his resource against Polley as he would have stood if no such mortgage had been made."

In *The Commercial Bank* v. *Cuvillier et al.* the action was brought against the defendants, A. Cuvillier & Co, as endorsers of a promissory note. It was pleaded by them that the plaintiff had accepted a mortgage from the maker of the note in full satisfaction and discharge of the cause of action. It appeared, however, that the right to sue on this was expressly reserved by the mortgage, and on this point as well as on others, the judgment was given for plaintiff, Burns, J., saying:—"As to the other point (meaning that above referred to) we have had a similar question before us on several occasions, and have held that a collateral security given by one of two or more joint debtors did not merge the debt."

This case was referred to and followed by the court in the judgment given in *McKay* v. *McLeod et al.*, 20 U. C. Q. B. 258, in which the defendants were the joint makers of the promissory note sued upon.

The mortgage or other speciality, therefore, to effect a merger, may be given to the holder of the bill or note by either the maker or the endorser, or by a joint maker or joint endorser of it, and that without reference to which party on the note the action may be brought against.

We shall now, in conclusion, refer to the position of a debtor who has given to his creditor a bill or note, and also a mortgage or other assignable specialty security for the purpose of protecting the note, it not appearing on the face of such mortgage or other specialty security that it was only intended as a collateral security.

The case of *Fairman* v. *Maybee*, 7 U. C. C. P. 467, was an action of ejectment, the plaintiffs claiming under a mortgage from defendant to one Badstone, and by him assigned to plaintiffs. It appeared at the trial that this mortgage had been given to Badstone together with and to secure a note for the same debt, but there was nothing in the mortgage to show the fact. Badstone subsequently paid away the note to a third party, who held it till it was taken up by the defendant. Badstone, after disposing of the note, assigned the mortgage to the plaintiff. Draper, C. J., in delivering judgment, said, "The plaintiff had no notice even that such notes were given..... and it was the duty of the defendant to see that he paid the money to the proper person. Even if there would have been no defence to an action by the holder of the note—if he had taken it *bona fide* without notice—it would in my opinion make no difference ..... If sued by the holder of the mortgage for default, it would be no answer that he was also liable on the note in the hands of a third party, and ..... the remedy on the deed is not affected even by payment of the note ..... It is argued that the defendant may thus be compelled to pay the debt twice; but even if so, it is his own fault, for he has enabled the mortgagee to commit a fraud by assigning the note to one and the mortgage to another."

SUMMARY PROCEDURE BEFORE MAGISTRATES.

An article on this subject, in the December number, has elicited, as we desired, more than one communication with reference to it. The letter of "W. B.," published last month, calls for particular notice, not merely because we happen to know the writer as a well informed and thinking member of the bar, but for its intrinsic value as a contribution to the discussion in hand. He suggests as a cure for evils pointed out—to enable amendments in convictions by order of the judge at the Court of Quarter Sessions. We quite agree with "W. B.," that such a provision would be desirable, and that to some extent it would lessen the evil complained of. Such an enactment is in force in England, and is to the effect—that upon the trial of any appeal to the Quarter Sessions against any order or judgment, if any objection be made on account of "any omission or mistake in drawing up such order or judgment, and it shall be shown to the satisfaction of the court that sufficient grounds were in proof before the justices making such order or judgment to have authorized the drawing up thereof free from the said omission or mistakes," the court may amend, &c. But this would not meet all the difficulty; the amendment would be on the evidence taken down before the justices; and many matters over which they have jurisdiction are of a very technical and involved description. A thing done, innocent in itself, often acquires a criminal hue when accompanied by a particular act, or when done under particular circumstances; and, acting on certain statutes, it requires a nice discrimination to mark exactly every fact necessary to be put in evidence as an element in the offence charged. There may therefore be nothing in the evidence to amend by—in point of fact it would often be so. Forms in every case are a great aid, and, if properly framed, suggestive of the facts and circumstances which are required to constitute the offence, and of the particulars which go to make it out. All we can admit in our correspondent's suggestion is, that if carried out it would *lessen* the difficulties in respect to convictions, but we do not see that it would touch the root of the evil. The subject calls for full and free discussion, and we will be happy to see it further debated in the *Law Journal*.

There is a good deal in what "W. B." says of the Division Courts having already plenty to do; but the experiment might be made of giving them jurisdiction in a class of cases partaking as much of a civil injury as of an offence against society.