of proof of misconduct should be thrown upon the creditor. Lord Campbell feels, with all who have given thought to the subject, that the present state of commercial immorality is mainly due to the relaxations that have been unwisely permitted in the law of bankruptcy and insolvency, the practical effect of which has been to give impunity to fraud. When bankruptcy ceased to involve penal consequences, it ceased to be disgraceful, and it was the dread of the disgrace of it, much more than a sense of right, which formerly deterred men from hazarding failure fraught with such consequences. Moreover, when the law ceased to treat the non-payment of debts as a wrong, and took to pitying the debtor and punishing the creditor, it is not to be wondered at that the public should come to look upon debt with leniency, nor that rogues, quitting the more perilous paths of felony, should have directed their energies and skill to the more profitable and safe modes of plunder by debt, certain that nothing worse would come of it than a third-class certificate, leaving them, after failure, richer than they were when they started. After the feeling so strongly expressed in the House of Lords, we hope to see a really large and sound law of insolvency proposed by the Government.—*Law Times.*

DIVISION COURTS.

OFFICERS AND SUITORS.

ANSWERS TO QUERIES.

J. McM.—If the defendant has sold your horse you can it appears to us, waive the trespass and sue for the amount as for money had and received, although the price received for the horse exceeds ten pounds, but it is no part of a Clerk's duty to instruct you how to bring your action.

"*A newly appointed Clerk*"—suggests to us "the advantage of giving short statements of causes of actions of every description suited for insertion in the affidavit for attachment."

In the first volume of this Journal we did so to a certain extent, but if it appears to be the desire of officers we shall revert to the subject again, and enlarge upon our former collection. It is very material that the "Cause of action" should be properly stated in the affidavit for attachment, and be *so* stated that the *whole* of the plaintiff's claim is embraced, otherwise his rights under the attachment might be seriously prejudiced if not totally destroyed.

If before next month we can ascertain that other officers coincide with our correspondent the matter asked for shall be furnished.

M.—Consent can give no jurisdiction of matters over which the Division Courts have no jurisdiction. There is a section in the English Act giving the Courts power over causes beyond their jurisdiction when the parties consent. The case to which our correspondent refers was under that power, but there is no similar enactment for our Division Courts.

T. B.—We are not aware of any decision under our Division Courts Acts, as to the meaning of the term *title* to hereditaments used in the 1st sec. of the Division Courts Extension Act. Our own view is that a claim of possession is not a claim of title to land. It may be that in its most comprehensive sense the term *title* embraces the possession, but not in the sense in which it is used in the Act, so that a defence which would amount to a *plea* of leave and license would not of necessity bring title to the land in question.

S. M.—A set-off is in the nature of a cross action, and if decreed upon by the Court cannot be sued upon again, but as the plaintiff may at any time withdraw his case or become non-suit, so a defendant where he finds the evidence too weak to support his set-off may withdraw it, but such withdrawal must be explicit, or the defendant will be concluded and cannot bring a subsequent suit on such set-off.

To the Editors of the Law Journal.

GENTLEMEN,—I avail myself of your paper to request any brother Clerk who may have had any experience in the issuing of executions upon the determination of fence viewers (8 Vic., chap. 20) to mention what his practice has been. I have my doubts as to how far a Clerk is authorised to judge of the sufficiency of the award.

It is by enquiries and answers to matters of this kind we can inform ourselves, and any Clerk who is willing to contribute information which his experience or reading gives, adds so much to the general stock of information possessed by all the Clerks in Upper Canada, for I presume all take your valuable publication.

A BACKWOOD CLERK.

[Fully concurring with the writer of the above letter in the advantage of answers to queries of this kind as contributing to the general information of all officers, we willingly insert the communication.

Our correspondent is not right in presuming that *all* the Clerks take the *Law Journal*,—the great majority do so, but there are some so indifferent to any aid in the discharge of their duties, as to decline availing themselves of the advantages we offer. Time will show whether these individuals are not so to speak "penny wise and pound foolish"—EDS. L. J.]

L.—The 7th sec. of Rule 69, settles the point that the Division Courts have "no jurisdiction to try an action upon a note of hand, a part of the consideration of which was for spirituous liquors drunk in a tavern." A document "in the nature of a promissory note but payable in lumber" given upon such a consideration comes clearly within the meaning of the enactment and Rule, and the plaintiff cannot recover on it.

To the Editors of the Law Journal.

GENTLEMEN,—Will you be kind enough to inform me what I should do under the following circumstances:—A plaintiff enters a suit; the summons is served 22 miles, mileage—the case is heard and occupying a long time, an increased hearing fee is ordered by the Judge.

In consequence, as the plaintiff says of the case taking an unexpected turn defendant got a verdict against him. From first to last I got no fees in the case, and had to pay the bailiff's costs and fee fund charges out of my own pocket as I did not exact fees in the first instance, the claim being on a note and the defendant a responsible person. The plaintiff has applied for a new trial, and as his affidavits are strong is likely to get it, but he refuses to pay the fees, &c., and he has no tangible property. What course would you suggest to me in the matter? CLERK D. C.

[The practice of giving credit for fees to casual suitors is a very unsafe one for a Division Court Clerk, as this case shows. We would direct our correspondent's attention to the 3rd sec. of the D. C. Extension Act, which provides