held, as well as subsequent meetings in the county town?

Whatever may be the proper construction, the question is one that occurs daily; and it is to be hoped that its importance will excite discussion among the profession, and at length elicit the true reading of the statute.

Yours truly,

Lex.

Millbrook, Jan. 30th, 1866.

[The above letters were received too late to permit of any thing but their mere insertion in this number.—Eds. L. J.]

MONTHLY REPERTORY.

COMMON LAW.

Q. B. U. C.

Corporation of Longueuil v. Cushman.

New trial—Practice.

Where a plaintiff is disappointed in procuring testimony he should withdraw his record or take a nonsuit, and a defendant in the like case should apply for a postponement. If instead of doing so he chooses to go to trial upon weak or insufficient evidence, he will not be relieved from an adverse verdict. In applying for a new trial for the discovery of new evidence, the nature of such evidence must be stated. (24 U. C. Q. B. 602.)

Q. B. Miller v. McGill. U. C.

Voluntary conveyance—27 Eliz. ch. 4—Registration.

O., requiring money, mortgaged land to B. in 1854, for £50, to enable B. to obtain it for him, which mortgage was registered in the same year. B. having done nothing, O., in 1856, got him to assign the mortgage to S., who paid B. £25, but neglected to register the assignment until 1864. In the meantime O. conveyed, for value, to M., to whom B., for a nominal consideration, conveyed his interest. *Held*, 1. That the mortgage to B., being voluntary, was void under the 27 Eliz. ch. 4, as against the conveyance for value to M., and that the fact of its being first registered could not affect its validity in this respect. 2. That the assignment by B. to S. was fraudulent and void under the Registry Law as against M., a subsequent purchaser for value who had first registered. (24 U. C. Q. B. 597.)

C. P. Nicholls v. Lundy. U. C.

Interpleader—28 Vic., ch. 19—Duty of County Court Judge under.

The judge of a County Court has no power under 28 Vic., cap. 19, to refer an interpleader issue to be tried before the judge of the County Court from which the execution issued, *reserving to himself the question of costs and all other questions*: he must either dispose of *the whole* proceedings himself or order them to be disposed of before the judge of the court from which the process issued; and where such a reference had been directed, on appeal from the decision of the judge who acted thereunder and tried the issue, *Held*, that such procedings were *coram non judice*. (16 U. C. C. P. 160.)

U. S. Eshelman v. Lewis.

Resulting Trust—Agent.

1. A resulting trust cannot be set up to affect the title of a purchaser for a valid consideration without notice of the trust. 2. A person whose money is invested in the purchase of land by an agent, is not obliged to take the land and to consider the purchaser as his trustee, but may elect to treat him as his debtor, and claim the money instead of the property. 3. *Downey* v. *Garard*, 12 H. 52, affirmed. (*Pitt. Leg. Journal*, Dec. 20, 1865.)

C. P. Nov. 18, 1865.

Galli v. Mongruel.

Practice—Act—Service on defendant out of jurisdiction.

A defendant, not being a British subject, and residing out of the jurisdiction, was served abroad with a writ giving him fourteen days for appearance, and also with a notice of the writ. The memorandum on the notice stated that if the debt and costs were paid in seven days from the service thereof, further proceedings would be stayed. The defendant had, by letter admitted the debt and service of the notice, but as the notice did not give the defendant the fourteen days limited for his appearance in which to pay the debt and costs, the Court refused to give the plaintiff leave to proceed. (10 W. R. 106.)

CHANCERY.

M. R. June 26.

Greetham v. Colton.

Will—Construction—Charge of debts—Insufficiency of personalty—Power of sale—Instructions for will.

A charge of debts upon land devised to a trustee gives him a power of sale, although it is expressly made "in case the personal estate should be insufficient;" and the trustee is not bound to show that the personal estate is insufficient. [See act of last session "to amend the law of property and trust in Upper Canada."]

A will consisting of memoranda intended as instructions for a more formal will, will be construed liberally, and the Court will consider how the conveyancer would have carried out his instructions. (13 W. R. 1009.)

V S. Nov. 8, 1865.

Duly v. Walder.

Conveyance by heir-at-law.

An heir-at-law is bound to join in the conveyance of real estate which his ancestor has contracted to sell, although he has no legal estate and no interest in the purchase money. (41 W. R. 45.)