DIARY FOR NOVEMBER.

1. Mon. *All Saints.*
7. SUN. *24th Sunday after Trinity.*
12. Fri.. Exam. of Law Students for Call to the Bar.
13. Sat.. Exam. of Arti. Clerks for Certificates of fitness.
14. SUN. *25th Sunday after Trinity.*
15. Mon. Michaelmas Term begins.
16. Tues. Examination for Osgoode Hall Scholarships.
17. Wed. Last day for service for County Court. Interim Exam. of Law Students and Articled Clerks.
19. Frid. Paper Day, Q. B. New Trial Day, C. Pleas.
20. Sat.. Paper Day, C. P. New Trial Day. Q. B.
21. SUN *26th Sunday after Trinity.*
22. Mon. Paper Day, Q. B. New Trial Day, C. P.
23. Tues. Paper Day, C. P. New Trial Day, Q. B.
24. Wed. Paper Day, Queen's Bench. New Trial Day, Common Pleas. Last day for setting down and giving notice for re-hearing.
25. Thur. Paper Day, Common Pleas.
26. Fri.. New Trial Day, Queen's Bench.
27. Sat... Declare for County Court.
28. SUN. *1st Sunday in Advent.*
29. Mon. Paper Day, Q. B. New Trial Day, C. P.
30. Tues. *St. Andrew.* Paper Day, Common Pleas. New Trial Day, Queen's Bench,

The Local Courts'
AND
MUNICIPAL GAZETTE.

NOVEMBER, 1869.

THE NEW LAW FOR THE MORE SPEEDY TRIAL OF PERSONS CHARGED WITH CRIME.

A short act passed in the last session of the Parliament of Canada makes an important change in respect to criminal procedure in the case of persons committed to gaol charged with crime. It is one of those gigantic strides in legislation, the full bearing and extent of which is not at first fully perceived, but when brought into use, and its value seen, we all are apt to wonder why it was not long before placed on the statute book.

The statute, entitled "An Act for the more speedy trial in certain cases of persons charged with felonies and misdemeanors in the Provinces of Ontario and Quebec," was introduced in the House of Commons by the Hon. John Sandfield Macdonald, Attorney-General for this Province, in a brief, incisive speech, explaining the nature of the change, the objects it was designed to accomplish and the evils it was intended to remedy. The measure attracted attention from all parties, and secured universal favor and support. Intended by the Premier of Ontario to apply only to the Province of Ontario, leading lawyers and members representing the views of the Government in the Province of Quebec claimed that it should be extended to that Province also, and so, finally, the act was passed.

Never was an act making so serious a change passed with less objection. We are not surprised at this, however, in respect to the Province of Quebec, where the system of trial by jury is not interlaced with its procedure civil and criminal, as it is with us; nor would the intrinsic merit of the proposition explain its ready acceptance even in the Province of Ontario, had not the public mind been for some years tending, in a measure, towards a more satisfactory, prompt and economical mode for the decision of questions of fact than trial by jury affords. Spurned at first, then listened to coldly, finally adopted, the partial disuse of trial by jury is now quite within the memory of the public men of the day; but since the first considerable inroad was made in that system, little or no progress has been made. Our apathy, or, it may be, our conservatism in legal matters stood in the way of further material progress until within the last few years, when modern enlightenment and the clamor for economy and speed in administration, if not the steady tide of human progress has opened to us sounder and better ways of dealing with legal procedure. The first great step was in the establishment in Upper Canada of a complete system of local administration which provided crown prosecutors in every judicial district in the country, a body of officers, trained men, taken from the bar, appointed by the Crown, and directly under the Government, to conduct and direct prosecutions against persons charged with crime. Since the federation of the British American Provinces, trial by jury in Ontario has been seriously curtailed by two acts of Parliament, and the idea seems to be gaining ground, that the mode of disposing of cases both civil and criminal by a judge alone will be the rule rather than the exception, and that the Benthamite idea of "single seated justice" will supersede the jury tribunal, which many in the present day believe fails in most cases to answer any valuable purpose.

The design of the act before us, shortly stated, is this: to secure the trial of persons charged with crime with the least possible delay and at the least possible expense. Not that proceedings are intended to be hurried forward with reckless and indecent haste, or, to use the language of Mr. Justice Gwynne's address, that "a slipshod mode of administering Justice, which is far from the intention and design of the act, and

which would mar its provisions and deform ts symmetry," should prevail. No; on the contrary, it was manifestly intended that the tribunal established under the act should follow a procedure suited to "single seated justice," and calculated on the one hand, to guard, as far as possible, against a failure of justice, and, on the other, to preserve to persons charged with crimes all proper safeguards against indefinite charges as well as to prevent too hasty proceedings against them. In explaining the powers and purposes of the new tribunals, we shall speak of them as their practice has been elaborated in detail, under a uniform code of rules in force in every county in Ontario. On another occasion, we purpose speaking in respect to these rules, devised by the three senior members of the Board of County Judges, and which, under the fostering approval of the Attorney-General, are now the law of the several courts.

It is a matter of regret, we think, that the new law has not force all over the Dominion, that it has been extended only to this Province and the Province of Quebec. We do not know how the Maritime Provinces are circumstanced; but for this Province, as might be expected, the act has *a peculiar fitness.* Ontario is divided into thirty-six judicial districts, each composed of one or more counties, with a resident judge in each judicial district who presides over all the local courts, civil and criminal therein, each with a complete court establishment, with Sheriff and other ministerial officers, a court house, and gaol, as in English counties, and with, moreover, a local officer, whom they have not in England, *a local crown prosecutor*, to take charge of and conduct criminal prosecutions in each judicial district. In this Province, therefore, the act comes into full operation without complication or disturbance of existing institutions, and is, it seems to us, in one sense, the necessary compliment to the excellent system which was introduced by Sir John A. Macdonald by the County Crown Attorney Act.

By the act now under consideration, each local judge in Ontario sitting under the provisions of the statute, and for every purpose connected with or relating to the trial of offenders, is created a court of record. No regular sittings are appointed, but the court sits from time to time as occasion may require. The Clerk of the Peace is appointed to act as clerk of the court, and the sheriff acts in the same way as in other criminal courts.

The *jurisdiction* of the court, as respects the nature of the charge, extends to "all offences for which a prisoner may be tried at a General Session of the Peace," in other words, *to nearly every crime, short of a capital felony, known to the law;* and if convicted, "such sentence as the laws allows and the judge thinks right" may be passed upon the convicted person. The jurisdiction, however, is limited to persons committed to gaol on such charges and consenting to be tried by the judge.

The *procedure* is this: within twenty-four hours after a prisoner is committed to gaol for trial upon any such charge, the sheriff notifies the judge of the fact, and when the local prosecutor is ready to proceed (having received and examined the depositions and papers which the law requires to be laid before him for the purpose) he informs the judge, and an order is at once issued, and under it the prisoner is brought before the judge in open court. A formal accusation in the nature of an indictment describing the offence (prepared in the meantime by the public prosecutor from the depositions, &c.) is then read to the prisoner by the judge, as the charge against him. The prisoner is then informed by the judge that he has the option of being forthwith tried by the judge without the intervention of a jury, or remaining untried till the next Court of General Session of the Peace, or Oyer and Terminer. If the prisoner, as he has a right to do, declines the jurisdiction and demands a jury, he is remanded to gaol. If he consents to be tried by the judge, he is at once arraigned and called upon to plead to the accusation. If the prisoner pleads "guilty," sentence is at once passed. If his plea be "not guilty," his trial is at once proceeded with, if the crown and prisoner are both ready, or if not ready, the proceedings are adjourned to an early day. On that day the trial is entered upon, but may be further adjourned in the discretion of the judge for the purpose of completing the evidence for the crown, that is, before the prisoner has gone into his evidence; or to enable the prisoner to produce other and further evidence, of which he was not aware at the time he entered on his defence, as being material thereto. The rule as to the other proceedings and as to evidence at the trial is the same as in ordinary

cases, and before passing sentence upon the prisoner the same questions will be asked as in other criminal courts, and if the prisoner has anything to urge why judgment should be arrested, or why sentence should not be passed, it is to be heard and determined by the court. None but Barristers-at-law will be heard as counsel.

