merchant and

AUCTIONEER,

QUEEN SQUARE,

CHARLOTTETOWN, P. E. ISLAND.

H. HASZARD,

Commission Merchant,

GENERAL AGENT,

AND

AUCTIONEER

Uppe. Queen Street,

Charlottetown, - - - P.E.I.

N. B.—Orders from abroad, and the country will receive prompt attention.

April 26, 1869

1871 Fresh Seeds. 1871

GARDEN, AGRICULTURAL, and FLOWER SEEDS and BULBS.

INDIAN CORN

Grown by an experienced cultivator in CORNWALLIS. For Sale by

WM. R. WATSON.

City Drug Store, Victoria Building

April 17, 1871.

HANDBILLS and POSTERS printed at EXAMINER Office.

Business Cards.

COLFORD BROS.,

Importers and Dealers in

TOBACCO,

CIGARS,

and Smokers Articles,

HALIFAX.....N. S.

May 1, 1871. 1y

UNION HOUSE!

Hurrah for the Railroad!

THE Subscriber thankful to his friends and customers generally, for their patronage since his commencement in business in UNION HOUSE Charlottetown, and in soliciting a continuance of the same, begs leave to inform the public that he has refitted up the Union House at a LARGE COST inside and out, and is now prepared to accommodate the

TRAVELLING PUBLIC,

and hopes to merit a share of Public Patronage If you want to be in the business part of Charlottetown, stay at the UNION HOUSE.

TERMS MODERATE.

A FIRST-CLASS BARBER'S SHOP

in connection with the Hotel, where you will always find the Barber at his post. In connection with the above Hotel is an

OYSTER SALOON,

fitted up in good style, second to none in the Provinces, where you can get Oysters done up in

First Class Style,

at any time up to 11 o'clock, p. m., Sundays excepted.

CHOICE LIQUORS

of all kinds, the very best in the market, and attentive waiters always in attendance. Come one! Come all! But don't get off the track.

JOHN S. O'NEILL.

Union House, Ch'town, May 1, 1871. 3m

HAPPY HOME

HOTEL.

The above New Hotel, in Sydney Street, opposite Blatch and McKenzie's, is now open for the Public, The H H. H is only one block south of the Market Square, affording Country People a favorable opportunity of obtaining Refreshments for themselves, and good Stabling and Provender for their Horses The Proprietor of the HAPPY HOME HOTEL is determined to give the best possible satisfaction to his Patrons. The Stabling is good, with abundance of Provender for Horses. In connection with the Hotel is a supply of

Groceries, Confectionary, &c.

Seven or eight permanent Boarders can be accommodated at a reasonable rate per week.

Good People, please call and judge for yourselves!

A. A. McKENZIE.

Proprietor

Sydney Street, Ch'town, Jan 23 1871.

Apothecaries' Hall,

The Old Stand, West Corner of Queen Square.

ESTABLISHED, 1810.

By Steamer *City of Cork* from ENGLAND. Brigantine *James* from MONTREAL, and other recent arrivals, the undersigned has completed his importtions for the winter, consisting of

GENUINE DRUGS & CHEMICALS,

Dye Stuffs, Vanishes, Paints, Oils, Colors, &c.

PATENT MEDICINES, PERFUMERY, TOILET ARTICLES, &c., &c.

The whole of which will be sold at a small advance on cost.

Special attention, by an experienced hand, to the preparation by day and night of Physicians' prescriptions and private recipes.

T. DESBRISAY.

Charlottetown, Jan. 2, 1871.

A. HERMANS,

Bell-Hanger, Gun and Tin-Smith,

Dorchester Steet,

(Next to "Examiner" Office.)

BEGS to return his thanks to the general public for the liberal patronage extended to him since his commencement in business, and asks for a continuance of the same. He keeps constanty on hand

A neat Asortment of

TINWARE, KITCHEN UTENSILS

&c., &c., &c.

ALL ORDERS in the above BUSINESS will be punctually attended to.

