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VOL. IV. TORONTO, MARCH, 1858. No. 3.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

W. D. ARDAGH, Barrister-at-Law; ROBT. A. HARRISON, B.C.L., Barrister-at-Law.

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References in this Index are made to the page and volume of the English Reports, as well as to Philadelphia Reprint, making it equally valuable to those having either series. From its peculiar arrangement and admirable construction, it is decidedly the best and most accessible guide to the decisions of the English Law Courts.

We annex a specimen showing the plan and execution of the work:

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I. GENERAL RULES.

II. PARTIES TO THE ACTION.

It is sufficient on all occasions after parties have been first named, to describe them by the terms "said plaintiff" and "said defendant." Davison v. Savage, 1, 537; 6 Taur, 636. Stevenson v. Hunter, 1, 675; 6 Tann, 406.

And see under this head, Titles, Action; Assumpsit; Bankruptcy; Bills of Exchange; Case; Chose in Action; Covenant; Executors; Husband and Wife, Landlord and Tenant; Partnership; Replevin; Trespass; Trover.

III. MATERIAL ALLEGATIONS.

Whole of material allegations must be proved. Reece v. Taylor, xxx, 590; 4 N & M, 469.

Where more is stated as a cause of action than is necessary for the gist of the action, plaintiff is not bound to prove the immaterial part. Bromfield v. Jones, x, 624; 4 B & C, 380. Evesham v. Posten, xii, 721; 2 C & P, 540. Duke v. Gostling, xxvii, 786; 1 B N C, 589. Pitt v. Williams, xxix, 203; 2 A & P, 841.

And it is improper to take issue on such immaterial allegation. Arundel v Bowman, iv, 103; 8 Taun, 109.

Matter alleged by way of inducement to the substance of the matter, need not be alleged with such certainty as that which is substance. Stoddart v. Palmer, xvi, 212; 4 D & R, 624. Churchill v. Hunt, xviii, 263; 1 Chit, 480. Williams v. Wilcox, xxxv, 609; 8 A & E, 314. Brunskill v. Robertson, xxxvi, 9 & E, 840.

And such matter of inducement need not be proved. Crosskeys Bridge v. Rawlings, xxxii, 41; 3 B N C, 71.

Matter of description must be proved as alleged. Wells v. Girling, v, 853; Gow 21 Stoddart v. Palmer, xvi, 212; 4 D & R, 624. Ricketts v. Salwey, xviii, 68; 1 Chit, 104. Tresdale v. Clement, xvii, 329; 1 Chit, 603.

An action for tort is maintainable though only part of the allegation is proved. Ricketts v. Salwey, xviii, 69; 1 Chit, 104. Williamson v. Awsley, xix, 140; 6 Bing, 266. Clarkson v. Lawson, xix, 299; 6 Bing, 587.

Plaintiff is not bound to allege a request, except where the object of the request is to oblige another to do something. Amory v. Broderick, xviii, 660: 2 Chit, 329.

In trespass for driving against plaintiff's cart, it is an immaterial allegation who was riding in it? Howard v. Peete, xviii, 653; 2 Chit, 315.

In assumpsit, the day alleged for an oral promise is immaterial, even since the new rules. Arnold v. Arnold, xxvii, 47; 3 B N C, 81.

Where the *terms* of a contract pleaded by way of defence are not material to the purpose for which contract is given in evidence, they need not be proved. Rolson v. Fallows, xxxii, 186; 3 B N C, 392.

Distinction between unnecessary and immaterial allegation. Draper v. Garratt, ix, 11; 2 B & C, 2.

Preliminary matters need not be averred. Sharpe v. Abbey, xv, 537; 5 Ding, 193.

When allegations in pleadings are divisible. Tapley v. Wamwright, xxvii, 710; 5 B & Ad. 395. Hare v. Horton, xxvii, 302; 5 B & Ad. 715. Hartley v. Burkitt, xxxiii, 925; 5 B N C, 687. Cole v. Creswell, xxxix, 355; 11 A & E, 661. Green v. Steer, xii, 740; 1 Q B, 707.

If one plea be compounded of several distinct allegations, one of which is not byself a defence to the action, the establishing that one in proof will not support the plea. Baillie v. Kell, xxxiii, 900; 4 B N C, 638.

