loss to the plaintiff, to which loss the plaintiff had not in any way contributed by any negligence or any unlawful act on his part. It would thus seem that according to all usual and ordinary rules the plaintiff ought to have had a verdict for the loss caused by the fall of the wall. The ground of the decision in this case seems to have been, although not clearly expressed, that the act of the defendant was not unlawful because it was not actionable. But this is not correct in a case like the present. There may be cases in which an unlawful act does not give any right of action unless it causes damage. In fact, in all actions on the case damage is the ground of the action—sometimes damage is presumed by the law, sometimes it is not: in the latter class of cases, therefore, actual damage must be proved to entitle the plaintiff to bring an action; for instance, if a servant driving a wagon comes into collision with another wagon by his negligent driving, his master will be liable in an action if damage capable of being estimated has been caused by his servant's carelessness; but if no actual damage has been caused the master is not liable to an action at all, even to recover nominal damages. In the latter case the owner of the wagon driven against by the servant has no right of action at all. In both these instances we have put, the act of the servant would be equally unlawful, and might in each case be done in precisely the same manner, and yet, in consequence perhaps of the nature of the load in the wagon of the plaintiff, might produce an entirely different result. A collision with a wagon loaded with cases full of china would be more likely to cause damage than a collision with an empty one; and this difference in the result of the collision causing the damage would be occasioned entirely by the act of the plaintiff in loading his wagon with goods of a particular sort. The action in the principal case was an action on the case, and as such ought, it would seem, to have been subject to precisely the same rules as other actions of the same nature. A distinction has, however, been drawn by this decision between an action on the case for taking away the support of land and other actions of the same class, and it is for this reason that this case is deserving of attentive consideration.—*Solicitors' Journal.*

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF VERMONT.[1]

CONTRACT.

Commissions.—The plaintiff effected a sale of certain real estate for M. for $22,000, under a previous agreement with M. to pay the plaintiff ten *per cent.* of the amount for which the property should be sold. M. received in part payment another piece of real estate at $7525, which was worth at the time but $4220. *Held*, that the plaintiff is entitled to ten *per cent.* of the *real* price for which the property was sold, and not of a *fictitious* price, or a price that in the trade was re-

[1] From W. G. Veazey, Esq., Reporter; to appear in 38 Vermont Reports.

garded by the parties as fictitious: *Wakefield* v. *Estate of Merrick*, 38 Vt.

But in determining whether the price named in the contract was real or fictitious, it must be considered how the parties regarded the property received in part payment in reference to its value. If the parties to the contract fixed upon the sum of $7525, as the price they judged it worth, that sum must be the guide, although in fact it was of less value; or if the plaintiff and M. judged it worth that price the result is the same: *Id.*

It appeared that pending the negotiation M. went with the plaintiff and examined the real estate that he received in part payment, and agreed on the price at which it was taken; but the auditor did not find that they judged the property worth less than the agreed price. *Held*, that in the absence of such finding the court are not at liberty to infer it merely from the fact that it was worth less: *Id.*

Deed.

Way.—There was a grant in the deed in question of a "common passway for all necessary and household purposes" to the rear of the building conveyed, of the width of a "common cartway." It appeared in proof that an ordinary cartway is of the width of only twelve feet. *Held*, that the grantee is not necessarily restricted to a passway twelve feet in width only: *Walker* v. *Pierce*, 38 Vt.

It is a question of fact whether the grantee has such convenient space left open and unobstructed for the purposes specified in the deed: *Id.*

Where a party grants a private way, he is not bound by implication to construct or keep it in repair: *Id.*

The parties to this bill owned a right of way in common with A., which the defendant had graded, to the orator's prejudice. *Held*, that a decree may properly be made for the defendant in effect to undo what he has improperly done, without making A. a party: *Id.*

Infant.

Contract in Infant's Name by his Father.—The defendant, Hiram Hill, put in a bid to the Post Office Department for a mail route in the name and in behalf of his minor son, Robert H. Hill, which was accepted on the defendant's personal guaranty. Said Robert was to enter upon his contract July 1st, but did not appear and carry the mail on that day, and after that the defendant procured it to be carried while said Robert held the contract. July 8th the plaintiff Putnam went to Washington to get the contract annulled on the ground of the failure of said Robert to carry the mail the first day of July, and to obtain it for himself, and on the 10th succeeded in his mission; and on the same day the plaintiff Thompson, having no confidence in Putnam's success in Washington, purchased of the defendant the said Robert's contract for $200 bonus, and received of the defendant a paper signed "Robert H. Hill," requesting the department to transfer or issue the contract to the plaintiffs. At the time of the trade Thompson supposed, and the defendant gave him to understand, that he, the defendant, was Robert H. Hill, the person by whom and in whose name the bid was made, and the defendant designedly concealed from Thompson the fact