Having lately made large purchases in the Cheapest Markets, intended for House Builders, such as

Gas Fitting, Water Closets,

Bell Fittings, &., &c.,

I am prepared to SELL THEM at RATES AS LOW AS CAN BE HAD IN THE CITY, and will fit them up in a good workmanlike style

To a generous public, I would say, that all orders in THIS BRANCH OF MY BUSINESS will be attended to with Despatch

A Lot of First Class WATER COOLERS on hand.

SAYER'S RYSTAL BLUE,

Sold Cheaper than ever.

July 12, 1869

BOSTON STEAMERS!

'Alhambra' & 'Commerce,'

ONE of the above Steamers will leave Boston every SATURDAY for this Port, *via* Halifax and Canso, commencing on the 8th inst., and will continue, until further notice. Returning, will leave Charlottetown every Thursday, at 12 o'clock, noon.

For Freight or Passage apply to

CARVELL BROS, Agents,

Ch'town, April 10, 1871. tf

General Advertisements.

POWNAL NURSERY.

Fruit & Ornamental Trees, &c.

THE Subscriber will offer for Sale, in their proper season, the following

FRUIT TREES!

800 Grafted Apple, of 7 different hardy kinds, at 24s. per doz. a part of which are from Cornwallis, N. S; 50 Crab Apple Trees, at 3s. each; 1000 Ungrafted or Seedling Apple, raised from the Baldwin Apple Seed. These are sure to be hardy, and we have no reason to doubt but they will yield, fruit, after their kind, are from 5 to 7 feet high; sold at 10s. to 12s. per doz. 300 Large Blue Plum Trees, and a few Green Gage, as good as can be had on the Island, 9s. to 12s. per doz. A few dozen Red Cherry, 1s. each; 500 Black Currant Bushes, 5s per dozen.

ORNAMENTAL!

700 Lombardy Poplars. 6s. to 9s. per dozen I expect a few dozen of Oak Trees.

GARDEN & OTHER SEEDS!

Also, a large variety of different kinds of Seeds, suitable for Market or private Gardens.

(See Catalogues of Seeds and Trees).

The above will be offered for sale at the Subscriber's, and at his large Double Stall in the Market House, Charlottetown, on Market Days.

Orders sent will be thankfully received and attended to

In regard to Cabbage and other Plants. I am making preparations to supply the Market boxed as last year, having 20 lbs. of select Seeds in reserve for that purpose.

EGGS.—I will pay the Highest Cash Price for any number of Eggs, at the Market House.

JAMES. J. GAY.

Pownal Village, Lot 49. April 20, 1871.

THROUGH TICKETS

TO ALL PLACES IN

Canada, Western States, California, etc.,

May be had at lowest rates, on application to

F. W. HALES,

Steam Navigation Company's Office, Lower Water Street.

Ch'town, April. 24, 1871.

Salt! Salt! Salt!

10,000 bushels Cadiz Salt.

THE Subscriber offers FOR SALE, immediately on arrival, in lots to suit purchasers the Cargo of the Brigantine *Katie*, now on her way from Cadiz.

GEORGE W. HOWLAN.

Cascumpec, April 3, 1871 h sj 2 m

COTTON WARPS.

FROM NEW BRUNSWICK COTTON MILLS.

9 Bales Assorted Numbers in White and Colored,

FOR SALE by

CARVELL BROS.'

May 1, 1871.

LOST.

A RED SETTER DOG, slightly lame, answers to the name of "Bran." Whoever brings the same to Government House, or gives such information as may lead to his recovery, will be handsomely rewarded.

Private Secretary's Office, April 17, 1871.

FOR SALE

AT

Queen Square Furniture Store!

Children's Carriages,

At a discount of 20 per cent from usual prices

JOHN NEWSON.

April 24, 1871.

NEW YORK FLOUR DEPOT.

Spring Importations.

JUST LANDED ex Schooner "M. E. MacLean," from New York—

670 Bbls. Flour, (fresh ground,)

50 Sides Heavy Sole Leather,

which will be sold

CHEAP FOR CASH.

WM. McGILL.

Ch'town. April 24, 1871.—1 m

AUCTION SALES

OF

PUBLIC LANDS!