But when it is composed of several distinct allegations, either of which amounts to a justification, the proof of one is sufficient. Ibid.

When is tender a material allegation. Marks v. Lahee, xxvii, 193; 3 B N C, 408. Jackson v. Allaway, xlvi, 842; 5 M & G, 942.

Matter which appears in the pleadings by necessary implication, need not be expressly averred. Galloway v. Jackson, xlii, 498; 3 M & G, 960. Jones v. Clarke, xlii, 694; 3 & B, 194.

But such implication must be a necessary one. Galloway v. Jackson, xlii, 498; 3 M & G, 960. Prentice v. Harrison, xlv, 852; 4 Q B, 852.

The declaration against the drawer of a bill must allege a promise to pay. Henry v. Burbidge, xxxii, 234; 3 B N C, 501.

In an action by landlord against sheriff under 8 Anne, cap. 14, for removing goods taken in execution without paying the rent, the allegation of removal is material. Smallman v. Pollard, xlvi, 1001.

In covenant by assignee of lessee for rent arrear, allegation that lessee was possessed for remainder of a term of 22 years, commencing, &c., is material and traversable Carvick v. Balgrave, v, 783; 1 B & B, 551.

Minimum of allegation is the maximum of proof required. Francis v. Steward, xlvii, 984; 5 Q B, 984, 986.

In error to reverse an outlawry, the material allegation is that defendant was abroad at the issuing of the exigent, and the averment that he so continued until outlawry pronounced, need not be proved. Robertson v. Robertson, i, 16; 5 Taun, 309.

Tender not essential in action for not accepting goods. Boyd v. Lett, i, 221; 1 C B, 222.

Averment of trespasses in other parts of the same close is immaterial. Wood v. Wedgwood, i, 271; 1 C B, 273.

Request is a condition precedent in bond to account on request. Davis v. Cary, lxiv, 416; 15 Q B, 418.

Corruptly not essential in plea of simoniacal contract, if circumstances alleged show it. Goldham v. Edwards, lxxxi, 335; 16 C B, 437.

Mode by which nuisance causes injury is surplusage. Fay v. Prentice, i, 827; 1 C B, 828.

Allegation under per quod of mode of injury are material averments of fact, and not inference of law in case for illegally granting a scrutiny, and thus depriving plaintiff of his vote. Price v. Belcher, liv, 58. 3 C B, 58.

Where notice is material, averment of facts "which defendant well knew," is not equivalent to averment of notice. Colchester v. Brooke, lili, 339; 7 Q B, 339

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NOTICE.

WHEREAS Twenty-five Persons and more have formed themselves into a Horticultural Society, in the County of Hastings, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vic., cap. 32, and have subscribed a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written bnd signed as by law required, to the Minister of Agriculture.

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as "The Belleville Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

LAW SOCIETY OF UPPER CANADA,

(Osgoode Hall.)

Hilary Term, 21st Victoria, 1857.

During this present Term of Hilary, the following Gentlemen were called to the degree of Barrister-at-Law:—

Edward Taylor Partnoll, Esquire.	Caleb Elias English, Esquire.
Ernestus Crombie, "	Thomas Hodgins, "

On Tuesday, the 9th day of February, in this Term, the following Gentlemen were admitted into the society as members thereof, and entered in the following order as Students of the Laws, their examinations having been classed as follows:—

University Class:

Mr. James Windeat, M.A.	Mr. John Anderson Ardagh, B.A.
" J Pennington Macpherson, B.A.	" Wm. Pryor Atkinson, B.A.
" John Turpin, B.A.	" George Bartholomew Boyle, B.A
" H. Coffin Windeat Wethey, B.A.	" Frederick Lampman, B.A.

Mr. William Hamilton Jones, B.A.

Junior Class:

Mr. William Edward O'Brien.	Mr. James Saurin McMurray.
" Charles Arthur Jones.	" John Crawford.
" Henry Erskine Irving.	" George Frederick Duggan.
" Warren Rock.	" Frederick Fanning.

Note.—Gentlemen admitted in the "University Class" are arranged according to their University rank, in the other classes, according to the relative merit of the examination passed before the Society.

