sec. 131, page 158, Consolidated Statutes of Upper Canada. Now the question arises under these sections and said rule, whether the judge on a jury trial can, if he thinks the plaintiff's evidence insufficient, force him to take a nonsuit against his will, or whether he is not in fact (as in the Superior Courts,) simply to instruct the jury to find a verdict for the defendant, as the plaintiff refuses the nonsuit. I contend that the latter is the proper course, and that the rule 69 does not conflict with this even, but merely gives the judge the power (which he might not otherwise have in jury cases) to nonsuit in jury cases with the plaintiff's consent. The contrary view is taken by several judges, and by the judge who presides over the Division Court in Toronto, and by the judge who presides over the Division Courts in the County of York. They contend that the judge has the power, whether the plaintiff consents or not, to nonsuit, and that the rule as to this in Division Courts is different from the practice in the Superior Courts.

Now I contend that the right of jury trial was given to the people in Division Courts, as a safeguard, to some extent, against the judge, and that a plaintiff having chosen his mode of trial, cannot be deprived of it, simply because a presiding judge may take a different view of the facts or their relevancy, or the importance of evidence from what they would have taken. That to grant such a power in a judge is tantamount to destroying the trial by jury, is saying that after all the jury are not to be judges of the fact, but only to act as the judge may dictate; is virtually making the judge the sole disposer of all cases. I say the rule comes in merely to say that, in jury cases, as in other cases, the judge, under ordinary rules of practice, as in the Supreme Courts, may nonsuit; not that he can do so at his mere will. If this rule had not been made, it might be thought he could not nonsuit even with consent, although I admit section 84 gave the power to the plaintiff to take a nonsuit.

But if there is a doubt, it is better to give it in favour of the plaintiff's right to go to the jury—reserving the right to grant a new trial to the defeated party. I see no difference between our County Court Act and the English County Court Act, (although the English Act has not our rule 69).

It has been held in England, agreeably to my view, that the judge cannot nonsuit against the plaintiff's *nil;* see *Stancliff* v. *Clarke*, 7 Exchequer Reports, 439; 21 L. J. Exch. 129; Davis County Court Practice, title, Nonsuit, 114. Then sec. 69, Consol. Stat. U. C. page 147, says that in certain cases the practice of the Superior Courts may be applied to Division Court practice. I would be happy to have the views on this matter of the learned editors of your Journal.

C. M. D.

Toronto, 22nd August, 1867.

[We are of the impression that our correspondent is right in the main in his view of the practice.—Eds. L. C. G.]

Dog Act—Liquor Licenses.

To the Editors of the Local Courts' Gasetee

Gentlemen,—Regarding the Act 29, 30 Vic. cap. 55, sec. 14, there is a difference of opinion held by justices and councillors in this quarter. Some insisting that the "returns usual in cases of conviction" should be made in *all cases* that come before justices under said Act. And others, that returns are *only* necessary where the owners of the dogs are proven.

If returns should be made in all cases, even where the owners of the dogs are not known, should the municipality in such cases be styled the defendants.

Also, is a person holding a license from a municipality for the sale of liquor by the quart, disqualified to act as councillor for such municipality. The council of which he would form a part, having the regulating of the amount of license to be paid, and the security to be furnished for the observance of the conditions of such license, and the by-laws of the municipality. Your opinion on the foregoing will oblige,

A Justice of the Peace.

[1. It does not at present appear to us that the certificate of the justices spoken of in section 9 of the Act for the protection of sheep, can be construed to mean a "conviction," which must be returned to the Quarter Sessions under the provisions of Con. Stat. U. C. cap. 124, alluded to apparently in section 14. There is certainly a "trial or hearing," but nobody is convicted, nor is any fine, forfeiture, penalty or damages imposed; there is in fact no certain person to impose a fine or penalty upon. The object of the first part of section 9 is to certify to the Municipality the name of