THE Commissioner of Public Lands will, on THURSDAY, the 8th day of June next, at 10 o'clock, a. m., on the spot, offer for sale, at Public Auction, by the lot, the whole of Cascumpec Point, comprising about 250 acres of excellent land, laid off for a town, and subdivided into 180 Lots, containing an area varying from two roods to three acres each. According to the plan of the same to be seen at this Office, and at the office of the Hon. G. W. Howlan, Alberton.

Purchasers will find in this property a valuable investment; it being situated in the harbor of Cascumpec, surrounded with good water privileges, and in the immediate vicinity of the terminus of the trunk line of railway to be constructed through this Island. It is eligibly situated for business, and, judging from the rapid growth of Alberton and the further contemplated facilities of communication, it is destined, ere long, to become a town of considerable importance.

TERMS OF SALE.—Twenty per cent. deposit, and the balance payable in three equal annual instalments with interest, paid yearly.

FRANCIS KELLY,

Land Office, May 11, 1871. Com'r. till 8th june.

Insurance.

The Travellers' Insurance Comp'y,

OF HARTFORD, CON.

Cash Assets - - - - - $1.600,000.

Grants everything desirable in

LFE & ACCIDE NT NSU RANCE

ON THE MOST FAVORABLE TERMS.

Accident Department.

THE Travellers' Insurance Company, in its Accident Department, is a General Accident Insurance Company, granting policies of Insurance against Death or wholly Disabling Injury by Accident to men of all trades, professions, and occupations, at rates within the reach of all. It insures against accidents by machinery, accidents from the use of tools and implements, accidents that occur in the usual and lawful avocations of life, as well as accidents by travel.

General Accident Policies are written for a term of one to twelve months each, and insure a sum of $500 to $10.000 against Death by Accident, and $3 to $50 weekly indemnity for wholly disabling injury by accident, not to exceed twenty-six weeks for any one accident, at an annual cost of $5 to $10 per thousand for occupations not specially hazardous. Hazardous risks taken at higher rates.

Life Department.

In its Life Department, the Travellers grants full Life and Endowment Policies, embracing the best features of the best companies, but without the complications or the uncertainties or the note system. It sells Insurance rather than future "dividends." Its contract is a plain one, its security is ample and unquestioned, and its rates of premium are exceedingly low. It prefers to do business on a cash basis, and thus gives its policyholders advantages not attainable under the credit system.

Premium system, the favorite low rate cash plan.

All policies non-forfeitable. Its ten, fifteen and twenty year policies can be converted into Endowments, at the option of the insurant. This feature is original with this Company.

The Travellers' furnish everything desirable in either Life or Accident Insurance. It has issued 215 000 general accident policies and Paid Fourteen Thousand Claims for death or injury by accident; the amount thus returned to policy holders averaging about Seven Hundred Dollars a Day for every working day during the past seven years.

In its Life department it has written 11.300 policies; and its Low Rate Cash Plan is steadily growing in favor with the insuring public.

Example of Life Rates.

The holder of a policy for $4000 will pay an annual premium of $70 20, which will cost in most other companies very nearly $90 Hence the assured can secure in the Travellers a Life Policy for over $5000 for the same annual premium as charged by other companies for only $4000, and the insurance take effect from date of policy without waiting for bonus additions, which are uncertain, and at best require the assured to have a guarantee of life for a number of years in order to realize.

Halifax Board of References:

Hon W. A Henry, Mayor.
A. Uniacke, Esq., Custos.
S. Tobin, Esq., Ex Mayor
N Clark, Esq., Clk. Peace.
G. Taylor, Esq., Sup. N. S. R.
James Scott, Esq., Merchant.
E. W. Clipman, Esq, do
W. N. Wickwire, M. D., Medical Referee.