Ordered—That the examination for admission shall, until further notice, be in the following books respectively, that is to say—

For the Optime Class:

In the Phœnissæ of Euripedes, the first twelve books of Homer's Iliad, Horace, Sallust, Euclid or Legendre's Geometrie, Hind's Algebra, Snowball's Trigonometry, Farnshaw's Statics and Dynamics, Herschell's Astronomy, Paley's Moral Philosophy, Locke's Essay on the Human Understanding, Whateley's Logic and Rhetoric, and such works in Ancient and Modern History and Geography as the candidates may have read.

For the University Class:

In Homer, first book of Iliad, Lucian (Charon Life or Dream of Lucian and Timon), Odes of Horace, in Mathematics or Metaphysics at the option of the candidate, according to the following courses respectively, Mathematics, (Euclid, 1st, 2nd, 3rd, 4th, and 6th books, Legendre's Geometrie, 1st, 2nd, 3rd, and 4th books, Hind's Algebra to the end of Simultaneous Equations); Metaphysics—(Walker's and Whateley's Logic, and Locke's Essay on the Human Understanding); Herschell's Astronomy, chapters 1, 3, 4, and 5; and such works in Ancient and Modern Geography and History as the candidates may have read.

For the Senior Class:

In the same subjects and books as for the University Class.

For the Junior Class:

In the 1st and 3rd books of the Odes of Horace; Euclid, 1st, 2nd, and 3rd books, or Legendre's Geometrie 1st and 3rd books, with the promblems; and such works in Modern History and Geography as the candidates may have read: and that this Order be published every Term, with the admissions of such Term.

Ordered—That the class or order of the examination passed by each candidate for admission be stated in his certificate of admission.

Ordered—That in future, Candidates for Call *with honours*, shall attend at Osgoode Hall, under the 4th Order of Hil. Term, 18 Vic, on the last Thursday and also on the last Friday of Vacation, and those for Call, merely, on the latter of such days.

Ordered—That in future all Candidates for admission into this Society as Students of the Laws, who desire to pass their Examination in either the Optime Class, the University Class, or the Senior Class, do attend the Examiner at Osgoode Hall, on both the first Thursday and the first Friday of the Term in which their petitions for admission are to be presented to the Benchers in Convocation, at Ten o'clock A.M. of each day: and those for admission in the Junior Class, on the latter of those days at the like hour.

Ordered—That the examination of candidates for certificates of fitness for admission as Attorneys or Solicitors under the Act of Parliament, 20 Vic. chap. 63, and the Rule of the Society of Trinity Term, 21 Vic. chap. 1, made under authority and by direction of the said Act, shall, until further order, be in the following books and subjects, with which such candidates will be expected to be thoroughly familiar, that is to say:

Blackstone's Commentaries, 1st Vol.; Smith's Mercantile Law; Williams on Real Property; Williams on Personal Property; Story's Equity Jurisprudence; The Statute Law, and the Practice of the Courts.

Notice.—A thorough familiarity with the prescribed subjects and books will, in future, be required from Candidates for admission as Students, and gentlemen are strongly recommended to postpone presenting themselves for examination until fully prepared.

Notice.—By a rule of Hilary Term, 18th Vict., Students keeping Term are henceforth required to attend a Course of Lectures to be delivered, each Term, at Osgoode Hall, and exhibit to the Secretary on the last day of Term, the Lecturer's Certificate of such attendance.

Ordered.—That the Subjects for Lectures next Term, be the Law of Mortgages, to be lectured upon by Samuel Henry Strong, Esquire, and the Law of Evidence to be lectured upon by John Thomas Anderson, Esquire.

ROBERT BALDWIN,
Treasurer.

Hilary Term, 21st Victoria, 1858.

STANDING RULES.

ON the subject of Private and Local Bills, adopted by the Legislative Council and Legislative Assembly, 3rd Session, 5th Parliament, 20th Victoria, 1857.

1. That all applications for Private and Local Bills for granting to any individual or individuals any exclusive or peculiar rights or privileges whatsoever, or for doing any matter or thing which in its operation would affect the rights or property of other parties, or for making any amendment of a like nature to any former Act,—shall require the following notice to be published, viz:—

In Upper Canada—A notice inserted in the Official Gazette, and in one newspaper published in the County, or Union of Counties, affected, or if there be no paper published therein, then in a newspayer in the next nearest County in which a newspaper is published.