This, in very brief outline, is a summary of the constitution of the court and its procedure. We have heard objections to this new law by some "that the power is too large to be vested in a single individual." As regards the *law* in each case the judge has no greater or larger powers than the judge acting at the "Sessions" or "Assizes;" but in being sole judge of the *facts*, and substituting the judge for a jury, his powers are certainly new. No doubt the step is a bold and decided one, but it is offered as an effort in the way of rendering justice more expedient and satisfactory to the public at large. As such, we accept it, and believe, with proper care in administration, the new courts will be a great improvement in the criminal law of the country. We have heard again that certain of the judges shrink from the work as an unpleasant and painful task, but it is now a *duty* on their part to do all in their power to give beneficial effect to the law, and if only zeal and courage with discretion be brought to the work, the new law must be a success; and we argue most favorably from the fact that the judges, one and all, have joined with such harmony towards a settled procedure.

It was the saying of a profound thinker, that, in respect to alterations in the law, "it is good not to try experiments except the necessity be urgent or the utility evident." We agree in this, and will call attention to a few matters showing, we think, conclusively that some change was called for, and that the substitute for the old procedure is vastly superior to the latter, and more calculated to render, in the language of the Attorney-General, "the administration of criminal justice more expeditious and satisfactory."

Who will not admit that it is a matter of high concern that persons in prison should be speedily tried; if innocent, they have the earliest opportunity for showing it; if guilty, their prompt punishment is secured, a matter of almost equal importance. If the offence be trifling, the time of imprisonment between committal and trial will often be a far greater punishment than the offence calls for. Imprisonment in a common gaol, it will also be admitted, is calculated to injure and deteriorate the position and character of any man, whether he be innocent or whether about to enter on the career of crime; and with the young, the associations of a prison are commonly productive of the most disastrous results, for young persons are brought, it may be for the first time, in contact with criminals and tainted with intercourse with them, or the vicious youth becomes hardened in vice by association with old criminals, or criminals more hardened than himself.

The expense of supporting persons in the common gaols is very great, and is borne by the localities, and it was impossible to guard against lengthened imprisonment without trial, while persons charged with crime could only be tried at the regular courts.

All these manifest evils—too manifest to need more than naming to shew that some remedy was necessary—the act under consideration is well calculated to remedy. Take the case of an innocent person committed for trial after the close of a criminal court. He might under the old law, however ready and anxious for trial, be obliged to remain in gaol some four months before being tried; now he can within a few days be tried before the County Judges' criminal court, and have the opportunity of at once establishing his innocence. As to the nature of the tribunal, what intelligent man, conscious of innocence, would not prefer being tried before an educated man, trained to the investigation of facts and above the reach of irregular influences rather than by a number of men, taken from the general community, utterly unacquainted with the investigation of facts, and with but little scope for the exercise of their reasoning powers.

Again, a trifling larceny or other offence is committed. The party arrested is perhaps unable to procure bail (as must often be the case in a moving population, or when it is recruited by emigration), and has to undergo months of imprisonment when probably his sentence would be only for a few days. We know of many instances of cruel hardships in cases of this kind without any means of relief. Under the present law it is quite possible that the prisoner can be tried and sentenced to appropriate punishment within forty-eight hours after his commitment. We need not enlarge

upon the evils of protracted imprisonment, and the mingling of the young with the more hardened criminals. The point was well put by Mr. Justice Gwynne in his address to the grand jury at the "Frontenac Assizes:—

"Grand juries," said the learned judge, "will have reason to rejoice in the diminution of labor falling upon them when the act shall have come into perfect operation, and the accused parties will have equal reason to rejoice that an opportunity is presented them of relieving themselves from that confinement previous to trial, which the old mode of procedure necessitated: much of the evil incident to the incarceration of persons who may be innocent with those who may be guilty, and of those guilty of minor offences with those who may be guilty of more heinous offences and arising from the associations and intercommunications of vice thus introduced will be also avoided."

The saving of expenses is the lowest ground that can be taken, but is probably the ground that will be most operative with people in general—for what may be refused to the soundest argument will often be promptly conceded to a popular cry for economy or a business-like necessity. We do not desire to undervalue economy in administration, but would not give undue prominence to an argument upon it, when the proposition, as in this case, is plainly recommended by higher considerations; but that there will be an enormous saving in gaol accounts for the maintenance of prisoners under the new law cannot be doubted. We have heard it estimated at fifty per cent. or more, and from the enquiries we have made think the estimate not excessive. The diminution of cases for the regular courts will also effect a saving, and it must be a considerable one, seeing that some sixty jurors as well as the officers of the courts are under daily pay, and if a number of prisoners are to be tried the court must be necessarily delayed; all this without speaking of the loss and the delay to suitors and witnesses in civil cases. Not that the work of the new court is to be done for nothing,—the ministerial officers engaged must be paid, and it would be wise and just to pay them liberally,—but it would take the expense of a great many trials before the County Judge to equal the cost of a single day at the assizes or sessions.

The County Judge's criminal court will be, if we may be permitted the expression, *a court of perennial gaol delivery:* a key always at hand to open the prison doors to the innocent; and in this aspect alone *any* outlay necessary in making the tribunal thoroughly efficient and safe would be amply justified.

The new law has been most favorably received by the thinking men, and so far has been, again to use the language of Mr. Justice Gwynne, "eminently successful, and prisoners have largely availed themselves of the opportunity afforded them for a special trial; that success will continue to attend the measure commensurate with so good a beginning, there is every reason to hope and believe."

There are many considerations in respect to the new law upon which we shall have occasion to remark hereafter; at present we must bring this article to a close by invoking the judges and officers connected with the new jurisdiction, and upon whom the duty of carrying out the act devolves, to be *earnest and zealous* in endeavouring to secure all the benefits it was designed by its author to accomplish, and which the government of this Province is bent on securing. The act at present may be said in a certain sense to be upon trial; it may, and with wise and careful administration must remain a permanent addition to our system of criminal jurisprudence, but it *may* be brought into disrepute and its vitality destroyed. Amongst all the wise utterances of Lord Bacon there is none more true than this, "that the life of a law lies in the due execution and administration of it," and it is well that it should be known and felt that with the County Judges and County Attorneys rests the administration of this, one of the most important criminal acts on the statute book of Canada.

The Court of Error and Appeal will sit for the dispatch of business on 3rd January, 1870.

The Toronto Winter Assizes have been fixed for the 10th January next. Mr. Justice Wilson will preside.

BILLS BEFORE THE LEGISLATURE.

The following Bills are now under the consideration of the Local Legislature. The Act to amend the law of evidence, which we give below, was introduced by Mr. Blake. There is also another to the same effect, brought in by Mr. Clarke, which having passed the second reading, after strong opposition from the Attorney General and others in the government,

was, together with Mr. Blake's bill, referred to a select committee:—

An Act to amend the law of Evidence.

Whereas the inquiry after truth in civil cases in the Courts of Justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue should be laid before the persons who are appointed to decide upon them, and that such persons should exercise their judgment on the credit of the witnesses adduced and on the truth of their testimony, and it is expedient to amend the law of evidence in this Province: Therefore her Majesty, &c., enacts as follows:

1. No person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence either in person or by deposition, according to the practice of the Court on the trial of any issue joined, or of any matter or question, or on any enquiry arising in any civil suit, action or proceeding in any Court or before any judge, jury, sheriff, coroner, magistrate, officer or person, having by law or by consent of parties authority to hear, receive and examine evidence, but that every person so elected may and shall be admitted to give evidence on oath or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question or in the event of the trial of any issue, matter, question or enquiry, or of the suit, action or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence.

2. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any civil suit, action or proceeding in any Court of Justice, or before any person having by law or by consent of parties having authority to hear, receive and examine evidence, the parties thereto and the persons in whose behalf, any such suit, action or proceeding may be brought or defended shall, *except* as hereinafter excepted, be competent and compellable to give evidence either *viva voce* or by deposition, and the husbands and wives of the parties thereto, and of the persons in whose behalf any such suit, action or proceeding may be brought or instituted or opposed shall, *except* as hereinafter excepted, be competent and compellable to give evidence either *viva voce* or by deposition according to the practice of the Court on behalf of either or any of the parties to the said suit, action or other proceeding.

3. Nothing herein contained shall in any civil proceeding render any person compellable to answer any question tending to criminate himself or to subject him to prosecution for any penalty.

4. Nothing hereinbefore contained shall apply to any action, suit, proceeding in any Court of Common Law instituted in consequence of adultery or to any action for breach of promise of marriage, nor shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any proceeding instituted in consequence of adultery.

5. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

6. Sections three, four, five, and eighteen of the Act, chapter thirty-two of the Consolidated Statutes of Upper Canada, entitled, An Act respecting Witnesses and Evidence, are hereby repealed.

An Act to amend sub-section two and three of section nine of chapter six of the Act passed in the thirty-second year of Her Majesty Queen Victoria, entitled the "Law Reform Act of 1868," *and to repeal section two of chapter one hundred and twenty-one of the Consolidated Statutes of Upper Canada (now Ontario).*

Whereas, it is desirable to amend sub-section two and three of section nine of chapter six of the Act, passed in the thirty-second year of Her Majesty Queen Victoria, entitled the "Law Reform Act of 1868," and to repeal section two of chapter one hundred and twenty-one of the Consolidated Statutes of Upper Canada (now Ontario), entitled "An Act respecting the expenditure of County Funds for certain purposes in Upper Canada": Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. That from and after the passing of this Act the word "Magistrates" in the eighth line of sub-section two of section nine of the "Law Reform Act of 1868," shall be struck out, and the words "Board of Audit" substituted instead thereof.

2. That sub-section three of section nine of the "Law Reform Act of 1868" shall be repealed, from and after the passing of this Act, and the following substituted in lieu thereof:

"Such of the said accounts and demands as shall be delivered on the first day of the sittings of the said Courts of General Sessions of the Peace, or of Oyer and Terminer and General Gaol Delivery, shall be audited by a Board of Audit, composed of the Chairman of the Court of General Sessions of the Peace, and two other persons, who shall be appointed annually for that purpose by the County Council of such county or union of counties at their first meeting in each year, not more than one of such persons, being a member for the time being of such County Council. And such accounts and demands shall be taken into consideration in the week next succeeding the week in which such sittings ended, and disposed of as soon as practicable."

3. That it shall and may be lawful for the County Council of any county or union of counties to pay the persons appointed by them to serve on the Board of Audit constituted by this Act, any sum not exceeding two dollars each for their attendance at such audit.

4. That from and after the passing of this Act section two of chapter one hundred and twenty-one of the Consolidated Statutes of Upper Canada (now Ontario), entitled "An Act respecting the expenditure of County Funds for certain purposes in Upper Canada," be and the same is hereby repealed.

An Act respecting Public Notice and Registration of Trading Partnerships &c.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. All persons associated in partnership in Ontario for trading, manufacturing, or mechanical purposes, or for purposes of construction of roads, dams, bridges, or other buildings, or for purposes of colonization or settlement, or of land traffic, shall cause to be delivered to the Clerk of the Peace, and to the Registrar of each County in which they carry on or intend to carry on business, a declaration in writing, signed by the several members of such partnership, when all such members are at the time of making the same in this Province; and if any of the said members be absent at the time, then by the members present, in their own names, and for their absent co-members, under their special authority to that effect.

(2.) Such declaration shall be in the form; or to the effect of the Schedule to this Act, and shall contain the names, surname addition and residence of every partner, and the name, style or firm under which they carry on, or intend to carry on such business, and shall also state the time during which the partnership existed, and declare that the persons therein named are the only members of such partnership.

(3.) Such declaration shall be filed within sixty days after the formation of the partnership, and a like declaration shall be filed in like manner, when and so often as any change or alteration takes place in the members of such partnership, or in the name, style, or firm under which they intend to carry on their business.

(4). Each and every member of any partnership, with regard to which the requirements of this section are not complied with, shall be liable to a penalty of two hundred dollars, to be recovered in any court having jurisdiction in civil cases to the amount of such penalty, by any person suing as well in his own behalf as on behalf of her Majesty; and one moiety of such penalty shall belong to the Crown for the uses of the Province, and the other moiety to the party suing for the same, unless the suit be brought (as it may be) on behalf of the Crown only, in which case the whole of the penalty shall belong to Her Majesty for the uses aforesaid.

2. The Clerk of the Peace and the Registrar shall enter each such declaration as aforesaid in a book, to be by them kept for that purpose, which shall be at all times, during office hours, open to the inspection of the public gratuitously; and for registering each such declaration, the Clerk of the Peace and the Registrar shall each be entitled to demand, from the person delivering it to him, the sum of fifty cents, if it does not contain more than two hundred words, and at the rate of five cents per hundred words for all above the number of two hundred.

3. The allegations made in the declaration aforesaid shall not be controvertible as against any party by any person who has signed the same, nor against any party, not being a member of the partnership, by any person who has signed the same, or who was really a member of the partnership therein at the time such declaration was made; nor shall any such signer or partner be deemed to have ceased to be a partner, until a new declaration has been made and filed by him or his partners, or any of them as aforesaid, stating such alteration in the partnership:

(2). Nothing in this Act shall exempt from liability any person who, being a partner, has not been mentioned in the declaration, and such person may, notwithstanding such omission, be sued jointly with the partners mentioned in the declaration, or they may be sued alone; and if judgment be recovered against them, any other partner or partners may be sued jointly or severally in an action on the original cause of action upon which such judgment was rendered;

(3). Nor shall anything in this Act be construed to affect the rights of any partners with regard to each other, except that no such declaration, as aforesaid, shall be controverted by any signer thereof.

4. If any persons have been, or are associated as partners in Ontario, for any of the purposes mentioned in the first section, and no declaration has been filed as aforesaid with regard to such partnership, then any suit or action which might be brought against all the members of a partnership, may also be brought against any one or more of them as carrying on, or as having carried on trade jointly with others (without naming such others in the bill of complaint, writ or declaration) under the name and style of their said partnership firm; and if judgment be recovered against him or them, any other partner or partners may be sued jointly or severally on the original cause of action on which such judgment has been rendered;

(2.) If any such suit or action is founded on any obligation or instrument in writing, in which all or any of the partners bound by it are named, then all the partners named therein shall be made parties to such action;

(3). The service of any bill of complaint,

writ of summons or process, for any claim or demand upon any existing partnership liability at the office or place of business of such existing partnership, carrying on business within this Province, is and shall be held to have the same and equal effect as a service made upon the members of the said partnership personally, and any judgment or decree recovered or made against any member of such existing partnership for a partnership debt or liability, shall be executory by process of execution, against all and every the partnership stock, property and effects, in the same manner, and to the same extent, as if such judgment or decree had been rendered or made against such partnership.

5. The word "partnership," in the foregoing section of this Act, shall include any unincorporated society, company or association for trading purposes, or for any of the purposes mentioned in the first section; the word "trade," shall include any of the purposes last referred to; and the words "suit" and "action" shall include any proceeding at law or in equity to which any such partner is a party.

SCHEDULE A.

Province of Ontario, { We ——, of ——, in County of ——, (*Grocers*), hereby certify that we (have carried on, and) intend to carry on trade and business as (*grocers*) at ——, in partnership under the name or firm of —— (*or as the case may be*), or I, (or we), the undersigned, of —— hereby certify that I (or we) (have carried on, and) intend to carry on trade and business as ——, at ——, in partnership with C. D. of ——, and E. F. of ——, and that the said partnership hath subsisted since the —— day of ——, one thousand ——, and that we (or I and we, and the said C. D. and E. F.), are and have been since the said day the only members of the said partnership.