Canada Board of References:

C. J. Brydges, Esq., Managing Director Grand Trunk Railway, Montreal
W. K. Muir, General superintendent Great Western Railroad, Hamilton
Hon L. Holton, late Minister of Finance, Moutreal.
Hon. Alexander Campbell, Commissioner of Crown Lands, Kingston.
Hon. W. M. McMaster, M. L. C., Firm McMaster & Nephews, Merchants, Toronto.
William Workman, Esq., President City Bank, Montreal.
Hugh Allen, Esq. Firm Hugh & Andrew Allen, General Merchants and Agents Montreal Ocean Steamship Company, Montreal.
J. L. Beaudry, Esq., Mayor of Montreal.
Edwin Atwater, Esq., Firm E. Atwater & Co., Merchants and President Citizens' Insurance Co., Moutreal
Henry Starnes, Esq., Manager Ontario Bank Montreal.
James Johnson, Esq., Ex-President Provincial Exhibition, London.

Applications for Life or Accident Insurance are respectfully solicited.

J. D. WELLS.

General Agent for Maritime Provinces.

Office in McLeod's Buildings, No. 114 Hollis Street, Halifax. 3 m.

COOPERS.

WANTED, at the Hillsborough Mills 20 Coopers. To good, steady men employment will be given for the winter, and liberal wages paid, either by the day or for piece-work.

CARVELL BROS.

Dec. 7. 1870 tf

Summer Arrangement.

STEAMER

HEATHER BELLE

LEAVES MOUNT STEWART BRIDGE every TUESDAY and SATURDAY morning at SEVEN o'clock, returning same days about THREE, P. M.

Leaves Orwell

Every THURSDAY and FRIDAY morning at SEVEN o'clock, returning same days about THREE, P. M.

Leaves Charlottetown for Crapaud

Every TUESDAY night or WEDNESDAY morning, according to the tide, returning same day.

By order,

F. W. HALES,

Secretary Steam Navigation Co.

Ch'town, May 8, 1871.

Cheap China and Earthenware Store.

JUST RECEIVED FROM ENGLAND, A

LARGE ASSORTMENT

OF

Dinner Sets, China Sets, Stone China Sets, Toilet Sets,

And a Handsome Assortment of

EARTHENWARE

of all descriptions, to be sold Cheap, Wholesale and Retail.

J. LeLACHEUR.

Old Stand, Reddin's Building, Queen Street.

Ch'town, May 1, 1871.

Apothecaries' Hall,

The Old Stand, West Corner of Queen Square.

ESTABLISHED, 1810.

JUST RECEIVED, a fresh supply of FELLOWS' COMPOUND SYRUP OF HYPOPHOSPHITES, and Wyeth Brothers' COMPOUND SYRUP of PHOSPHATES (Chemical Food).

—ALSO—

A Good Assortment of Aniline Dyes, Roseine, &c.

T. DESBRISAY.

Ch'town, Jan. 2, 1871.

SUPREME COURT.

Important Civil Suit, respecting the Right of Way and alleged Obstruction at the west end of Pownal Street.

THE CITY CORPORATION *VS.* J. S. CARVELL, ESQ.

RESPONDENT, MARSHALL FLYNN; APPELLANT, DANIEL DINN.

An Appeal Case from the Mayor's Court to the Supreme Court.

(CONTINUED.)

Friday.—Cause continued. Court opened at 11 o'clock, a. m. His Honor Judge Hensley presiding.

HON. E. PALMER addressed the Court, and said he must ask its permission to re-call a witness to give some formal testimony as to the publication of the Bye-law referred to, and to the manner of its being agreed to by the City Corporation.

JUDGE HENSLEY.—The case on the part of the Respondent having been closed the evening before, I would like to know particularly the purport of the testimony proposed, before the rule of the evidence can be departed from.

Hon. E. Palmer.—It is merely to prove the publication of the Bye-law in a public newspaper, also in a pamphlet form, and the entries in the Corporation Book, showing the members of the City Council present when the Bye-law passed. Mr. Macgowan, the City Clerk, left the stand yesterday without these facts being formally proved. It was mere inadvertence. He had the Gazette with him, and the pages marked in the City Record Book, but was not particularly interrogated as to them. This evidence has but little to do with the merits of the case, and should not be excluded on mere technical grounds through the inadvertence of counsel or witness. He pressed it in furtherence of the administration of justice. It would work no injury to the appellants, and would create no material delay in the hearing of the case. There was no rule of law which arbitrarily excluded it. Provision was even made by a late Island Act of Assembly to adjourn a cause when partly tried before a jury, when the ends of justice required it. The business of the present term was not pressing—there was ample time to get through the whole. It was not like the assizes in England, where a large amount of business had to be disposed of, and the Judge had to close the Court to proceed to another County. The matter was one purely in the discretion of his Lordship, and he hoped there would be no further objection offered to its being received.