In Lower Canada—A notice inserted in the Official Gazette, in the English and French languages, and in one newspaper in the English and one newspaper in the French language, in the District affected, or in both languages if there be but one paper; or if there be no paper published therein, then (in both languages) in the Official Gazette, and in a paper published in an adjoining District.

Such notices shall be continued in each case for a period of at least two months during the interval of time between the close of the next preceding Session and the presentation of the Petition.

2. That before any Petition praying for leave to bring in a Private Bill for the erection of a Toll Bridge, is presented to this House, the person or persons purposing to petition for such Bill, shall, upon giving the notice prescribed by the preceding Rule, also, at the same time, and in the same manner, give a notice in writing, stating the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers for the passage of rafts and vessels, and mentioning also whether they intend to erect a draw-bridge or not, and the dimensions of such draw-bridge.

3. That the Fee payable on the second reading of and Private or Local Bill, shall be paid only in the House in which such Bill originates, but the disbursements for printing such Bill shall be paid in each House.

4. That it shall be the duty of parties seeking the interference of the Legislature in any private or local matter, to file with the Clerk of each House the evidence of their having complied with the Rules and Standing Orders thereof; and that in default of such proof being so furnished as aforesaid, it shall be competent to the Clerk to report in regard to such matter, "that the Rules and Standing Orders have not been complied with."

That the foregoing Rules be published in both languages in the Official Gazette, over the signature of the Clerk of each House, weekly, during each recess of Parliament.

J. F. TAYLOR, Clk. Leg. Council.
Wm. B. LINDSAY, Clk. Assembly.

16-tf.

Legislative Council,
Toronto, 4th September, 1857.

EXTRACT from the Standing Orders of the Legislative Council.

Fifty-ninth Order.—"That each and every applicant for a Bill of Divorce shall be required to give notice of his or her intention in that respect specifying from whom and for what cause, by advertisement in the official Gazette, during six months, and also, for a like period in two newspapers published in the District where such applicant usually resided at the time of separation; and if there be no second newspaper published in such District, then in one newspaper published in an adjoining District; or if no newspaper be published in such District, in two newspapers published in the adjoining District or Districts."

J. F. TAYLOR,
Clerk Legislative Council.

10-tf.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

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REMITTANCES.

February, 1858.—E. D, *Kingston*, $4; R. K., *Beamsville*, $4; H. R., *Woodstock*, $4; G. M. W., Dresden, $5; D. G. H., Atherly, $5; W. H. R., Normanton, $4; J. E., Saugeen, $4; J. A., New Hamburg, $4; G. M., do., $4; P. M., Toronto, $4; L. & M., Stratford, $4; J. H., Guelph, $4; M. C. L., Mayor of Galt, $4; W. P. V., Port Sarnia, $5; W. J., Rainham Centre, $4; D. S., Hamilton, $4; Township of Sombra, $4; W. P, N. & Co., Elora, $4; E. T. G., Woodstock, $4; Co. of Kent, Chatham, $4; W. S., Simcoe, $4; W. M. W., do., $4; W. H. S., Burford, $4; J. C. H. Sharon, $4, Judge C., Sandwich, $4; T. M., C.D.C., Omemee, $4; W. M. P., C.D.C, Cornwall, $4; L. H., Toronto, $4; J. S., Fort Erie, $10; Township of Nelson, Nelson, $4; W McC., do., $4; W. H. T., Whitby, $4; T. T., Devon, $4; H. McC., Galt, $4; M. K., Merrickville, $4; W. S. C., Peterborough, $10; J. T., Derry West, $4; W. B. McC., Brockville, $4; H. McC., Frankville, $4; G. C. W., Cornwall, $10; E. R. K., Selkirk, $4; A. S. St.J., St. Catherines, $4; J. S., D. C. C., Tecumseth, $4; R. P. C., Brockville, $5 42; T. D. M., Merrickville, $4; G. L. M., Kingston, $6; J. B, Hamilton, $4; S. J. D., Chatham, $4; A. M. Smithville, $4; S. J., Norwich, $4; J. B., do., $4; W. W. K., Farmersville, $4; C. A., St. Thomas, $4; Co. Wentworth per C. O. C., Hamilton, $4; H. P., Wilton, $4; W. D. Ottawa, $4; A. J., Collingwood Harbour, $4; J. C, Flos, $4; W. S., Penetanguishene, $4.

