responsibilities of his position, and that he for one would be willing to be a contributory to any plan that would tend to secure soundness and uniform administration in the Division Courts.

We could name many other gentlemen, animated by the same feelings, and to whom our thanks are due for assistance rendered in the object which from the first the *Law Journal* had in view.

In our Prospectus, issued in January 1855, it was stated as follows:—"A space will be afforded to elicit whatever experienced officers or practitioners may be able to set down for the information of others, whose doubts lead them to query; thus giving, as it were, the advantages of a monthly conference on the many difficult points which are constantly arising; also for queries on points of practice, &c., which the conductors of the *Law Journal* will gladly aid in resolving."

The "monthly conference" proposed has been kept up, to a limited extent, ever since. For the present, the part of Judge Armstrong's letter with which we most cordially agree, containing the suggestion of a general meeting of the county judges at Toronto, is the only part we advert to. Many of the judges have had an experience of over twenty years, and there is scarcely a clause of the statutes that has not undergone judicial construction by one or more of the judges—hardly a point of practice that some one or more of the thirty-three judges have not considered. Each judge, by a conference of this kind, would have the advantage of the experience of all, and all would be enlightened in some way.

At the suggestion of several judges, we have more than once thrown out the idea of such a meeting, and we would gladly see it take place. The first thing is to hear from each judge on the subject. We will be happy to learn the views of any one who feels an interest in the proposed meeting, not for publication, unless so desired, but that we may be enabled to offer a definite suggestion.

Immediately after July term would probably be the most convenient time for a meeting. No judge, whatever his standing, would feel himself quite warranted in taking steps for a meeting, unless armed with a call to do so from a very considerable number of his brother judges. Yet we are convinced it only requires some one to take up the matter, to ensure a full meeting.—EDS. L. J.]

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(*Reported by* C. ROBINSON, ESQ., *Barrister-at-Law, Reporter to the Court.*)

LIVINGSTONE ET AL v. MASSEY.

Action against carrier—Felony shewn by the evidence—Nonsuit.

In an action against a carrier for non-delivery of a package of money, defendant pleaded not guilty. The plaintiffs' witness, their agent, proved that within a week after his delivering the parcel to defendant he found that he had absconded, that he then sued out an attachment against him as an absconding debtor; and that, as he believed, defendant was at the time of the trial in goal, charged with stealing the money. *Held*, that this evidence sufficiently showed a felony, as defendant upon it might, as a bailee, be properly convicted of larceny, under Consol. Stats. C., ch. 92, sec. 55; and a nonsuit was ordered.
Hagarty, J., dissenting. [Q. B., M. T., 27 Vic.]

Action for money had and received. The first count was in the common form. The second stated that defendant was a common carrier of goods for hire: that on the 21st of February, 1863, the plaintiffs delivered to defendant, and he accepted for carriage and delivery, a money parcel containing $888 22, of which the plaintiffs theretofore had lawful possession, to be carried by defendant for the plaintiffs, and to be delivered within a reasonable time to Messrs. Simpson & Eaton, at their place of business in the village of St. Mary's, for reward to defendant. Breach, non-delivery within a reasonable time, or at any time.

Pleas, to the first count, never indebted, and payment; to the second count, not guilty.

The trial took place at Stratford, in October, 1863, before Hagarty, J. It appeared that defendant was a carter at St. Mary's and was in the habit of receiving parcels from the plaintiffs' agent to carry from the railway station and deliver in that village. On the 21st of February, 1863, defendant received two parcels for Simpson & Eaton, done up in brown paper, containing $888 and some cents. The agent heard within a week that the parcel was not delivered, and enquiry found that defendant had absconded. He traced defendant to London, but lost the trace there, and then sued out an attachment against him as an absconding debtor. The agent swore that he only knew the contents of the parcels from the amounts marked outside: that the Express Company (the plaintiffs) mark the amount according to the declaration of the parties forwarding money parcels, without counting. He also stated that, as he believed, the defendant was then in gaol, charged with stealing this money.

One of the firm of Simpson & Eaton proved that in February last they expected about $888 to be sent to them by parties in Montreal: that they never received it; and the Express Company made good the loss to them.

For the defence it was objected that the evidence shewed the defendant had committed a felony, and if so the action would not lie. Leave was reserved to move for a nonsuit on this objection, and the plaintiffs had a verdict for $888.

J. Read obtained a rule *nisi* to enter a nonsuit pursuant to leave reserved.

Read, Q. C., shewed cause, citing *Edwards* v. *Kerr*, 13 U. C. C. P. 24; *Wellock* v. *Constantine*, 7 L. T. Rep. N. S. 751.

DRAPER, C. J.—The action is against the alleged felon. In Hale Hist. Plac. Cor. 546, the following case is stated: "A. steals the goods of B., viz., fifty pounds in money, A. is convicted, and hath his clergy upon the prosecution of B. B. brings a trover and conversion for this fifty pounds, and upon not guilty pleaded this special matter is found, and adjudged for the plaintiff, because now the party hath prosecuted the law against him, and no mischief to the commonwealth; *but it was held, that if a man feloniously steal goods, and before prosecution by indictment the party robbed brings trover, it lies not, for so felonies should be healed.*"

It seems to me two questions arise. First, on the pleadings: is the evidence admissible, assuming its sufficiency to prove a felony, on these pleadings?

The plea of not guilty puts in issue the loss or damage charged, and the plaintiffs of necessity have to prove it. If the evidence shews that the alleged loss was caused by a felonious act committed by the defendant, it is in truth a failure on the plaintiffs' part to prove the cause of action. It is not an answer set up by defendant to a cause of an action *primâ facie* proved. The defendant will then succeed on not guilty, because the plaintiffs' evidence does not sustain the declaration, and not on a plea which confesses the loss complained of, and seeks to avoid by alleging that he stole the goods.

Secondly, is the evidence sufficient to prove a felony, and not merely such a breach of duty as is charged? The objection taken at trial was not as to the proof of value or contents of the two parcels, but that whatever the value, great or small, the evidence, if it proved any thing, proved that the defendant stole them. On this point I felt doubtful, but at last I am constrained to hold that such is the proper conclusion.

The delivery of the parcel to the defendant at the railway station at St. Mary's was proved, as well as admitted on the pleadings, and so was his undertaking to deliver these parcels to a firm in St. Mary's. The non-delivery of either parcel to this firm was also proved, as well as defendant's absconding shortly after the receipt of them. I cannot satisfy myself that this is not evidence