He then proceed to argue that before he replied to the especial points of defence urged on behalf of the appellants, he deemed called on to answer that charge thrown out by their learned Counsel, to the effect that the prosecution was one of those kinds which too often proceed from an envious and jealous disposition against individuals who embark in useful commercial enterprises, and doing much better than their neighbors, and therefore sought to be put down. This was certainly a most ill-chosen accusation, and, looking at the motives and objects of the parties concerned, must retort very strongly on those who have made it. Even the City Corporation, whom the learned Counsel has repeatedly charged as being the prosecutors, have no interest in the question really at issue here, which is that of the public right to a common highway. The City owned Pownal wharf, and he believed, claimed along the west side of it a certain strip of the shore, as an easement over which, and occasionally grounding on which, vessels might lie while using the wharf; but this was not the right *now* contended for; on the contrary, it was that of the public in all directions, whose interests, perhaps, might come in conflict with the City wharf rights as well as with Mr. Carvell's, and the question was, which was to give way, Mr. Carvell, or the hundreds whose daily access from the river to Pownal Street especially in winter, was attempted to be effectually stopped? These conflicting interests were not new to the law, and to show how they were looked upon in the English Courts of Justice, he cited a case, he said, was very analagous to the present, where the law was laid down by the late Lord Denman, Chief Justice of the Queen's Bench, in England; it was the King *vs.* Ward, 4 Ad: and El. 2 B. Reports 384, a prosecution instituted against the defendant for a kind of causeway projecting into the side of the river Medina, Cowes Harbor, Isle of Wight, extended by the defendent from private property of his own. It was to facilitate the landing of passengers who wanted or had to come up a right of way through an Inn, which was the defendant's property. One of the defendant's witnesses (a captain of a steamboat) even stated that "He considered the alteration a great benefit to the public; first, in launching and landing boats more readily; secondly, steamboats (and, of course, other vessels) could approach where they could not; thirdly, vessels obtain shelter from the quay;" and these results were hardly disputed on the part of the prosecution. In arguing the case, reference was made to the authority of Lord Hale, whose declaration of the law on this subject is as follows, viz:—

"All nuisances and impediments of passages of boats and vessels, *though in the private soil of any person* may be punished by indictments."

Reference was also made to the case of Rex. *vs.* Lord Grosvenor, 2 Stark: N. P. C., p. 448, a prosecution for building a wharf out into the river Thames, under the authority of a grant from the Corporation of the City of London of a part of the soil of the river between high and low water mark, which wharf, notwithstanding such authority and claim of right was held to be a nuisance. Reference was also made to the case of Rex *vs.* Russell, C B. O C, 556 (in which the law was expounded as admitting the question to depend in a good measure on the question of advantage or disadvantage of the erection to the public) which last mentioned case is not now approved of, but its law doubted by more modern Judges. In the case I cited, continued Mr. Palmer,—the King *vs.* Ward—Lord Denman observed as follows: "And I must say that, if the violation of rights which belong to any part of the public is to be vindicated by the benefit which may arise to another part of the public elsewhere, we are introducing inquiries of a most vague and unsatisfactory nature, and entering into speculations upon which no jury can be properly expected to decide." But there is another part of Lord Denman's decision in *Rex vs. Ward*, which comes still more forcibly home to the position of Mr. Carvell in the case now contested, and in quoting from Lord Denman, the character of this distinguished and exalted statesman and Judge, his just and fearless regard throughout his life for public rights unimpaired by ancient mistaken notions of an over-sacred regard for private interests, makes his language peculiarly applicable to this case. He says, at page 404:—"And in the infinite variety of active operation always going forward in this industrious community, no greater evil can be conceived than the encouragement of capitalists and adventurers to interfere with known public rights, from motives of personal interests, on the speculation that the changes made may be rendered lawful by ultimately being thought to supply the public with something better than what they actually enjoy."