Witness our (or any of our) hands at—— this —— day of —— one thousand ——.

A. B. usually residing at ——.
B. C. usually residing at ——.
D. E. usually residing at ——.

Filed in the office of the Registrar of the County of ——, at ——, on the —— day of ——, 18—.

—— Registrar, County of ——.

SELECTIONS.

BARON BRAMWELL'S OPINION OF TRIAL BY JURY.

The evidence given by Baron Bramwell before the Law Courts (Scotland) Commission as to trial by jury is worth attention. In answer to Mr. Shand's question, "In the majority of cases do you think that a trial before a jury or before a judge is to be preferred?" Baron Bramwell answers—"That is a very large question indeed. I think if I wanted the truth to be ascertained in that particular case, I should prefer an intelligent man who had been in the habit of exercising his faculties all his life on such questions to twelve men who had not been in the habit of exercising theirs, who might not be so intelligent men, who certainly have not been in the habit of exercising them together, farmers and others, who are very much fatigued from being taken and shut up in a hot court. If I wanted nothing but the truth in a particular case, I should prefer the verdict of the judge; and it seems to me impossible to doubt that he is the preferable tribunal. When I was first made a judge myself, I was very strongly in favour of trials being before a judge; but I am afraid that the jury is a crutch that I have been leaning on for so long a time that I have now got used to it, and I don't think I am as good a judge of the question as I was 13 years ago. Moreover, there is no doubt that trial by jury popularises the law. I remember a case before the House of Lords in which I was contending for a particular construction of a covenant, and my brother Willes was contending the other way, and the question put to me was, How was it possible that people should enter into so stringent a covenant as you contend for? I said, 'My lords, they will trust to that true court of equity, a jury, which, disregarding men's bargain and the law, will decide what is right in spite of all you say to them.' And it is so. I don't say that they do not regard the law, for I believe they do; but every man must feel that, although he may have the law on his side, he is in some peril if the justice of the case is not with him also. I think it would be difficult to discriminate between civil and criminal cases; and in criminal cases I think it is better that the judge should not be the man to find the prisoner guilty; but it is a very large question, and I feel some hesitation in offering an opinion about it."

In answer to a further question, "You have had no cause from your great experience to be dissatisfied with jury trials?" the learned Baron answers—"No. There are cases in which juries go wrong; for instance, in an action against a railway company, they generally go wrong there; in actions for discharging a servant they generally go wrong; in actions by a tradesman against a gentleman in questions whether articles supplied were necessary to an infant or wife, they are sure to go wrong; in actions as to malicious prosecution, they are always wrong. You may say to them, 'The question is not whether the man is innocent, but whether there is absence of reasonable cause and malice, but in vain. They find for the innocent man."

In answer to Mr. Justice Willes' question—"And cases of running down?" Baron Bramwell replies—"There they generally find for the plaintiff, so much so, that a man who has run down another, if he is wise, will bring the action first. I remember one case particularly, in which the question was whether the man that recovered was free from blame,

and there was blame in the other; and each recovered in the action where he was plaintiff." —*Law Times.*

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

COALITION BY CANDIDATES—AGENCY—UNDUE INFLUENCE—ELECTION.—There being a coalition between candidates, the agent of one becomes the agent of the other; and if a corrupt act is brought home to the one, both are unable to hold their seats. But personal corruption must be proved against each individually: the proof personally against the one does not prove it personally against the other.

Doing or threatening violence to an elector to induce him to vote or refrain from voting, vitiates the election, although done by an agent only. And if that is done which a man has a perfect right to do, but with a view to influence a vote, it is intimidation. *Ex. gr.* if a landlord threatens to turn out, or does turn out a tenant for his vote, that is inflicting harm or loss within the statute.

An employer who dismisses his servant on account of his vote is also guilty of undue influence.

Whether the withdrawal of custom from a tradesman, or a threat to withdraw it, amounts to undue influence is a question of degree.

Semble, where the loss proposed to be inflicted in this way would seriously affect the saleable value of the goodwill of a business, it would be such a loss as is contemplated by the statute.

The loss must be so serious that a judge could direct a jury in a criminal court that a person threatening to inflict or inflicting it was guilty of a misdemeanor.

A threat to exercise undue influence must be deliberately uttered with the intention to carry it into effect, and not in a moment of anger; whilst the loss to be inflicted must not be too remote.

An act of treating under sect. 23 of 17 & 18 Vict. c. 102, does not affect the election. If it comes within the 4th section it will affect the election. But the candidate will be responsible if he is in any way accessory to the giving or providing of refreshment corruptly, *i. e.*, with the view of influencing votes at the election then pending.

The question whether the intention was to influence votes must depend upon the circumstances and the manner in which the refreshment was given, the time when it was done, and very much upon the nature of the entertainment.

The difference between the giving of meat and the giving of drink considered.

There is no law which prohibits the giving of feasts to electors after the election. The authority of a person requested to canvass, and so made an agent, ceases with the election; and, unless there is something to show continuing authority, that person could not, by giving a feast ten days after the election, upset that election.

The 44th sect. of 31 & 32 Vict. c. 125, says that if any candidate is proved to have personally engaged as a canvasser or agent for the management of his election any person, knowing that such person within seven years previous to such engagement has been found guilty of corrupt practices, the election shall be void:

Held, that it is enough if such a person is engaged with the candidate's knowledge.

Held, further, that the statute is not confined to paid agents, but the person engaged must be an agent for the management of at least part of the election.

P. was scheduled by Bribery Commissioners within seven years, and acted in a way which would have made him an agent for the purpose of affecting the seats of the candidates by ordinary corrupt practices. The candidates, however, both denied any knowledge that he was in the schedule, or that he was acting as the chairman of a certain ward committee. There was no evidence that either candidate had wilfully shut his eyes to the engagement of P., and it was

Held, that the engagement did not affect the election.—*The County of Norfolk* (*Northern Division*), 21 L. T. Rep. 264.

INSOLVENCY.—1. That the nullity declared by paragraph 2 of section 8 of the Insolvent Act of 1864 is an absolute nullity, and a promissory note given in violation of the provisions of said paragraph is absolutely null and void *ab initio* even in the hands sf a third party innocent holder before maturity.—*In re Henry Davis et al., Insolvents* v. *E. Muir et al., Claimants.* 13 L. C. J. 184.

2. That the privilege of the landlord on the proceeds of the effects found on the premises leased, is not affected by the Insolvent Act of 1864, and has precedence over the privilege of the assignee and the insolvent for the costs of their respective discharges under the Act.—*In re Catherine Morgan, Insolvent* v. *John Whyte et al.* 13 L. C. J., 187.

ELECTIONS.—A member was in the habit of sending down to his agent annually a sum of £250 to be distributed in Christmas gifts. He gave no directions as to how it should be expended, and made no inquiries:

Held, that the giving of Christmas gifts was not a matter to avoid the election, unless it was shown that the gifts dispensed by a responsible agent had influenced votes.

Where there is some evidence of intimidation, in considering whether the freedom of election has been so interfered with as to affect its validity, the extent of the majority obtained by the sitting members must be considered.

A member is responsible for the act of an agent done contrary to instruction, but if the agent treacherously or traitorously agrees with the other side, then if he does a corrupt act it would not vacate the seat unless it is proved that the corrupt act was at the especial request of the member himself or that some untainted and authorised agent of the member directed the act to be done.

But the seat would be affected if a man being an agent is tricked by the other party into committing a corrupt act, he himself honestly still intending to act as agent.

It was shewn that committees were formed, having at their heads paid agents for the purpose of getting the men together, so that they might be corrupted at any moment at which it might become necessary. It was not proved that "the tip" to vote was given, but it was proved that several of the voters so collected together did not vote for the other side. Further, the names of many voters were written by an agent upon a card, and it was

Held, that the proceedings of these organizations and of the agents amounted to bribery.