MUNICIPAL MANUAL,

WITH NOTES OF ALL DECIDED CASES, AND A FULL ANALYTICAL INDEX.

MESSRS. MACLEAR & CO. beg to announce that they have made arrangements for the publication of the above work, so soon as the Consolidated Bill now before the Legislature shall become law.

Editor—ROBERT A. HARRISON, Esq., B. C. L., Author of "Robinson & Harrison's Digest," "Common Law Procedure Act, 1856," "County Courts Procedure Act, 1856," "Practical Statutes," "Manual of Costs in County Courts," &c

DIARY FOR MARCH.

1. Monday..... 10 o'clock, Q. B. Judgments; 2 o'clock, C. P. do.
2. Tuesday..... Chancery Examination at Hamilton and Ottawa.
3. Wednesday Last day for notices of Trial, County Courts.
5. Friday..... 10 o'clock, C. P. Judgments.
6. Saturday... Exam. at Hamilton and Ottawa ends. 11 o'clock, Q. B. Judgments.
7. SUNDAY .. *3rd Sunday in Lent.*
8. Monday .... Chancery Examination at Barrie and Cornwall.
9. Tuesday ... Quarter Sessions and County Court sittings.
13. Saturday... Examination at Barrie and Cornwall ends.
14. SUNDAY .. *4th Sunday in Lent.*
21. SUNDAY .. *5th Sunday in Lent.*
28. SUNDAY .. *Palm Sunday.*

TO READERS AND CORRESPONDENTS.

No notice taken of any communication unless accompanied with the true name and address of the writer—not necessarily for publication, but as a guarantee of good faith.

We do not undertake to return rejected communications.

Matter for publication should be in the hands of the Editors at least two weeks prior to the number for which it is intended.

Editorial communications should be addressed to "*The Editors of the Law Journal, Toronto,*" or "*Barrie.*"

Advertisements, Business letters, and communications of a Financial nature should be addressed to "*Messrs. Maclear & Co., Publishers of the Law Journal, Toronto.*"

Letters enclosing money should be *registered*;—the words "Money Letter" written on an envelope are of no avail.

The Upper Canada Law Journal.

MARCH, 1858.

IMPRISONMENT FOR DEBT.

The law of debtor and creditor has a direct bearing upon the trading classes, and an indirect bearing upon all other classes of the community. Its operation is of the most extensive kind. Its intricacy and complexity, and we may add, its insufficiency is now almost a universal theme.

Some there are, who say that we need a more perfect law of insolvency; others say a bankruptcy law is required; others say, the right of a creditor to arrest his debtor in civil cases is unnecessarily severe; others again say, imprisonment for debt is a relique of barbarism and ought to be abolished.

In a multitude of councillors, we are told, there is a wisdom; in a multitude of complaints we affirm on the present occasion, there is cause. Whatever differences in detail exist, all are agreed that the law of debtor and creditor in Canada demands amendment.

In a former number of this Journal, we expressed at length our views as to insolvency and bankruptcy, and shall now proceed to examine the law of arrest with a view to the suggestion of necessary amendments.

It is well known that the law favors the liberty of the subject. It is equally known that the subject must pay his debts and perform his other lawful obligations. It is the right of a creditor to seek by process of law the liquidation of his lawful demand; but it is also the right of the debtor to be protected so far as consistent with the exigencies of society in the enjoyment of his liberty. The relation of these apparently contradictory rights to each other ought to be the first subject to engage the attention of the legislator.

The deprivation of a debtor of his liberty, in other words, imprisonment for debt, is justifiable only on one of two grounds,—either the *security* of the creditor, or the *punishment* of the debtor.

The right of a creditor to secure the body of his debtor *when about to abscond*, is not, we assume to be questioned either on grounds of humanity or of justice. Incidental to this, the right to punish *for fraud or other unfair dealing*, must also, we apprehend, be conceded.