Now, let me ask, continued Mr. Palmer. Which party it is here who has self interest in view—on whose side it is that personal gain and sinister motives stand most prominent in view? Is it the city authorities of Charlottetown who are struggling in a speculation for money making? Is it the public whose scores—those hundreds of people living at the South Shore, West River, Lot 48, Belfast, &c., who are proved to have used this right-of-way into and out of Charlottetown so continually in winter; is it this party who has the mighty dollar at stake, or is it Mr. Jedediah Carvell.

I said at the outset that a large class of citizens are here interested. It is used in winter as well as in summer, and it is indispensable in a North American climate to protect those thoroughfares so common to travel on in winter. I repudiate those reproaches thrown out simply because they evince some little feeling. What is every body's business is nobody's business, and, unless the public have somebody to protect them, in a few years they will wake up to see that they have lost their rights by those who have stolen a march upon them. Because the Corporation have expressed their opinion regarding that which they could not overlook, and therefore, gave orders that it should be pulled down, as it was a nuisance—certainly *prima facie*. I say these are no grounds for accusing a Mayor of moral turpitude. I shall not allow these remarks to pass over, for they are not calculated to do any good, and the learned Counsel apparently endeavours to persuade himself and others that it is for the paltry fine of 20 shillings, we are interested in securing. The very theory of the case is this, that there is—as they have admitted—a right-of-way there—then it becomes a question what is the width of that.

JUDGE HENSLEY.—They, the appellants, pretend to say they have not gone beyond a certain mark.

MR. E PALMER.—I want to know in the question of damages what is necessary for us to show, or whether it is necessary for us to wait till a witness proves that he has been scratched on his shins or lost an eye.

JUDGE HENSLEY.—As for public damages I don't think it necessary to go into that now.

MR. PALMER then proceeded to reply to some of the legal objections taken by the defendant's Counsel. With regard, he said, to there being no damages proved, the law, in a criminal prosecution for a nuisance to a public highway, did not require damages to be proved. (Mr. Hodgson—No specific damages.) Do the learned Counsel require us to prove that some person, in endeavoring to squeeze through this *very spacious* gap which the defendant has *considerately* left for the public, has torn his clothes or scratched his face against the pointed ends of the brushwood? Certainly one or two of our witnesses have proved that a single individual could hardly squeeze through it without injury; but nevertheless specific injury is not required in proof.

JUDGE HENSLEY.—As for damages, I don't now think proof of them necessary, and do not intend to stop the case here.

Mr. Palmer contended that the witnesses had proved that the obstruction complained of projected several feet across the street line, towards the wharf. It did not signify whether 6 feet or 6 inches, either would be a material obstruction in the spot in question. Mr. Carvell's Counsel had, so far, conducted his defence as to admit that a right-of-way had to be left to the public at this particular place. Now let us suppose if the public had, through length of time and great thoroughfare, gained a right-of-way through an old gate-way, only 8 or 9 feet wide, limited by two immovable granite pillars on each side, which was just wide enough, but no more, for nearly all business traffic, and the adjoining owner of the soil was re-adjusting his fences in that place, and projected an upright post six inches beyond one of the side pillars, and insisted, of right, to keep it there, which would thereby prevent loads going through, which before could have done so, would not this six inches be a most material obstruction in such a place, if allowed. The same would be the case in the gap now in question—if six inches of obstruction, and no more, be proved, it calls for the interposition of the the law to abate it, though in its if small, a vast inconvenience in that particular place, already too small. So here the maxim—'de minibus lex'—would not apply. Mr. Palmer then touched shortly on two or three other legal points, to shew their inapplicability to the real question at issue, and that there were no grounds for nonsuit, and concluded by contending that in a case where the merits of the prosecution were so substantially proved, and the public right-of-way so clearly established *prima facie*, at least that the Court ought to call upon the defendant to go into the merits of his case, and to bring forward what evidence he had to support it.

