

GENERAL CORRESPONDENCE.

of professional gentlemen have been made under the circumstances above mentioned, but I have some doubt as to such a title. I think that such married woman, at least after her husband's death, has a right to redeem notwithstanding such sale.

Your opinion on the above will much oblige,
Yours Truly, LEX.

[We cannot undertake to answer questions of this nature. We shall be happy however to publish any letters discussing the point.—Eds. L. J.]

Will's Act 1868-9.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—I notice in the Act to amend the Law as to Wills, in the Statutes of Ontario 1868-9 what appears to be a misprint. The 3rd section provides, that "Every will shall be revoked by the marriage of testator, *except* a will made in exercise of a power of appointment when the real or personal estate thereby appointed *would* in default of such appointment, pass to the testator's heir, executor or administrator or the person entitled as the testator's next of kin under the Statute of distributions." Now, the English Stat. 7 Will. IV and 1 Vict. c. 26, s. 18, from which this Act is taken excepts appointments not which *would*, but which "*would not* pass to the testator's heir &c., and this seems to be more reasonable. Is there not an error in our Statute?

Yours truly,

G. C. G.

St. Catharines, June 12th, 1869.

[Will be referred to hereafter.—Eds. L. J.]

Signing final Judgment and issuing execution in two days—A law trick.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—A curious *law trick*, for I can call it nothing else came lately under my observance, to which it may be worth calling the attention of the legal profession. Indeed it is a curiosity in its way. It has been for many years understood to be the policy of the law in Canada, to prevent as far as possible, an embarrassed debtor from preferring one creditor to another—in other words, the law favors an equal, just distribution of a debtor's property. Hence a confession of judgment in favor of, or a sale or assignment of all

a debtor's property when he is in insolvent circumstances to a favored creditor, is legally bad. By the ordinary process of the law, as marked out in the Common Law Procedure Act, a creditor has to wait a certain time—to take certain steps before he can get a judgment and issue execution on a specially endorsed writ. Thus—he issues a Summons—serves it—and the debtor has ten days within which to appear after service. If the debtor fails to appear on the tenth day, the creditor can sign judgment on the eleventh day. Then the creditor waits eight days more, in all eighteen days, before he can issue execution. But it seems a few lawyers in Toronto (one at least to my knowledge), has found out a way to set at defiance the law as to confessions of judgment—the law as to preferences, and to laugh to scorn the slow process of the Common Law Procedure Act. What, wait eighteen days? nonsense—it can all be done in two. Thus "A" has a claim against "B"—he issues and serves a specially endorsed writ on "B" through some convenient attorney (or if you will by himself), "all in one day—"B" by another convenient attorney appears the second day as a matter of form, (perhaps the name of some attorney at a distance is used, with or without his assent). The appearance is filed on the first or second day. Then "A" at once files his declaration, and "B" (accommodating man!) at once pleads, all on the second day. Suddenly "B" without assigning any reason, withdraws his pleas or enters a written disclaimer. "A" watching his opportunity (spider-like) makes up and enters a judgment by *nil dicit*, and as quick as thought pounces on "B's" goods with an execution—or garnishees his debts, and has the money in his pocket before some poor creditor has even got a judgment. Now all this is done in two days. It is done in concert by having a debtor *willing to prefer* a creditor, and by two attorneys playing into each other's hands, or acting as the machines of two men setting the objects of the law at defiance.

I happen to know that two judgments were lately signed in the Queen's Bench in this way, and signed evidently to obtain an illegal advantage over a creditor who had a judgment laying unpaid.

Now here is a trick—a legal trick—that two may play at. Is it, or is it not legal? Is it not in fact an abuse of the process of the court