

tors must only be more careful than they have heretofore been whom it is they trust with such very extensive stocks of goods.

I think I must dismiss the appeal, but it must be without costs.

Appeal dismissed.

CORRESPONDENCE.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

Power of Magistrates to Commit under Petty Trespass Act of Upper Canada.

GENTLEMEN,—Trespass by defendant crossing the inclosed field and premises of complainant.

Page 947 Con. Stats. U. C. Trespass Act.
25 Vic. cap. 22, Amendment thereto.

By 2nd section substituted for 1st section of said Act, trespass without injury, penal.

3rd section of said Trespass Act makes the provisions of Summary Convictions Act, page 1083 C. S. Canada, operative as to procedure.

In the Act and Amendment no provision is made for enforcing the penalty, or any imprisonment mentioned.

57th section Summary Convictions Act—Powers vested in Magistrates to issue distress warrants according to statute, under which conviction made, and also in cases where no such provisions are made.

62nd section same Act—In default of distress, commitment, "in such manner and for such time as is directed and appointed by the statute on which the conviction or order mentioned in such warrant of distress is founded."

Your opinion as to whether a defendant could be committed to prison after return of distress warrant under the provisions of said Trespass Act, would much oblige,

A JUSTICE OF THE PEACE.

[Sec. 62, referred to, seems to apply, and speaks of the distress issued under Sec. 57, which is the preliminary proceeding intended to enforce the pecuniary penalty spoken of in the Petty Trespass Acts. A commitment therefore would seem to be authorized, if the proper preliminary steps had been taken, as pointed out by the sections of the statute preceding Sec. 62.—Eds. L. C. G.]

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

An important question—The Bankrupt Law.

MESSRS. EDITORS,—I would respectfully ask your opinion on this question:

Can an insolvent debtor, under his *certificate of discharge from all his debts*, claim a

discharge from a judgment or debt *not included* in his list of creditors attached to the schedule to his petition?

There is nothing positive in the Bankrupt acts of Canada in the affirmative or negative, but several clauses of the act of 1864, say that he must attach a list of his creditors to his assignment.

Perhaps some of your legal readers can give an answer or some authorities on this point. I may refer to the question in your next issue, and in the meantime, if convenient, would feel obliged for the opinion of yourselves.

Toronto, June 24, 1867.

SCARBORO.

[We should be glad to hear from our correspondent again, or from others who may have light to throw on the subject.—Eds. L. C. G.]

Evidence of wife against husband.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—There have been some conflicting decisions by the judges of the Superior Courts at Nisi Prius, respecting the *competency* of a wife to give evidence against her husband. Referring you to the 5th section of chapter 32 of 22 Victoria, Con. Stat. U. C., page 402, I request you to mark the wording. It enacts that "This act shall not render *competent*, or *authorise* or *permit* any party to any suit, &c., or the husband or *wife* of such party, to be called as a witness on behalf of *such party*; but *such party* may, in any civil proceeding, be called and examined as a witness in any suit or action at the instance of the *opposite party*: *Provided* always, that the *wife* of the party to any suit or proceeding named in the record, shall not be *liable* to be examined as a witness at the instance of the *opposite party*."

The question is, can a brother, who has supported a wife and her child, who have been inhumanly driven by her husband from his home, when only a few days out of her confinement, call upon the wife to prove the board, lodging, necessaries, &c., furnished to her during a period of two years, in which her husband has deserted her by removing to a foreign country? The late Chief Justice McLean held that she was competent, *if so disposed*; that she was not *liable* to be examined, if she objected. There has been a contrary decision given since then. Pray which decision is right? I have only to remark that the wife *may be* the *only* person able to prove the expulsion from her hus-