We do not think any rational man will dispute the abstract truth contained in either of these modified propositions. The cause of complaint seems rather that *under color* of existing rights, an opportunity is given for the exercise of oppression and cruelty. It is asserted that a debtor is too much in the power of his creditor, and that this power is abused. But surely the abuse of a right is no valid argument against its use? Rather than root *out the right, let it be placed under sound and proper restraints.*

The law in civil cases sanctions an arrest either before action, during action, or after judgment. An arrest before judgment is said to be on mesne process; an arrest after judgment is said to be on final process.

This was the law of England at the time of the conquest of this Province, and was generally understood to have been introduced by the Royal Proclamation and other official instruments published shortly after the conquest. The law of arrest in civil cases was, we believe, wholly unknown to the French and spread great alarm among the ancient inhabitants of the Province. It was made a prominent subject of complaint in more than one petition to the Executive for relief.

When the Canadas were separated in 1791, as to civil rights, the laws of Canada, in other words, the French laws, were conceded to Lower Canada, while the laws of England were, by express enactment of our own legislature declared to be in force in Upper Canada. Under this enactment, (32 Geo. III., cap. 1, s. 3,) the law of arrest in civil cases, was, of course, included. So it continued with occasional amendments as to the form of affidavit for arrest, until 1843, when a remarkable statute was passed. It was intituled, *An Act to abolish imprisonment for debt, and for other purposes therein mentioned,* (7 Vic. cap. 31.) It recited that imprisonment for debt where fraud is not imputable to the debtor is not only demoralizing in its tendency, but as detrimental to the true interests of the creditor, as it is inconsistent with that forbearance and humane regard to the misfortune of others which should always

characterize the legislation of every Christian country. It further recited that it was desirable to soften the rigor of the laws of Upper Canada affecting the relation between debtor and creditor, so far as a due regard to the interests of commerce would permit It then enacted generally, that no arrest should be made in any civil suit, when the cause of action should not amount to £10, and that it should not, even in these cases, be lawful for a plaintiff to proceed to arrest the body of a defendant unless upon the making of an affidavit of debt and plaintiff's belief that the defendant was immediately about to leave the Province, and that no person should be taken or charged in execution, (*i. e.*, arrested on final process,) for any sum whatever. The enactment, it will be noticed, fell much short of its recital, and left the law as to arrest on mesne process, precisely as it was previously.

Little more than fifteen months were allowed to expire until the Legislature repealed the Act, doing away with the restriction upon arrests on final process, and so restored the law of arrest to its original state.

Such is the present law against which so many clamor—some for amendment, others for repeal. No arrest can be made on mesne process for a debt under £10. When a debt exceeds that amount, the arrest may be made either on mesne or final process; but in the former case, not without an affidavit showing plaintiff's cause of action, and his apprehension of defendant leaving Upper Canada. When the cause of action is a debt certain, a writ of capias may issue upon the filing of the affidavit without the intervention of any Judge. When it is for a cause other than a debt certain—for example, damages for seduction—a Judge's order is necessary before proceeding to arrest. These are the only cases in which arrests can be made for the *security* of the plaintiff. Arrests may be made for the *punishment* of a debtor in the cases following. Whenever a plaintiff having obtained a judgment in a Superior or County Court, swears that in his belief, the defendant has parted with his property, or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution, a writ of capias ad satisfaciendum—that is final process—issues upon the filing of the affidavit for the arrest of the defendant. Whenever a judgment is obtained in a Division Court for an amount within its jurisdiction, whether under or over £10 the defendant may be summoned and examined as to his means of satisfying it. If he do not attend and do not allege a sufficient reason for not attending, or if attending, he do not answer to the satisfaction of the Judge, or if it appear to the Judge that credit was obtained by false pretences, fraud, breach of trust, or that the debt was wilfully contracted by defendant without his having any reasonable expectation of his being able to discharge it, or if fraud in the concealment of property be made to appear, or if it be shewn that after judgment, defendant had means to pay the debt, but did not do so: in all these cases, the judge may commit the defendant to gaol for any period not exceeding forty days, (13 & 14 Vic. cap. 53, s. 92.) Prisoners in some gaols concerning whom an outcry is made because of their owing only a few dollars must have been incarcerated under this clause, and if so, under the direct order of the County Judge—the imprisonment being for fraud, and *not* for debt.

