Lynch v. *Reg.*, which was one of felony, but rest their judgment on the more general ground, that the improper discharge of the jury could not be the subject of a plea; and my Brother Hill quotes and concurs in the judgment of Crampton, J., in the Irish case.

I think the authorities quite sufficient to authorise us to decide that the discharge of the jury is no legal bar to another trial, and therefore that there ought to be such jury process as is necessary to produce that further trial. Whether that is to be entered on the record as a *venire de novo*, or as a continuation of the former jury process, is a matter not now before us.

Rule discharged.*

GENERAL CORRESPONDENCE.

Police Magistrate—Right to practise as an attorney.

To the Editors of the Law Journal.

Gentlemen,—As a general rule magistrates are not practising attorneys, but the Police Magistrate of the city of Toronto appears to be an exception to the rule. Can you inform me whether or not in law he is entitled to practise as an attorney? Your opinion will oblige

An Enquirer.

Toronto, January 27, 1863.

[Recorders and police magistrates are appointed by the Crown, and hold office during good behavior: (Con. Stat. U. C., cap. 54, sec. 375.) Each is ex officio a justice of the peace for the city or town for which he holds office, as well as for the county in which the city or town is situate: (*Ib.*) The Governor General may, by letters patent under the great seal, appoint the recorder to preside over and hold the division court of that division of the county which includes the city: (*Ib.* sec. 383.) While a recorder is authorized to hold the division court, he is not allowed to practice as a barrister, advocate, attorney or proctor in any court of law or equity: (*Ib.* sec. 385.) We know of no such provision which in express terms disables a police magistrate from practising as a barrister, attorney or solicitor in Upper Canada. It is true that Con. Stat. Can., cap. 100, sec. 2, provides that, "When not otherwise specially provided by law no attorney, solicitor or proctor shall be a justice of the peace in or for any district or county of this province during the time he continues to practise as an attorney, solicitor or proctor;" but we cannot see our way to the conclusion that this *per se* disables a police magistrate to practise as a barrister, attorney or solicitor.—Eds. L. J.]

MONTHLY REPERTORY.

COMMON LAW.

EX. Evans v. The Bristol & Exeter Railway Com.

Carrier—Delivery—Evidence.

In proving delivery of goods by a carrier, though it is not necessary to give evidence of delivery into the hands of the consignee or his servants, it is necessary to show an actual delivery of the goods into their possession.

* No further proceedings were taken by the Crown in this case, a *nolle prosequi* having been entered by the Attorney General.

EX. Leech v. Gibson.

Practice—Trial—Non-appearance—Nonsuit—Costs of the day.

If when a cause is called on, the Plaintiff is not ready for trial, and the Defendant is so, but does not apply for a nonsuit, he cannot have the costs of the day.

EX. Higginbotham v. The Great Northern Railway Co.

Carrier—Damage to goods—Evidence.

In an action by consignee of goods against carriers for damage caused by want of care in the carriage, proof that the goods were in proper condition when received by them, and were damaged when delivered is sufficient. Although the jury find that the damage was caused partially by bad packing, that does not answer the action, and goes only to the amount of damage.

EX. C. Wright v. Wilkin.

Devise upon condition—Trusts and conditions—Mortmain Act.

A devise of lands to A., upon the express condition that A. should pay certain legacies within twelve months from the decease of testatrix. *Held*, that it was a trust, and not a condition, the breach of which would give the heir a right of entry.

Where lands are devised, subject to certain trusts, some of which are bad by the Statute of Mortmain, the devisee takes the lands free of such trusts.

EX. C. Cahill v. The London & N. W. R. Company.

Railway Company—Passengers Luggage—Merchandise.

Where a railway company contracts with passengers for certain hire, to carry them with their personal luggage only, and a passenger is conveyed, with a box which he has with him as personal luggage, but which is in fact merchandize, the company are not liable for its loss, unless the package is unmistakably merchandize

EX. Jones v. Davies and Wife.

Ejectment—Merger of estate for years in freehold—Tenancy by the Courtesy initiate.

D., the male defendant, being lessee of al. estate for years, his lessor devised the lands in fee to D.'s wife, subject to the payment of an annual rent charge to the plaintiff with a proviso for entry in case of non-payment. D. had issue by his wife.

Before the lease for years had expired, the plaintiff brought an action of ejectment for non-payment of the rent charge.

Held, (affirming the judgment of the Exchequer) that the action was not maintainable; that the devise in fee to the wife did not operate as a merger of the lease for years; that during the lifetime of the wife the husband was only tenant by the courtesy initiate and not consummate, and consequently had not such an estate of freehold in his own right as would merge the term.

C. P. Brown v. Tibbetts.

Set off—Attorney's bill of costs—Demurrer—Practice.

The declaration alleged that the defendant, an attorney, promised to indemnify the plaintiff against all costs which he might incur in a certain action which the defendant was to carry on for the plaintiff as his attorney; that the plaintiff was compelled to pay a certain sum for costs in that action; that all things had happened to entitle the plaintiff to have the defendant's promise fulfilled; that the defendant had not performed his promise or repaid the plaintiff the sum expended by him in payment of such costs. To so much of the count as related to the payment of money by the plaintiff, the defendant pleaded at set-off of his bill of costs. Replication that the defendant did not one month before suit deliver to the plaintiff a signed bill of costs. Rejoinder, that the said charge became due after the passing of 6 and 7 Vic., ch. 73, demurrer to replication. Demurrer to rejoinder.