An agent of the sitting member organised a vigilance committee for the purpose of detecting bribery on the other side, and in a public speech exhorted his audience not to allow their voters to vote. This advice was followed on the following day:

Held, intimidation for which the member was responsible.

Semble, it is illegal to employ a number of persons to actively search for corrupt practices on the part of opponents, and if they use violence in so doing it will amount to intimidation.

There being cross petitions, and each side having failed in part and succeeded in part:

Held, that they should bear their own costs.—*Stafford Borough Election*, 21 L. T. Rep. 210.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

MORTGAGE—ABSENCE OF COVENANT TO PAY—PLEADING.—*Held*, on demurrer to the plea in this case, that the mere words, contained in the proviso to a mortgage, "in three equal payments to be respectively made," were not sufficient to create a covenant to pay the amount specified.—*Jackson* v. *Yeomans*, 19 U. C. C. P. 394.

ILLEGITIMATE CHILDREN.—1. Testator, after a gift to "my son T." (who was illegitimate), directed a division of his estate into seven parts, one of which he gave to his wife and after her death to "such of my children to whom the other six shares are given." He directed those six shares to be paid "among all my children living at my decease, except my son T." Testator left seven children, of whom two (T. and A) were illegitimate. *Held*, that A. was not entitled to a share.—*In re Well's Estate*, Law Rep. 6 Eq. 599.

2. An unmarried woman, by will, describing herself as a spinster, gave her property to her children. She had four illegitimate children and in a codicil she described them by name. *Held*, that these children and not the next of kin were entitled to the property.—*Clifton* v. *Goodbun*, Law Rep. 6 Eq. 278.

3. Testator gave a fund to his daughter M. for life, and after her death to all the children of M. begotten, or to be begotten, in equal shares. At the time of the testator's death M. had four children by A., whom the testator believed to be M's lawful husband, and after the testator's death M. had three more children by A. The marriage between M. and A. turned out not to be lawful. M. never had any legitimate children. *Held*, that the children born before the testators death took under the gift, but those born after his death did not.—*Holt* v. *Sindrey*, Law Rep. 7 Eq. 170.

4. Illegitimate children of an unmarried woman described in the will by her maiden name, are entitled to share in a legacy to her "and her two youngest daughters."—*Savage* v. *Robertson*, Law Rep. 7 Eq. 176.

AGENTS OF CORPORATION.—Parties professing to act as agents of a corporation, cannot be allowed to make a profit on the purchase of property for such corporation, and an action may be maintained by stockholders, in the name of the company, to recover monies thus fraudulently obtained by the promoters of such corporation.

The acts of either of several parties concerned as partners in such a fraud, are evidence in such action.

The morality of the law holds the party to the position he assumed to occupy.—*Simons et al* v. *Vulcan Oil Co.—S. C. Penn.*

INFANT.—The defendant, being of age, signed the following statement at the foot of an account of the items and prices of goods furnished to him, while an infant by the plaintiff: "Particulars of account to the end of 1867, amounting to 162*l.* 11*s.* 6*d*, I certify to be correct and satisfactory." *Held*, that this was not such a ratification in writing of the contract within 9 Geo. IV. c. 14, s. 5, as to render him liable.—*Rowe* v. *Hopwood*, Law Rep 4 Q. B. 1.

FACTOR. — An agent "intrusted with, and in possession of, goods," within the Factors Acts, is a person who is intrusted as agent for sale; and, consequently, one whose authority to sell has been revoked cannot pledge goods which had been intrusted to him for sale; but which he has wrongfully retained after his authority has been revoked, and the goods demanded from him by his principal.—(Exch. Ch.)—*Fuentes* v. *Montis*, Law Rep. 4 C. P. 93.

LIFE INSURANCE.—A custom among life insurance companies to allow thirty days' grace for the payment of premiums, notwithstanding a clause of forfeiture for non-payment on the day they become due exists in the policy, is valid to interpret the contract, and may be proven by the insured.

Evidence that the practice of the company was to give notice at the time at which the premiums fell due, and that they ommitted to do so on the occurrence of the default in question, or that they so dealt with the insured as to put her off her guard is admissable as evidence, from which the jury may draw the conclusion that the insured was mislead by the company, the company cannot take advantage of a default which they have themselves contributed to or encouraged.—*Helme* v. *Life Insurance Co.*, U. S. Report.

GIFT.—A check was given by A. to B., and presented without delay. The bankers had sufficient assets of A., but refused payment because they doubted the signature. The next day A. died, the check not having been paid. *Held*, a complete gift, *inter vivos*, of the amount of the check.—*Bromley* v. *Brunton*, Law Rep. 6 Eq. 275.

Lord Thurlow's appearance when presiding in the House of Lords was very grave and imposing, and Fox once remarked that it proved him dishonest, for no person could *be* so wise as Thurlow *looked*.—*Bench and Bar.*

ONTARIO REPORTS

MUNICIPAL CASE.

(Before His Honor JAMES R. GOWAN, Judge of the County Court of the County of Simcoe.)

IN THE MATTER OF APPEAL FROM THE COUNTY COUNCIL OF THE COUNTY OF SIMCOE IN EQUALIZING THE ASSESSMENT ROLLS.

Assessment Act of 1869, sec. 71—Equalization of Rolls—Procedure—Towns and Villages.

Held, in equalizing the rolls, although a difference is recognised by 32 Vic. cap. 26, sec. 71, between town and village property and country property, that as the valuation of the former is arbitrarily reduced by two-fifths, the duty of the County Council is to increase or decrease the aggregate valuations of townships, towns, and villages, as the rolls stand, as well as to make the statutory reduction with respect to the latter—town and village rolls being subject to equalization in the same way as townships.

Statement of the mode of procedure adopted in bringing the question for consideration in this case before the judge of the County Court under sub-sec. 3 of sec 71.

Remarks upon the difficulty, under the present system of assessment, of arriving at a fair equalization of the Assessment Rolls in different townships.

[Barrie, July 31, 1869.]

This was an appeal to the judge of the County Court of the County of Simcoe from the decision of the County Council of that County, under sec. 71 of the Assessment Act, of 1869, in equalising the assessment rolls for the preceding financial year. The facts of the case fully appear in the judgment of

GOWAN, Co. J.—Finding no procedure laid down in the law by which the jurisdiction under sec. 71 of the Assessment Act of 1869 is given, I appointed a day to hear all parties interested and settle as to the course of procedure, having reference to the nature of the jurisdiction, and the time limited for hearing.

On the day appointed, the Reeves for the greater number of municipalities were present. The Warden also was present, but not as authorized for the purpose by the County Council.—Upon the appeal being lodged I stated my desire to hear the several municipalities, and that I was prepared either to hear them by counsel or by some member of the corporation, authorized to act for the body entitled to be heard, but that I could not listen to unauthorized advocacy or permit it before me. The appellants alone were represented by counsel. The reeves appeared in person on behalf of their several municipalities. I then required the appellants to hand in at once a full and specific declaration or statement of what was objected to in the equalization by the County Council, and what it was claimed ought to have been done; in fact, full particulars to which they (the appellants) were to be confined in evidence, and I required similar declaration and claim from the other municipalities desiring to be heard and with the like object—these declarations were all put in—as the duty might be thrown upon me to equalize the whole assessment for the County. I further stated that I was prepared, so far as time would allow, to hear evidence submitted by any municipality to assist me to a just equalization, and I named the day when I would commence taking any evidence that might be submitted to me. In the course of the discussion as to the division of the time available for *viva voce* testimony, it was proposed to leave the matter in my hands upon the

documentary evidence of a public character that I might call for, and that I was to proceed to hear and determine the matter of the appeal under the power and provisions of sub-sec. 3 of sec. 71, of the Assessment Act, it being understood that I might use my personal knowledge in such determination, and to this all the municipalities appearing assented.

The equalization made by the County Council, and the table upon which they acted, were put in evidence in the regular way and the rolls for 1868 were likewise produced, upon the call of the appellants, from the custody of the county clerk, who also subsequently furnished certain statements or abstracts from the rolls (the correctness of which I tested for myself).