JUDGE HENSLEY.—The rule laid down in all the cases is that the admission of evidence, after the Counsel have declared the case closed, is a matter left to the discretion of the trying Judge, and in this case, as it was evidently inadvertance on the part of the Counsel, I will allow Mr. Macgowan to be recalled.

Peter Macgowan called, and re-examined by Mr. E. Palmer. The Royal Gazette is published by authority. The City Bye-law published in the Royal Gazette by order of the City Council. I got this from Mr. Haszard's Records, passed May 1st, 1856. I have also seen it published in that form in the City Bye-laws. It is published in another manner in the Royal Gazette. I have seen them published in the City Library. I have seen it in the Law Courts previous to to-day. The last entry in the Minute of the City Council is that the engrossed law be read the third time. At the passing of the Bye-law there were eight members present, with the Mayor. At the next meeting there were eight members present. Mr. Haszard published them in a newspaper—*Haszard's Gazette.*

Cross-examined by Mr. Hodgson.—Will you undertake to say that the copy printed there is the same as that which went to the Lieutenant Governor for his approval? It appears minuted there in the book. I believe them to be the same. I presume that the Bye-law which passed the Council is the same which is gazetted here in the Royal Gazette. I looked everywhere for the original Minute of Council. I think it went to the printer. I read the proofs, and I presume my predecessor read the proofs of bye-laws. We read both the printed copy and the manuscript. The fines of the Police Court go into the City Treasury. The prosecutor in the case of a trespass gets the fine. There was not a written notice given to the City when the wharf was being added to Pownal Street. It was the Mayor who directed this prosecution to be commenced. There was a meeting on purpose called by the Mayor to take action on the matter.

Mr. PALMER objected to the witness showing the Minutes of the City Council at said meeting.

JUDGE HENSLEY.—Where a book is already in the hands of a witness it is competent to advert to it.

Mr. HODGSON.—I want to show my Lord, that this public meeting on the 2nd March was composed of the Mayor and Recorder and three members of the City Council. The Mayor called the meeting at short notice, to take into consideration the brush placed at the foot of Pownal Street, and as was asserted by the City Police Marshal, it was removed immediately after by the City Surveyor and all the parties summoned up before the Mayor to answer in this case. We will show question in which the Mayor who sat as Judge had a pecuniary interests, and I have seen a Judge of the Supreme Court leave the bench where your Lordship now sits, when on one occasion a case came up in which he was interested. To witness—I want to know if you did not concoct a notice which you tried to get the Clerk of the Executive Council to sign? Witness—There was a paper prepared, but on comparing it with my book, the paper I had prepared did not exactly correspond with the original. I made another one to make it more explicit or clear.

MR. E. PALMER.—My learned friend thought of finding a mare's nest, so now I suppose he is satisfied.

