His Honor the County Judge was not acting as chairman at the time, being ill that day. or no doubt he would have called for the necessary papers precedent to the appeal, and, not finding bonds entered into, would not have entertained the appeal. Your opinion will oblige

A JUSTICE OF THE PEACE.

Dec. 28, 1863.

P.S.—The conviction was made pursuant to a by-law of the County Council for the suppression of vice, &c.

[We are not at all satisfied that our statute regulating appeals from summary convictions requires a recognizance in *every* case to be entered into by the appellant.

The statute seems to provide for an appeal under three different states of circumstances.

1. In case a person, complainant or defendant, thinks himself aggrieved by an order, decision or conviction, and within four days after conviction, &c., gives to the other party, &c., a notice in writing of his intention to appeal, &c.

2. *And* in case of "an appellant in custody," if he either remains in custody or enters into a recognizance with two sufficient sureties, &c.

3. *Or*, in case "the appellant be on bail," if he enters into such recognizance as aforesaid,—

Such appellant may appeal, &c. (Con. Stat. U.C. cap. 114.)

The recognizance, therefore, would appear to be required only in case of an appellant in custody or on bail. If the appellant be neither in custody nor on bail, no recognizance seems to be required. We know of nothing to prevent the party convicted paying the fine and costs, reserving his right of appeal, in which case no recognizance appears to be necessary (*In re Mason and Sessions of York and Peel*, 13 U. C. C. P. 159).

Of course if a Court of Quarter Sessions, without having jurisdiction over an appeal, quash a conviction, the order quashing the conviction would be a nullity, and the conviction, notwithstanding, open to be enforced in the ordinary manner.—EDS. L. J.]

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—You will much oblige by giving me your opinion upon a question about which there is much diversity of opinion among the profession in this city. The question is this, if the last day for service of notice of appeal from a magistrate's conviction fall on a Sunday, can notice of appeal be served on that day? If not, would service on Monday be sufficient? Yours faithfully,

A BARRISTER.

Hamilton, December 11, 1863.

[Paley, in his most useful work on Summary Convictions, doubts the sufficiency of service of notice of appeal on Sunday, but at the same time argues that the service of such a paper on a Sunday does not appear to be prevented by any statute. (Paley on Convictions, 4th edit. 312.) He refers to notices which may be legally served on a Sunday, and does not attempt to distinguish between a notice of appeal and the notice which he mentions. (*Ib.*) But the question appears to have been adjudicated upon in a case to which Paley makes no reference. (*The Queen* v. *Justices of Middlesex*, 3 New Sess. Cases, 152.) There it was held that notice of appeal from a magistrate's conviction is in the nature of process, and cannot be legally served on a Sunday. (*Ib.*) And it is clearly decided that service on Monday, where Sunday is the last of the four days for service of notice of appeal, is not sufficient. (*Reg.* v. *Justices of Middlesex*, 2 Dowl. N.S. 719; *Aspsell* v. *Justices of Lancashire*, 16 Jur. 1067, n.; *Peacock* v. *The Queen*, 27 L. J. C. P. 224; *Pennell* v. *Churchwardens of Uxbridge*, 5 L. T. N. S. 685.)—EDS. L. J.]

Law of insolvency—Favored creditors—Judgments by default.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—Since the enactment of our Provincial Statute respecting preferential assignments, the apparent object of that law is frequently defeated by a proceeding upon the legality of which I would ask your opinion.

The statute seems to have in view the preventing of any one creditor from obtaining the proceeds of all the debtor's effects, to the exclusion of others; but should the debtor be disposed to favour a particular creditor, he takes one or other of these courses:

1. If no creditors have sued, the favoured creditor institutes a suit, the proceedings are carried on quietly, and judgment is taken, thus obtaining for such creditor a priority; or

2. If another creditor has sued, or if several have done so, appearence is entered and defence made to all but the suit of the favoured creditor, who is allowed to take a judgment by default, and thus becomes in effect a preferential creditor.

Be pleased to state whether or no a question as to the validity of such judgments has ever arisen the courts, and, if so, mention the case or cases

If there are no cases reported, an expression of your own views will oblige.

Your obedient servant,

Prescott, Dec. 22, 1863. L. E.

[We refer our correspondent to *Young* v. *Christie*, 7 Grant, 312, where he will find the question which he raises discussed and decided. The law as to the estates of insolvent debtors is any thing but satisfactory. It is so imperfect as to be liable to be defeated by endless subterfuges, and yet the Legislature does not appear to be equal to the task of amending it.—EDS. L. J.]

MONTHLY REPERTORY.

COMMON LAW.

C. P. HERMANN v. SENSECHAL.

Notice of action—False imprisonment—24 & 25 Vict. ch. 99, sec. 33—Bona fides—Reasonable belief.

In an action for false imprisonment, the defendant is entitled to notice of action, under sect. 33 of the 24 & 25 Vict. ch. 99, if he honestly believed in the guilt of the plaintiff, and also believed that he (the defendant) was exercising a legal power; and this is so, although it be also expressly found by the jury, that the defendant did not reasonably so believe, the latter finding being in such case immaterial.