No other evidence was given or tendered to me on behalf of any municipality in the county, and I have in fact been left to determine upon the same material that was or ought to have been before the County Council in making the equalization. And upon that material in the absence of any other evidence I have equalized the whole assessment of the county, and in so doing determined necessarily the specific matters appealed.

It was understood, I know, that I was not to go into the reasons why I had arrived at certain conclusions, why decided in a certain way—but simply to give judgment; yet, as I had necessarily to decide to the best of my ability the matter of law argued before me, I think it right to state the grounds which led my mind to a conclusion as to the proper construction of the law.

The assessments are made in each municipality by a local officer appointed for the purpose by the corporation of the town or township.

The work of twenty-three or more officers, each acting independently in performing a difficult duty, is not likely to present results showing a just relation between all the valuations throughout a county.

In respect to the question of value also, it is not easy to satisfy the judgment, and no two persons, I am sure, would be likely without conference or inter-communication, to arrive at similar results even upon similar material. In point of education, in soundness of judgment, and in fitness for the duty there must be a great diversity amongst the assessors.

The law not providing for the assessment for the whole county by a limited number of men, acting together and guided and governed by uniform principles, but by separate and independent valuators, it was obvious that great injustice might be wrought if every municipality was in effect, allowed to say how much it would contribute to a county rate, and so doubtless the provision in sec. 71, was made to enable the County Council so to deal with the valuations made by individual assessors, as to make them present a just basis in apportioning a county rate.

The section referred to shows how this is to be accomplished.

First. The rolls for the preceding year are to be examined by the Council of the County "for the purpose of ascertaining whether the valuations made by the assessors in each township, town or village bear a just relation to the valuation so made in all such townships, towns and villages."

Second. They must, according as justice may require, increase or decrease the aggregate valuations of property (of real and of personal property) in any township, town or village, by adding or deducting so much *per centum* as may in their opinion be necessary to produce a just relation between all the valuations of real and personal estate throughout the county.

This duty it is made incumbent upon County Councils to perform, and the object to be accomplished is plainly indicated, viz:—That property set down in one or more townships or towns at half or one-tenth it may be of its value,—the valuations in other towns or townships being but 10 per cent, or some other figure under actual worth—may not be allowed to so remain, but by deducting from some, or adding to others, or otherwise by levelling up or down to some one standard, all may be brought into just relations of value over the whole County. In doing this, however, there is a restriction in the latter part of the clause, That the aggregate valuation for the whole county is not to be reduced; the figuring may be increased, but is not to be brought below the sum of the aggregate values on the rolls; the just relation in value spoken of in section 71, being produced by the action of the Council as stated therein.

Sub-section 2 discriminates between town and country property, declaring as I understand it, that town property as compared with country property, shall be arbitrarily reduced to three-fifths.

I am pressed with the difficulty of reconciling the language in the first and second sub-sections. But when I look at the obvious intention of the law, I cannot think the legislature invited and directed the Councils to do that which in the next line (if the sub-section is to be construed as leaving them, the County Council, only a ministerial duty as regards towns) they are prohibited from doing.

By the first sub-section, the council are to "examine the rolls of *towns*, villages, and townships." Why examine the rolls of *towns*, villages, and townships? Why examine the rolls of *towns* unless for the purpose after-mentioned? They are to see whether the valuations in the *towns* and villages (*towns* again) are in just relation to the valuations in all the *towns* and *villages* and townships in the county and they may *increase* or decrease the valuations in any, not a township only, but in any *town*, village or township adding or deducting, &c. Towns and villages are mentioned no less than four times in the clause, and in direct connection with townships, and the power of the County Council to deal with them. If it was intended that County Councils should have no power to deal with towns and villages, I cannot think the language referred to would have been used. A strong argument against the construction contended for by the appellants, lies in this, that if section 2 is to be so read as to disable Councils from doing any more towards equalization than taking the interest on the amounts at 6 per cent and capitalizing at 10 per cent as the aggregate valuation for towns, it would be in the power of the assessor of any town or village, to fix the proportion payable by his municipality on a county rate, and the County Council would be bound simply to register the wrong. I can see neither reason nor justice in allowing councils to decrease or increase the aggregate valuations of township assessors, but disabling them from doing so in the

case of town assessors. I thought, at first, that a solution might be found so as to give effect to every part of the clause, in a levelling down process, in this way, taking the town with the lowest aggregate valuation and decreasing the valuations in all other municipalities, so as to produce a just relation in all the valuations; but then, this could not be done, for there is a plain and positive prohibition against reducing the aggregate valuation for the whole county as made by the assessors.

In the 3rd sub-sec. of same clause, *any local municipality* dissatisfied with the action of the Council in increasing valuation, may appeal. If the meaning of sub-sec. 2, be as contended for by the appellants, a town or village could not be affected by such a decision, but sub-sec. 3, plainly implies that they might be injuriously affected and on no other ground could the right of appeal given to them be justified.

The 72nd sec., plainly implies also that examination of the rolls of *all* municipalities is necessary in the process of equalizing the valuations in the several municipalities. For what purpose, if certain of them are to be taken at arbitrary valuations on the assessors' return! The question seems to me to answer itself.

Section 74 shows that a county rate is to be assessed equally on the whole ratable property of the County, and provides distinctly, that the amount of property returned on the rolls for the *townships*, towns and villages (as finally revised and equalized) is to be the basis upon which the apportionment is to be made, again implying the existence of the power to change the original returns.

I think to give effect to the intention of the Legislature the County Council should perform the duty in the order prescribed—first equalizing the valuations in the several municipalities, towns, townships and villages, as provided in first part of section 71—and then, after doing so, to make the deductions in respect to towns and villages directed in sub-sec. 2.

There is obviously a higher standard of value applicable to farm property than to village proderty, and so in the every day transactions of business it is estimated. Village property is subject to many incidents calculated to depreciate its value that property in the country is not liable to. A large share of town and village property is also perishable and in its nature subject to yearly depreciation. The land is not in general productive except when built upon, and cannot be turned to the profitable account that farm property can. All these, it is true, enter into the element of value, and might well be considered in the first instance, but the Legislature has thought it right to fix arbitrarily a difference in value, and whether well-founded or not it must be acted upon.

The course which I think it was the duty of the County Council to follow, I myself have pursued in respect to towns. The County Judge acting in this matter of appeal is possibly invested with unrestricted power to equalize the assessment, as, in his opinion, may be just—the language is certainly broad enough to admit the view—"And such Judge shall equalize the whole assessment of the County." But I have thought it right and more in conformity with the true intention of the law, to be governed by the principle laid down in the law as to valuation respecting towns.

When this appeal was lodged I saw from the nature and extent of the enquiry, if *viva voce* testimony was to be submitted, and the short time allowed by law for making it, that it would be impossible to receive complete evidence from all interested, and evidence upon which I could with safety act, for I felt and I feel that if partial or incomplete testimony were laid before me, it would be worse than useless, and might possibly produce an impression upon my mind not calculated to assist me in arriving at a just equalization of the whole assessment of the County; nor could I have time to analyze and examine it properly, if at all. The costs, also, if the matter was gone into exhaustively, I knew would have been enormous, and these considerations and the wish expressed by all parties in the matter induced me to take it up in the way desired, and to endeavour to do justice to the best of my ability on materials submitted without insisting upon other evidence. I have endeavoured to justify the confidence placed in me, and nearly every day since the appeal was lodged I have been engaged in making, so far as time would permit, a thorough examination of all the rolls and documents before me. I cannot help saying that the manner in which many of the rolls are got up is anything but creditable to assessors. I did not think it possible that such imperfect and slovenly work as some of the rolls exhibit could have been received from the hands of any assessor. And having made a most detailed examination of what each assessor has done, I must state my conviction that assessment under the present system forms, in my judgment, a most unreliable basis of action for county or other purposes.

