It is further worthy of consideration whether the mischief of the old law is not to be regarded as in great measure the occasion of the new. The act of 1790 punished manslaughter only when committed on the high seas. In the case of the *United States* v. *Wiltberger*, 5 *Wheat R.* 76, it was decided that, under that act manslaughter committed on an American ship near Whampoa, in a river navigable from the ocean, was not punishable. That decision was made in 1820. A revision of the crimes acts was made in 1825, and yet it was not considered necessary to make any new law on the subject. As Whampoa was then without the jurisdiction of any country which had recognized the general law of nations, there was certainly strong occasion for a change, unless the policy of this country had been regarded as fairly expressed in *Palmer's* case. And, if the British portion of St. Clair River is within the purview of the act of 1857, we shall have presented the singular anomaly of an assault which constitutes a crime if followed by death on land either within or without the United States, and yet is no crime or offence whatever if followed by death on the spot. The act of 1857 was occasioned by the result of a trial before Judge Curtis for a fatal assault committed on the high seas, and which would have amounted to manslaughter, under the old statute, if the wounded man had not survived long enough to be landed. *United States* v. *Armstrong*, 2 *Curt. C. C. R.* 451. The bill was introduced by Mr. Fessenden, who made this statement on its introduction, and it passed without any examination or debate. There is no reason to suppose its intention was to go beyond the class of assaults made manslaughter under the former statute, or to do more than provide for the cases of death on land resulting from attacks which already were punishable where death occurred at the place where the fatal blow was given. If designed to go further, it creates a *casum omissum* by no means less formidable than the one it was meant to supply. I am very strongly inclined to the opinion that, even if the other statutes had received no construction, the effect of this, as an amendatory act, should be confined to the high seas. But, be this as it may, I have no doubt whatever that it cannot be extended to cover an assault made in a foreign country, unless made by one of the ship's company or passengers upon another of the inhabitants of the ship.

These considerations would, to my mind, be sufficient to dispose of the case before us, without regard to the views which have been presented to us as applicable to these particular waters. Although they are navigable, and actually used for commerce of a maritime nature, which, when foreign, or between different States, may, perhaps, be open, under the legislation of Congress, to the forms of admiralty remedies, where the option of a jury trial is allowed, yet every portion of the lakes and their connecting waters is the exclusive property of Great Britain, or of some American State. And the Supreme Court of the United States has recently decided that upon these waters as upon the internal tide-waters of the States, the jurisdiction of the admiralty is not local and territorial, but is transitory, and attaches only to such commerce as has been by the constitution of the United States submitted to the control of Congress. (*Allen* v. *The Fashion*, 21 *How., and Maguire* v. *Card, Id.*) There is no construction of the act of 1857 which, under any theory of jurisdiction, could extend it to offences committed on the *lakes*, for they come within none of the terms used; and it would be a very forced construction which should apply the statute to their connecting waters.

Without expressing my opinion upon the power of Congress to punish such an offence as Tyler's I am entirely satisfied that no act of Congress now in force can be fairly construed to embrace it. I am therefore of opinion that the case was not within the jurisdiction of the Circuit Court of the United States for this district, and was not within the intent of the act of 1857.

Both questions reserved should be answered in the negative.

(To be concluded in our next.)

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

Picton, Nov. 14th, 1859.

Gentlemen,—As Clerk of this Municipality I would beg leave to made one or two enquiries of you respecting a return to be made by me to the Honorable Receiver General of this Province.

Under 20 Vict., ch. 10, sec. 1, a return of the number of the names of all resident rate-payers *rated on the Assessment Roll* for each year is required to be made on or before the 31st of December, in order to obtain the proportion of Clergy Reserve Fund money.

1.—Should the Poll-tax-payers be included in this return? (See 16th Vict., ch. 182, sec. 35, Statute Labour.)

I think the Poll-tax-roll is not a portion of the Assessment roll, as on reading the act just referred to you will perceive.

2.—If a person is rated on the roll in 4 or 5 different places should these repetitions of his name be considered as so many *distinct names or numbers*?

By stating your opinion of the above queries through the columns of your valuable journal, you will much oblige,

Your obedient servant,

John Twigg.

[1.—Our correspondent is we think, correct in his surmises. Persons subject to Statute labor merely are those "not assessed upon the assessment rolls," and as a return is to be made only of such rate-payers as only are "rated upon the assessment roll," these ought to be excluded.

2.—No. The return is to show "the number of resident *rate-payers* appearing on the assessment roll," and not the number of pieces of land which each rate-payer owes. (See sec. 20, Vic., cap. 71, Schedule).—Eds. L. J.]

MONTHLY REPERTORY.

COMMON LAW.

C. P. Glynn, (Bart) v. Aberdair Railway Company. *April*, 29.

Notice to Sheriff—Compensation.

Where a Railway Company took land without making compensation, and the owner of the land gave notice to them to summon a common jury under the 68th section of 8 & 9 Vic. c. 18, and before the company had issued their want to the sheriff, gave a second notice, requiring a special jury.

Held, upon a demurrer to a plea, stating that the first notice had been waived, and varied by the second, and that they had issued their warrant within twenty one days of the second notice, that the twenty one days began to run from the time of giving the first notice, and that the 54th section of the Act could not alter the 68th section of the same Act.

Q. B. Roper v. Lendon. *April*, 30.

Policy of insurance—Condition precedent—Agreement to refer to arbitration—Jurisdiction.

Where one of the conditions indorsed on a policy of Insurance was that, if a loss occurred, notice thereof should be given forthwith to the Company, and within fifteen days after such fire a particular of the loss should be delivered; and, in case any difference should arise between the insured and the Company, that such difference should be submitted to arbitration.

Held on demurer, that in an action on the policy, a plea which averred that a particular of the loss was not delivered within fifteen days was good, inasmuch as the delivery of such a particular was a condition precedent to the plaintiffs right to recover on the policy; but that a plea averring that the action was brought in respect of a matter which it was agreed by the policy should be