unsound mind, or out of the Province, shall be taken into account in estimating the six years."

Rule No 5, of the General Rules of Practice, provides that the *return of emoluments* shall be made without any special order from the judge, immediately after the 30th of June and 31st day of December, yearly, according to a prescribed form. And Rule No. 6 provides that a copy of the list of unclaimed suitors' monies shall be transmitted in the month of January in each year to the County Attorney, with the monies mentioned in such list.

Bailiffs are required to make returns on oath with regard to process in their hands and monies received by them in the execution of their duties, (Rule 12) as will be more particularly noted hereafter. Rule 7 provides that bailiff's returns shall be filed in the clerk's office, and be open without fee to the inspection of any person interested; and that the clerk shall examine such returns, and if found correct and complete within ten days after the receipt thereof, endorse thereon a memorandum in the following words:—

"I have carefully examined the within return, and find the same to be full, true, and correct in every particular to the best of my knowledge and belief.

"Dated the —— day of —— 18 .

"—— —— Clerk."

If the clerk finds the returns incorrect or incomplete, he shall forthwith notify the judge of the same, and of the particulars thereof.

All fees are payable in the first instance by the party at whose instance the proceedings take place (sec. 50).

The 53rd section declares that bailiffs neglecting to return process or executions within the time required by law, shall forfeit their fees thereon, and these fees "shall be held to have been received by the clerk, who shall keep a special account thereof," and account for and pay the same over to the County Attorney to form part of the General Fee Fund. There is also a general provision that monies arising from any penalty, forfeiture, or fine imposed by the Act, not directed to be otherwise applied, shall be collected by the clerk of the court, and by him paid over to the County Attorney to form part of the Fee Fund (sec. 190).

The primary object of the bond to the Crown before referred to is to secure the due and regular performance of that branch of the officer's duties which relates to the fee fund monies. The quarterly returns, according to the instructions from the Government, are to be made on 31st March, 30th June, 30th September, and 31st December in each year; and any clerk failing to account to the County Attorney for the space of ten days after the examination of his quarterly account by the judge is, according to the instructions to the County Attorney, to be reported to the Attorney General of Upper Canada, with a view to the necessary proceedings being had at law for the recovery thereof.

Clerks of the Division Courts are in some sense public officers, and several of the provisions of the Consolidated Acts of Canada, chap. 12, will be found to relate to them.

In case of the resignation, removal, or death of a clerk, all accounts, moneys, books, papers, and other matters in his possession by virtue of, or appertaining to his office, become the property of the County Attorney of the county, who holds the same till the appointment of another clerk, to whom they are to be delivered when his security covenant is completed (sec. 47). And any person wrongfully holding or getting possession of accounts, books, papers, or matters belonging to the court, is guilty of a misdemeanor, and is liable to be committed to gaol, there to remain without bail til he has fully accounted for, or delivered up to the County Attorney the matter withheld (sec. 48).

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(*Reported by* C. ROBINSON, Esq., *Barrister-at-Law, Reporter to the Court.*)

HENRY MCCABE v. MARY MCCABE.

Will—Construction.

"I, Michael McCabe of the township of S., south half of lot 24, tenth concession, do make and ordain this my last will and testament in the manner and form following all of my estate, goods and chattels, I give and bequeath to my dear and beloved wife, whom I appoint sole executrix of t is my last will and testament, hereby revoking all other and former wills by me at any time heretofore made."

Held, that the word *estate* passed the testator's land, notwithstanding its connexion with the personality. [C. T., 26 Vic., 1863.]

Ejectment for lot 10, in the eleventh range east the Garafraxa road, in the town of Owen Sound, and the south half of lot 24 in the tenth concession of Sydenham.

"The plaintiff claimed as heir-law of one Michael McCabe, the defendant as devisee under his will, which was as follows:

"I, Michael McCabe, of the township of Sydenham, south half of lot number 24, tenth concession, county of Grey, Canada West, do make and ordain this my last will and testament, in manner and form following: all of my estate, goods and chattels, I give and bequeath to my dear and beloved wife, Mary McCabe, whom I nominate, constitute and appoint sole executrix of this my last will and testament, hereby revoking all other and former wills by me at any time heretofore made."

At the trial at Owen Sound, before Richards, J., it was objected that this was insufficient to pass land, and the plaintiff also contended that the testator when he made it was of unsound mind.

A verdict having been found for defendant,

Robert A. Harrison moved for a new trial, citing *Cliffe* v. *Gibbons*, 2 Lord Rayd. 1325; *Buchanan* v. *Harrison*, 8 Jur. N. S. 965.

HAGARTY, J.—I have read the voluminous evidence at the trial, and am clearly of opinion that the verdict is right on the merits.

It was objected that the will does not pass real estate.

It would in my judgment be a reproach to the law if on such a will a man should be held to have died intestate as to his real estate, including the very lot which he names as his place of abode or residence.

Notwithstanding the older cases cited, I think the real estate would be held to pass at the present day on words like those before us. The tendency of all the modern cases seems to me to be to look at the plain obvious meaning of words, unembarrassed by technicalities which could never have occurred to the mind of the testator. We are asked to say because the word "estate," which by itself is admitted to be quite sufficient to pass realty, is joined