I will not impose upon myself the painful task of expressing an opinion as to returns of value set upon property by men whose duties are plainly set down in the Act of Parliament, and who are required to verify on oath the full certificate necessary to be placed upon their completed roll; but I will say it is small wonder that year after year the County Councils find such difficulty in agreeing on an equalization, and that the equalization, when made, is generally after a long struggle on the part of municipalities to alter, and in the end is understood to be upon a compromise, or concession of some kind to secure the necessary majority. One can see in the probable conflict of opinion almost inevitable on the conflict of interests, in the possibility of combinations to secure results operating unjustly towards certain municipalities outside such combinations, and in other difficulties that surround the subject, suggesting obstacles to a just decision, a good reason for an appeal to some independent tribunal, beyond the reach of irregular influences; and, economy being an object, the County Judge was doubtless selected and empowered to decide, and however distasteful the duty, I must admit a right of appeal seems necessary under the present system of equalization.

For years past it would appear that no uniform course has been taken in respect to most of the municipalities in the County. I speak from a careful analysis I made of the apportionment by the County Council since 1861, exhibiting the pro-

portion in each year both of aggregate valuations, and of the county rates in respect to each and every municipality in the County. I sought in vain for some clue therein to an apportionment, but could find none.

And now, after more than ten days of incessant labor in examining the assessment for the County and preparing tables therefrom and other work of the kind to assist me in reasoning upon the facts and figures before me, I have not entirely satisfied myself in the result arrived at, and I scarcely hope to satisfy the municipalities affected, but I know that what I have prepared approximates to a just equalized value for the whole County, and I think that whenever a reliable assessment is made of the whole County by persons acting on uniform principles and not subject to irregular influences or local direction, and with reasonable time for the work to be done, the figures I now present will, to a great extent, be justified.

In going over the work I found in the paper on which the County Council acted in equalizing many errors in addition, ranging from one dollar upwards, and in one case an error of no less than one hundred thousand dollars. These of course I set right.

The whole value for the County as equalized by me will be found increased from $11,702,285 to $14,809,739.86—and that is a valuation far under its real worth I incline to think, but did not consider I would be justified, as the matter stands before me, in raising it beyond the present figure.

The County Clerk, according to the direction of the Reeves, has furnished me with all the returns I called for, tabled from the public documents in his custody and he gave me some assistance in discovering where some of the errors in addition referred to were.

I believe a new rate may with facility be struck upon the figures I give, and I have spared no pains to work out all as fully in detail as is possible in minute and complex calculations.

Arrived at the close of a distasteful and very onerous duty, I have at least the consolation of knowing that the municipalities are saved a heavy outlay in the course that was taken; and as respects the payment for my labours in this protracted enquiry there certainly is much work given for a small sum of money—eight or nine dollars being all the Government will receive in stamps as an equivalent for my services in this matter of appeal.

CORRESPONDENCE.

Division Courts amendment Act.

To the Editors of the Local Courts' Gazette.

Gentlemen,—The incongruous nature of the Division Courts Amendment Act of 1869 has in some measure been remedied by the "New Rules" and "New Forms" recently published, but there are, nevertheless, some enactments in said statute on which further explanation would be very desirable; among these I may mention the rather strange provisions in section eighteen.

This section enacts that where there is no bailiff of the Court in which the action is brought, or when any summons, execution, subpœna, process or other document is required to be served or executed elsewhere than in the Division in which the action is brought, they may, in the election of the party, be directed to be served and executed by the Bailiff of the Division in or near to which they are required to be executed, or by such other Bailiff or person as the Judge or Clerk issuing the same shall order, and may for that purpose, be transmitted by post or otherwise, direct to such Bailiff or person, without being sent to or through the Clerk.

From this clause it follows, that the "*party*" (whoever this is, whether plaintiff or defendant we are left to guess) has the power to select for service the Bailiff of the Division in or near to which they are required to be executed; while the Judge or the Clerk issuing the same may confer that power to *any person*, and since by the Interpretation Act a person means either male or female, a Judge or a Clerk may entrust even a woman with the execution of process.

The Judge and the Clerk have here concurrent jurisdiction, and the writs which they respectively issue, they may also respectively order to be executed as they think proper.

Rule 84, which only refers to executions required to be executed under the 18th section, states what *may* be done in the premises, as it says, the writ may be directed by name of office, to the Bailiff of any of the Division Courts in the same County; but cannot be issued to the Bailiff in another County.

But neither this rule, nor any other rule, as far as I can learn, gives any information regarding this mysterious "*person*," whom the Judge or Clerk may order to serve or execute process. We are left entirely in the dark as to the mode or form in which such order is to be made.

Rule 81 informs us how process for service in a "Foreign Division" is to be transmitted, in cases where the plaintiff does not elect (here the "party" is styled plaintiff), and the Judge or Clerk does not make any order as to how it shall be served.

The 19th section of said act, and rule 84, define the duties of such Bailiff, to whom such summons, execution, subpœna, process and other document has been sent to serve

and execute; but they are silent in regard to the "*person*" referred to in section 18.

The reason why neither the Legislature by said act, nor the Judges in ther new rules, have laid down any measure regarding the duty of such "*person*" whom the Judge or Clerk may order to serve or execute process, appears to me very simple; and in my humble opinion, that reason was, because they knew that they had no power over such an irresponsible individual, and they therefore made no provisions regarding the duties of him or her. But why the Legislature gave power to Judges and Clerks to appoint, at their option any irresponsible person to serve or execute important documents, I have in vain endeavoured to discover.

Bailiffs have to give heavy security for the faithful performance of their respective duties, they are as a body, with few exceptions, not overpaid, they are required to be ready at all times to serve or execute process, there are very few divisions without a bailiff, and if so, this is only temporarily, as vacancies are soon filled again; it is therefore unjust to take away from them business which legitimately belongs to them. But this is by far the least act of injustice that may arise by the exercise of the power conferred upon Judges and Clerks by ordering irresponsible persons to serve or execute process. The plaintiff may thereby sustain serious losses, and that even without redress.

The plaintiff, who in good faith ordered execution, may not elect to order how it shall be executed, but trust to the Clerk, whom he considers a responsible officer of the Court, that he will properly attend to the matter. The defendant resides in another County, and the Clerk, finding by rule 34, that he cannot direct the execution to a Bailiff of that other county, does for some reason or other, issue the execution to some irresponsible "*person*," as he is allowed to do by the 18th section. That irresponsible person, however, neglects to make return thereto, or he may have collected the money, but decline to pay it over, and may have absconded. Where now is the redress for the plaintiff? He may blame the Clerk, but he may not be able to prove wilful negligence of that Clerk, who shields himself by the authority vested in him by that 18th section, and the probable result will be, that the plaintiff loses all chance of recovering his judgment. And thus, by this mysterious word "*person*," the operation of the Division Courts' Acts, which heretofere, as far as the responsibility of the Officers of these Courts is concerned, was considered safe and reliable, is now rendered uncertain, insecure and unreliable.

It may be true that no such case has yet occurred. and it may be a long time before it will occur, but it cannot be denied, that by exercising that power, such or similar cases may happen, and will, if they take place, prove a hardship to the plaintiff; neither can it be denied that the power conferred upon Clerks at least, is of a most arbitrary nature, and affecting the regular working of the Courts; and last, not least, it must be conceded, that the 18th section, even if the words "or *person*" were omitted, contains ample provision for the speedy service or execution of any summons, execution, subpœna, process or other document, since that section provides, that the same may be served or executed by the Bailiff of the Division *in or near* to which they are required to be executed; thus giving plaintiffs, Judges and Clerks, a choice between two, three or more Bailiffs, viz.: the one "*in*" the Division, and every one in the several adjoining Divisions; and I entertain serious doubts whether there is any Division in the Province of Ontario, in which process would be better and safer served or executed by an irresponsible person, than by a Bailiff of the Division Court.

I remain respectfully yours

OTTO KLOTZ.

Preston, Nov. 18, 1869.

