53, and that no judgment at all much less an unsatisfied one was existing.

2nd. That it did not assume the form of a judgment nor had the effect thereof until the time limited for payment had stopped the order for such payment having till then only the effect of a verdict in one of the Superior Courts to which it is analogus.

3rd. That it did not under any circumstances become a statutory sense an unsatisfied judgment until the fi. fa. had been returned *nulla bona*, or some attempt had been made at levying and failed. He cited as to this, C. L. P. Act, 1856, Sec. 193 and 194, Twine v. Mercer et al, coram, Robinson, C. J., in Chambers, 8th December, 1856; McDowel v. Hutchison et al. coram, Richarde, J., in Chambers, 28th January, 1858.

Robertson for the plaintiff, submitted that the course pursued was perfectly regular even under the 91st clause, but relied on the 94th clause of the same Act as putting the case beyond a doubt, that section of the statute giving the power as he contended either to issue and serve both at the same time or in the alternative in the event of a defendant personally appearing at the trial to examine him without service at all, and that it was clearly the intention of the Legislature to favour the course pursued herein, he therefore asked that the defendant should be committed to custody for contempt in not obeying the Judgment summons.

Mackintosh, in reply, contended that the true meaning of the 94th clause was to be found in its marginal note which only gave power to examine where the defendant personally appeared, that where the section and its marginal note did not tally the latter was law, such a case had already occurred under the 52nd section of this very Act, and the marginal note was upheld by McPherson v. Forreter, 11 U. C., 2 B. 362. He submitted that Rule 17 and forms 54 and 55 also shew meaning of clauses in dispute.

Judgment was reserved and given on 29th July.

Small, Co. J.—I have very carefully examined the 91st and 94th clauses of the Act in question, and think that unless the defendant personally appear at the trial (which was not the case here), I can neither examine him nor take any action against him in this matter.

The Judgment summons must therefore be discharged.

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

ROCHESTER, N. Y., Sept. 1858.

GENTLEMEN,—As your valuable journal aims to throw light on points of legal controversy, will you have the kindness to give some, in regard to the following statements?

Some fourteen years since one H. and myself entered into a partnership in business, H. acting as "sleeping partner," at the same time carrying on a large business of his own. In the course of time I desired to withdraw. We therefore chose two men as arbitrators to settle the matter. H. proposed that I should throw off one-third of the accounts to allow for bad debts, and that he would carry on the business in his name. I consented, and by so doing brought myself in debt to H. about £70—the business barely paying—for which I gave a note. *H. gave me his bond to pay all claims; he, also,* to collect all dues. Thus ended the matter for three weeks, when H. told me he had discovered some more claims against the firm. The arbitrators met again and brought me £34 more in debt, making £104 to pay; I required time, as I was without means. I gave H. four separate notes of £26 each, payable in 6, 12, 18, and 24 months, signed jointly by my brother and myself. The £70 note I desired H. to give back to me as it was *included in the four notes.* H. said the note was not with him then, but he would hand it me in a day or so (at the same time the note was passed off and beyond his control!) at farthest. H. gave me a writing to this effect.

Two of the four notes was paid before due, the remaining two are unpaid as yet, but have offered time after time—providing H., or those who hold those two £26 notes, would give me ample security in regard to those *claims* against the firm, and return the £70 note, my just due.

H. failed in some months after we dissolved, and took the benefit of the Bankruptcy Act. The creditors immediately turned to me for pay—H. being largely in debt before we formed a partnership, not to my knowledge however, and as a matter of course paid a small dividend.

Now, Gentlemen, I am both able and willing to pay that which is legal, but not illegal.

Please to inform me the proper mode of procedure to bring the matter to a final close.

Yours truly,

J. R. C.

[The conduct of H., upon the showing of our correspondent, was very reprehensible. Had he not obtained a certificate of bankruptcy, he would, we take it, have been bound to furnish the requisite security. *His negotiation of the £70 note in* bad faith would also have rendered him liable to the consequences of his act. But his whole conduct, as well as the legal effect of the certificate of bankruptcy upon his conduct, must be governed *by the laws of the State of New York.* And as we, as editors of the *Upper Canada Law Journal*, neither profess to understand the laws of that State, nor to know the mode of procedure adopted in its Courts, we find ourselves wholly unable to advise our correspondent in his difficulty. We doubt much, if able, whether we should be willing to do so. Our purpose is not to advise individual correspondents, but by answering individual communications to give information to the great mass of our subscribers. Whenever our opinion is asked upon a state of facts, of interest only to the writer, our course is to refuse the information sought. The money enclosed by our correspondent is applied in payment of his subscription to this Journal—EDS. L. J.]

To the Editors of the Law Journal.

GENTLEMEN,—I presume you have heard of the high-handed proceedings of the Court of Chancery in suspending a Barrister and Solicitor of the Court for some hasty words used by him to a brother Solicitor in the Master's Office in Hamilton; but for which he on the spot apologised to the Master, and with which apology the Master expressed himself completely satisfied.

I hope gentlemen you will take this matter up and inform the profession—nay, every member of it, through yours, the only legal periodical in Upper Canada, whether they are slaves or freemen; and if slaves, the best means of acquiring their freedom. The feeling in the profession, so far as the case is known, is, that the gentleman who was so summarily dealt with, has been cruelly treated. Others are as subject as himself to be similarly treated, and all therefore have an equal