

To the Editors of the Law Journal, Toronto.

Etobicoke, May 20th, 1858.

GENTLEMEN:—I would respectfully request your opinion as to the legality of the following section of a By-law of our Municipality:—

"And be it enacted, that in cases where parties own or occupy property in two or more places in this Municipality, they shall perform the amount of labour chargeable against each division of such property under the Pathmaster in whose section or division it may be situated, or commute with said Pathmaster for the same."

You will perceive by this that the intention was that the scale of Statute Labor should be applied to each division of property, and not to the aggregate, and consequently increasing the amount of labour.

I remain, your's &c., on behalf of the
Municipality of Etobicoke,
W. A. W., Deputy Reeve.

[We are inclined to doubt the validity of the clause to which our correspondent refers us. There is nothing in the Assessment Act as to divisions of Townships. It is simply enacted that every male inhabitant of any township between the age of 21 and 60 years, assessed upon the assessment roll of any township, shall, if the property (i.e., the aggregate property in the township), of such party less assessed, at not more than £50, be liable to 2 days' labor,

At more than £50, but not more than £100, 3 days' labor.

" 100, " " 150, 4 "

" 150, " " 200, 5 "

&c., &c., &c.

(16 Vic., cap. 182, s. 36). This, of course, applies to parties "assessed upon the assessment rolls," that is, resident proprietors. In regard to non-resident proprietors to whom commutation is contemplated, the charge is against each parcel of land owned in the township, and not against the proprietor himself, that is commutation, is to be charged "against each separate lot or parcel of land according to its value." (a. 38) The difference between the liability of a resident and of a non-resident proprietor deserves attention from Municipalities.—Eds. L. J.]

MONTHLY REPERTORY.

CHANCERY.

V. C. W. IN THE MATTER OF AITKINS' ARBITRATION. Dec. 9.
Arbitration—Common Law Procedure Act, 1854.

Courts of equity have clear jurisdiction under the Common Law Procedure Act, 1854, to remit back to arbitrators for their reconsideration the matters referred to them by agreement between the parties, there having been clear mistake on the part of the arbitrators in the award as made by them.

V. C. K. BUCKERIDGE v. WHALLEY. Dec. 9, 23.
Habeas Corpus—Prisoner under Common Law process—Attendance in Chambers.

Where a prisoner is in confinement under a common law process, and it is required that he should attend in Chambers under an order made by the chief Clerk, the Court will order a writ of *Habeas Corpus* to issue that he may attend in custody of the officer *de die in diem*.

L. C. WARDEN v. JONES. Nov. 7, 12. Dec. 17.

Husband and Wife—Creditor—Settlement—Statute of frauds—Part performance—13 Eliz., cap. 5.

Where husband promises wife before marriage to settle her property, and induces her to marry before settlement, on the representation that he is solvent and that a settlement will be as good after as before marriage, and a settlement of her property, consisting of stock in a Railway Company, is subsequently made, such settlement is void against creditors, under 13 Eliz., cap. 5, the husband being insolvent at the time of the parol agreement.

V. C. W. BEETSON v. STUTELY. Jan. 12

Specific performance—Compensation.

A. contracted to purchase a leasehold estate subject to an under lease, of which seven years were unexpired, to B's father. A. agreed with B., on having a surrender of this under lease, to grant him a new lease, and B. agreed to procure a surrender of the underlease from his father, and to accept such new lease. B's father refused to surrender the under lease.

Held, upon demurrer, that A. could not obtain specific performance of this agreement, there being no allegation that B. had professed himself legally competent to enforce a surrender; and the question as to compensation to A. being determinable by action at law for damages.

Held also, that B. could not be compelled to accept a lease in the terms proposed at the expiration of the under lease.

L. C. RE. DODD. Jan. 13

Habeas Corpus—Jurisdiction—Common Law Procedure Act.

A., a solicitor, issued a writ, as plaintiff, out of the Common Pleas in England against a resident in Jersey, where B., his clerk served it. A. himself was in custody in Jersey at the time. A. was detained, and B. arrested by the Court in Jersey for issuing and serving the writ.

Upon *Habeas Corpus* B. was ordered to be discharged, but A. was remitted to custody, not for issuing the writ, but because it appeared that otherwise he was properly in custody.

COMMON LAW.

Q. B. BEARD v. KNIGHT. Jan. 22.

County Court Act, 19 & 20 Vic., cap. 108, sec. 75—Goods of third party seized in execution—Distress for rent.

The goods of a third party improperly taken in execution on the defendant's premises, under the warrant of a County Court issued against the defendant's goods, are not distrainable under 19 & 20 Vic., cap. 108, sec. 75, that section applying only to goods of the execution debtor.

Q. B. JACKSON (Administrator of Oliver Jackson, deceased,) v. WOOLLY AND WIFE. Jan. 19.

Mercantile Law Amendment Act, 1856—Retrospective effect—payments by one of two co-debtors—Knowledge and consent of other co-debtors.

Part payment by one co-debtor within six years before the commencement of suit, and before the passing of 19 & 20 Vic., cap. 97, sec. 14, does not prevent the operation of the Statutes of Limitation in favour of another co-debtor, following the authority of *Kindersley v. C. in Thompson v. Waulman*, 3 Drew, 628; 5 W. R., 30.

Mere knowledge and consent by one co-debtor to payments made by another co-debtor, do not prevent the operation of these Statutes in favour of the non-paying co-debtor.