[Our correspondent has brought very acute observation to bear upon the enactment to which he refers, and no doubt there is much difficulty in determining what is really meant. We leave his remarks to elicit observation from other officers, merely remarking for the present, that we think that the clause gives the power to the judge to make the order, whether he had issued the process or not; but confines it to the clerk *who issued the process.*

Then, our correspondent, we think, is not quite right in supposing (if we correctly understand his meaning) that a clerk can issue an execution into another county. There is nothing in the Division Court law to authorize it. Rule 34 provides how a writ of execution issued to another division is to be directed; to the officer, not by name, but "by

name of office," &c.; and the words "but cannot be issued to the bailiff in another county" are merely declaratory. It is quite clear (in our judgment) that the 18th sec. of the recent act does not at all imply that an execution can issue out of the county: "execution or other process is required to be served or executed elsewhere than in the division in which the action is brought," &c. "Required," must be held to be lawfully required, and the Division Court Act does not empower writs to be executed out of the county, except in certain specified cases, and the forms 77, 80, and 84 clearly show this.

We do not think it at all probable that any clerk would be disposed to take the responsibility of directing an execution to an irresponsible person in or out of the county, so that no evil is likely to arise out of the enactment. It is well, however, that every enactment affecting these courts should be closely watched and boldly criticised, and our friend Mr. Klotz has a naturally acute mind and long experience in the courts. Although it is scarcely apropos to the present matter, we take the liberty to repeat a remark respecting Mr. Klotz, made by the Chairman of the Board of County Judges, viz., that Mr. Klotz had submitted a carefully prepared and well considered paper to the Board, which was found very useful and commended itself in every way to favorable consideration.]—EDS. L. J.

Renewal of Executions in Division Courts—its abuse.

TO THE EDITORS OF THE LAW JOURNAL.

MESSRS EDITORS:—Since the Act of 1868-9 giving garnishee powers to Division Courts, it has become very common to renew Division Court executions, under the power given in 32 Vic. chap. 23 sec. 24, in our Province. This section in the Act is alluded to, and a form given, by rule 158, new rules. Now section 26 of the new Act, 32 Vic. chap. 23, expressly amends section 141 of the Division Courts Act, and adds these words to that amended section, "but may from time to time be renewed by the clerk *at the instance of the execution creditor* (that is the execution first issued), for thirty days, from the date of such renewal, in the same manner and with the same effect as like writs from the Courts of Record may be renewed, under the provisions of the Common Law Procedure Act."

I fear, in many parts of the country, that this excellent and necessary new provision will be (if it is not already), liable to be used to the injury of execution creditors. It is easy to see, that if a clerk or a bailiff can take it upon himself to issue renewed executions, from time to time, that a large profit may be made out of the privilege, which was conceded chiefly for the benefit of execution creditors. On these renewals the clerks charge also for "enforcing" as they call it, the old execution. The first execution is returned to the clerk, and a fee charged, and he issues it again, to the Bailiff who may again renew it, if he has the power, to suit his convenience. I happen to know of instances where executions have been renewed several times, by the officers of the Division Courts, without any authority from the execution creditor. Such things are illegal. No one can authorise this but the execution creditor or his agent. The Judge might in some cases interfere. It will be remembered, that by section 2 of the new Act, an execution cannot issue on a judgment by default, but at the "instance of the plaintiff." It is well that the law should be guarded in this respect. Human beings are such, that they will be constantly inclined to encroach on the privileges of the law if not looked after.

The duty of the Bailiff is to make the money on his execution within thirty days. When that time has run, the execution in his hands is dead. He must, and ought to return it. He has no right, and the clerk should not take any order from him, to renew the execution. The moment he does this he oversteps the law. If the execution creditor gives no orders the matter rests. It may be said, that in some instances the Bailiff might be under the necessity of returning "goods on hand for want of buyers," or might have seized goods just before the expiration of the writ, and have no time to sell. What is he to do in such cases? Must he lose his fees, and cease to act further, because the plaintiff will not act? The new Act and the rules do not allude to such cases. It is supposed, that every plaintiff will only be too glad to make his money and renew the execution. At all events, the bailiff and the clerk cannot usurp his powers. The writ does not bolong to them. I am persuaded that, already many instances all over the country have occurred, of the abuse of the power to renew executions.

The Judges have by the new tariff greatly

increased bailiff's fees, and the later should be careful not to step beyond their powers.

Nov. 19, 1869. "LEX."

[We agree with all our correspondent says. It is quite impossible to prevent frauds. There is certainly nothing in the statute to authorize the clerk acting except at the *instance* of the plaintiff or execution creditor, and a writ issued without the order of the credior would be liable to be set aside. An abuse of power such as our correspondent speaks of would not only authorize the judge to dismiss the officer but would make it obligatory morally to do so.—EDS. L. J.]

Women's Rights.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—I see from a paragraph in the *Chicago Legal News*, that a Mrs. Arabella A. Mansfield, A. B., a young married lady of about 24 years of age, was lately admitted to the bar and authorised to practice law in the State of Iowa, at the same time as her husband, Professor Mansfield.

This will gladden the eyes of John Stuart Mill; in fact, the philosopher is thrown away in benighted England, he should go to the land when the rights of married women are fully understood, and there learn a thing or two on the subject of his last hobby.

I presume the "Professor" will secure the services of his better half as a junior partner in a professional as well as in a domestic way, and I might suggest as a name for the firm "Mansfield et ux., Attorneys, &c."—this would have a legal smack about it, and at the same time be short and to the purpose. As we are told that Mrs. M. is a lady of strong mind, we trust the Professor will be able to hold his own in this complex partnership, otherwise it may result in his superintendence of the domestic department, which has hitherto fallen to the lot of the "*ladies*," (strange that there are no *women* in the United States, and that the men are all "Professors" or "Generals.") But really it is hardly fair to the rest of the profession in Iowa, to permit a charming fair one to pit herself against a learned brother in argument before a jury of twelve *men*. The latter would simply have no chance at all. His only possible salvation would be to have a jury composed of at least half of them, "*ladies*," if possible of twenty four years old and under.

Speaking of this suggests an idea which I have much pleasure in presenting to the learned Editors of the *Legal News*—that juries should be composed of women instead of men. Juries are so stupid now, that they cannot, humanly speaking, be any worse, and as women have a knack of often jumping to correct conclusions from wrong premises, a change in the sex would probably be highly beneficial. Yours, &c., B. B.

REVIEWS.

THE INSOLVENT ACT OF 1868, WITH TARIFF NOTES, FORMS AND A FULL INDEX, by James D. Edgar, of Osgoode Hall, Barrister-at-Law, Toronto: Copp, Clark & Co., King Street, Toronto, 1869.

Mr. Edgar and the publishers have lost no time in giving the public the benefit of this useful manual. It is in every respect an improvement of the edition of 1864, and will find a large sale. We have not space, however, to review it now, but shall return to it again hereafter.

APPOINTMENTS TO OFFICE.

DEPUTY CLERK OF THE CROWN, &c.

JAMES CANFIELD, of the Town of Ingersoll, Esquire, to be Deputy Clerk of the Crown and Pleas, and Clerk of the County Court of the County of Oxford, in the room and stead of Wm. A. Campbell (temporarily acting), resigned. (Gazetted 16th October, 1869.)

CORONERS.

ROBERT DOUGLAS, of the Village of Port Elgin, Esq., M.D., to be an Associate Coroner within and for the County of Bruce. (Gazetted Sept. 18th, 1869.)

WILLIAM RANDALL, of Wolfe Island, Esq., to be an Associate Coroner within and for the County of Frontenac. (Gazetted October 2nd, 1869.)

A. H. PAGET, Esq., to be an Associate Coroner within and for the County of Wellington. (Gazetted October 2nd, 1869.]

JOHN A. STEVENSON, of the Village of Norwood, Esq., M.D., to be an Associate Coroner within and for the County of Peterborough. (Gazetted October 9th, 1869.)

TO CORRESPONDENTS.

"A STUDENT," "STUDENT."

Letters received from above, but no names are given to verify them. We cannot, therefore, publish them under the rule which we have laid down for our guidance in such cases.