MR. HUDGSON.—Opened the case for the Apellant. He said:—In opening this case My Lord, I have to say that it is one of extreme harshness on the part of the City Corporation, who have shown an utter disregard to the rights of property, and who with unparalleled violence have destroyed the breastwork erected upon the land of my client. It does seem strange that when we see City Bye-laws violated with impunity in the very face of that, the Corporation should single out my client whose only crime is that he is, with a spirit of enterprise, spending capital and giving labor to the people. The City authorities, instead of extending any encouragement, are the first to recklessly and lawlessly tear down his property. The first notice my client had of the intentions of the Corporation, was the appearance of an armed band destroying the breastwork which was erected within the line of the Steam Factory. Not satisfied with this, they had Mr. Carvell's workmen summoned and brought before the Police Court, where the City Council were the Judges. They were the originators of this prosecution, the prosecutors themselves, then constituting themselves the Judges in their own case, we are surprised to find them imposing the extremest fines upon the appellants in this case, who were the hired servants of Mr. Carvell, and only in the exercise of their legitimate labor. Instead of being the protectors of law and order, we find the Corporation to be outraging the rights of private property. I will dispose of the flimsy evidence given here that the breastwork extended beyond the line of the street. I will then prove conclusively that it was within the line of the street, and that it is built further out now than it was at first. The claim which the Corporation set up that the river frozen over is to be considered as one of the City streets under their control, is unfounded. The provision in Statute 29 Vic, 30th chap., is that the Hillsborough when frozen shall be considered a street of the city, subject to such Bye-laws as they may pass; and no Bye-law has been made since the passing of that Act. They seek to condemn us under a Bye-law made ten years before. It never was the intention of the Legislature that the then existing Bye-laws were to be extended to the frozen river; if such were the case, the most absurd consequences would ensue. For instance, there is a City Bye law to prevent furious driving on the streets. Will any one contend that this gives the City authorities the right to prevent such driving on the River as far as the harbor's mouth. There is a Bye-law to prevent persons loitering on the streets, but if the river is a street under all the existing Bye-laws, the boys who catch smelts around the spring holes could be fined. Again, if the streets of the City were covered with a glare of ice, persons would not for a moment be permitted to sail boats through them; it would be clearly illegal. But if the harbor is a street, then it must be illegal to to do so there also. The object of that Statute was to give the City a jurisdiction on the river, where before they had none, so that parties acting illegally could not make the harbor a city of refuge from the Police constables, but it was to be subject to such Bye-laws as should thereafter be made, and no such has ever been passed. No! the references are utterly inapplicable, and the City authorities have only a limited jurisdiction, and of that they never availed themselves. I will next prove to your Lordship that the Breastwork did not extend upon the line of the street, and that the proof given here to that effect was not only flimsy, but foolish. How absurd for the City Council to attempt to prove an important matter of this kind by an eye line. Mr. Ball took his observation from Rankin's House, but I will show that Rankin's house is inside the correct line by the plan supplied by the Corporation. The proper mode of making a survey is from the posts driven into the centre of the Streets. We will prove that the Breastwork, when first erected, was two feet further west, than it now is. The present Breastwork is nearer the street, because when Mr. Carvell saw the lawless manner in which the Corporation attempted to destroy his property by brute force, he resolved to come as near the line of the street as his title warranted him in doing. We can prove that Merry and Gormley gave false evidence in saying they measured the distance between the wharf and the Breastwork, and can show that in the Police Court they actually swore that they did not do so. Next we will prove a good title to the property at the west end of Pownal Street. It was formerly owned by the principal officers of Her Majesty's Ordinance Department, and by them conveyed to Mr. Purdy, who never recognized the right of the public to trespass upon his land. He put obstructions in the way, and built a gridiron for vessels to lay at. The vessels touched the wharf, and the passage was impassable. There was a steep bank there, and he made a way there for his own convenience. His rights were not disputed, and his title is transferred to us as far out as the channel. We have the most perfect and best legal right to hold it, until dispossessed of it by a jury. Every one holding land near the shore has the same right The owner has the privilege to encroach upon the sea, and it is not in the power of any two Magistrates to prevent him; a jury alone can do it. As to an easement, that is an interest in land which an inferior jurisdiction is incompetent to try. But, my Lord, there is another right-of-way which this very Corporation have stopped. The wharf has two sides, and they have erected a barricade ten feet high, without rhyme or reason, upon the public street, which prevents the people who come down the way of the Argyle Shore from having access to the City in that direction. Not satisfied with this, they are responsible not only for blocking up the passage, but they have encroached upon our property. First, the wharf was built near the Ordnance line for the convenience of landing their stores. Mr. Purdy bought the land from the Ordnance Department in 1847, and since that time the wharf has been built out fifteen feet on our property. The Counsel upon the opposite side may have to change their briefs, as we will commence an action to make the Corporation draw up the piles which are now infringing upon and interfering with our just rights. They have taken this subject into their own hands, and in the Court below the Mayor threatened to commit me for telling him he had no jurisdiction. Before trying the case they prejudged it. Yes, whilst the case was still pending, they expressed their determination to give the judgment in their own favor. They had not even the common decency to be silent; and if this is the way they prejudge actions that do come within their jurisdiction, the sooner they are abolished the better.

The witnesses for the appellant were next examined.

J S. Carvell sworn. Examined by Mr. Hodgson. I know the property in question.