CORRESPONDENCE.

To the Editors of the Law Journal.

MILTON, 21st June, 1859.

GENTLEMEN,—In answer to the general invitation contained in your last issue, to furnish information on the working of the 91st clause of the Division Courts Act, I beg to submit the following as the result in this Division;—the amount of business done here is not large, the County being a small one, with six divisions therein: the proportion of Judgment Summonses I presume is small also, yet, sufficient perhaps, to illustrate the principle you wish to evolve.

During a period of eighteen months past, the number of Judgment Summonses issued is twenty-six (whole number of suits for the same period 780).

Aggregate amount at issue, in cases of Judg. Sum.		£189 10 0
Of which amount at issue has been paid.....		64 11 1
In 3 cases	(of the 26).	No order was made.
In 5 cases	(of the 26).	Order not obeyed, no further action.
In 3 cases	(of the 26).	Order partially obeyed, "
In 3 cases	(of the 26).	A settlement between the parties has been brought about, previous to, or on Court days.

During the above period (18 months) no order of commitment has been made.

The existence of such a clause as the one in question, is essential to the interests of the creditor, and by no means can it clash with those of the HONEST debtor: in the absence of the power to garnishee, were the Division Courts Act deprived of the 91st clause, there would be too many "loop holes of retreat" for the dishonest debtor, the Act would be deprived of a large amount of its usefulness.

The cases of hardship alluded to by you, which were paraded in some of the Journals a few weeks ago, with a view to excite a feeling against the clause were very extreme cases, I should hope far-fetched; or, if they existed at all, were isolated instances, showing mal-administration, which should not be an argument against the principle which is embodied in said clause, and, to suppose *such* an application of it to be at all general, would be, in my humble opinion, a libel on the good sense, the *justice* and *mercy* of our County Judges; but, even admitting that it may have been abused, the repetition of such harshness will in future be checked by the Act of last Session, which will prevent the vindictive creditor from gratifying his ugly temper, in submitting his victim to the indignity of unnecessarily frequent summonses of the kind; and those who formerly complained of the existence, and possible abuse of the 91st clause, should, *with this corrective, be satisfied that its intention absolutely necessary.*

I remain Gentlemen,
Yours respectfully,
JOHN HOLGATE,
Clerk, 1st Division Court, Halton.

To the Editors of the Law Journal.

BEAMSVILLE, 30th June, 1859.

GENTLEMEN:—On reading your article in the June number, headed "The Judgment Summons," I thought, as my Court is so small it was not worth troubling you with a statement of our judgment summonses; but upon more mature consideration, I think, although few in number, they will be a very material aid in showing forth the great value of the 91st section of the Division Courts' Act, or Judgment Summons. I therefore annex them:—

1. *Hill* v. *Clines*, £14 1s. 1d., in which cause the defendant did not appear; was ordered to 40 days imprisonment, but settled with plaintiff.

2. *Sufford* v. *Henry*.....	£6	19	7	Set. with plaintiff	before	Ct.
3. *Shepherd* v. *Gross*.....	6	9	1	"	"	"
4. *Kew* v. *Culp*.....	13	19	10	"	"	"
5. *Henry* v. *Terryberry*..	11	19	7	"	"	"
6. *Henry* v. *Stevenson* ...	18	17	4	"	"	"

In cause, *Kew* v. *Culp*, the defendant gave up property which he had previously alleged to be under chattel mortgage. You will observe that our Court is very small, from the fact that the total number of suits from the 1st December, 1857, (which was the commencement of this Court), to the 1st June, 1859, a period of 18 months, is only 230 suits.

I remain your obedient Servant,
JOHN C. KERR,
Clerk 4th Div. Court, Lincoln.

U. C. REPORTS.

QUEEN'S BENCH.

Reported by C. ROBINSON, ESQ., *Barrister-at-Law.*

EASTER TERM, 1859.

REGINA v. OXENTINE.

The Courts are not authorized to grant a new trial in criminal cases on the discovery of new evidence or for the misconduct of the jury.

The prisoner was convicted at Chatham, before *Burns*, J., of a rape committed upon Isabella Steinhoff, at Raleigh, on the 4th of August, 1858.

McCrea obtained a rule *nisi* for a new trial, on the grounds that the verdict was against law and evidence, and the charge of the judge who tried the case; that the jury were influenced in their evidence by matters not sworn to before them; and on the discovery of fresh evidence.

R. A. Harrison shewed cause and cited *Bently* v. *Fleming*, 1 C. B. 479; *Straker* v. *Graham*, 7 Dowl. 223; *Harvey* v. *Hewitt*, 8 Dowl. 598.

ROBINSON, C. J., delivered the judgment of the Court.

The statute 20 Vic., ch. 61, allows an application to be made for a new trial upon any point of law or question of fact, in as full and ample a manner as any person may now apply to such superior court for a new trial in a civil action.

We do not think we can, under these provisions, entertain an application on affidavits setting forth the discovery of new evidence or the misconduct of the jury, for these are not "points of law," which we take it means legal questions that have been or may be raised on the indictment or on the evidence, and they are not questions of fact, which we understand to mean questions of fact arising from or suggested by the evidence given.

The alleged discovery of new evidence refers to the affidavits of witnesses who ought to have been subpœnaed, if the prisoner had reason to suppose that evidence would be material, as they must have known that they would speak to most of the facts they now refer to, because what they do speak of occurred in the prisoner's presence.

One of the witnesses was subpœnaed, as the prisoner's counsel swears, but did not attend because she was ill. The witness herself, however, does not state that she was ill, or what reason she had for not attending, and the other witness is said not to have been subpœnaed, and does not swear whether he was required to attend the trial, or why he did not attend.

What is complained of in the conduct of the jury is, that one of the jurors in the jury room said that the prosecutrix was a person of good character. No testimony as to her character was given at the trial. The evidence of the girl, who was about fifteen years of age, was positive and distinct in proof of the offence, and if believed, conclusive.

There was evidence of several witnesses (children) which was calculated to raise great doubt of the truth of the story, but there