The best grounded causes of complaint are, in our opinion, those alleging that the facilities for arrest for debt are too great and demand restriction. We agree with those who say there is not sufficient check to prevent the law being made an instrument of oppression. We think that an affidavit made for the purpose of arresting a debtor either on mesne or final process, should show the grounds of suspicion. We think, moreover, that no arrest should be permitted till a Judge is satisfied of the sufficiency of the grounds stated. It is wrong to suffer any man, learned or unlearned, to work his mind into a state of apprehension of losing his debt, and then allow him to be so far the judge of the correctness of his apprehension as to enable him to arrest his debtor, in order to prevent his fancied flight, or to punish his fancied fraud. Whether oppression be designed or not, the effect upon the debtor is the same. A Judge if appealed to before arrest, being more experienced and less disinterested than any ordinary creditor would be of the two, more likely to arrive at a correct judgment. To the creditor as well as to the debtor we believe the change would be for the better. If arrests were sanctioned by a Judge, the responsibility would be in a great measure shifted from the creditor to the Judge. There would be fewer actions for malicious arrest, and to the creditor a relief from the apprehension of such actions. To the debtor there would be less apprehension of arrest, and of course, less embarrassment in the anticipation of it. The security of the creditor would not be at all lessened, and the security of the debtor, by which we mean his peace of mind, would be to a great extent guaranteed.

We have a precedent for this proposed amendment. It is now nearly twenty years since the right of the creditor to arrest his debtor was in England, restricted as we propose. By a Statute passed on 10th August, 1838, (1 & 2 Vic., cap. 110,) it is enacted that if a plaintiff by affidavit show to the satisfaction of a Judge of one of the Superior Courts, that he, the plaintiff, has a cause of action against the defendant to the amount of £20, or upwards, or has sustained damage to that amount, and that there is probable cause for believing the defendant is about to quit England unless apprehended, it shall be lawful for such Judge

to *direct* that such defendant shall be held to bail, &c., in other words arrested subject to be bailed. In this manner and this only, can an arrest since 1838 be made on mesne process in a civil case in England. By a Statute subsequently passed, (9th August, 1844,) no arrest is permitted on final process in any action for the recovery of any debt wherein the sum recovered does not exceed £20 exclusive of costs recovered by the judgment, (7 & 8 Vic. cap. 96, s. 57.) Imprisonment for fraud is however preserved, no matter how small or how great the debt, (Ib. s. 59); but of the existence of the fraud, a Judge and not the creditor is to decide. (Ib.)

If it were prudent for us in 1792 to adopt the laws of England as to civil rights, whether good, bad or indifferent, it is certainly necessary for us to watch the amendments since found necessary, and engrafted upon such laws. No law, in general, as every lawyer knows, passed in England since 1791, has any effect upon us unless we make it our own by act of our own legislature. It is our opinion that our legislature ought ere this to have adopted the English enactments of 1838 and 1844, the want of which we are confident is the chief cause of the present agitation against imprisonment for debt.

If we are to accept the Vice-Regal Speech as an indication of the topics of forthcoming legislation, we shall not be compelled to wait much longer for some reform in the law of imprisonment for debt. We hope nothing will be done without due deliberation. A comparison of the English law with ours in the manner we have in this article attempted will be found to throw much light upon the work to be done. When making the comparison a sharp look out for anticipated amendments during the present session of the Imperial Legislature, ought not to be neglected.

LEGAL PROTECTION—THE LAW OF DEFAMATION.

Whether or not self-defence be the *first* law of man's nature, experience has taught us that his impulses are prompt and vigorous to vindicate his person and rights. These, in the absence of superior protection, it may well be contended he has a right to himself to defend.

The laws of every civilized community are designed to afford this superior protection; but the law goes only a short way in protecting from injuries by mere words. A man's truth, his honesty, his courage, may be falsely impeached, the honor of his wife or daughter may be publicly, brutally, and causelessly assailed, yet he has no legal protection—no legal redress. So it is with many other offences against morals, which operate to the injury of individuals, and tend more to destroy a man's peace and happiness, than loss of property or injury to his person.

When laws fail to provide adequate redress, the natural tendency of an aggrieved party is to seek it for himself. Nothing can be more dangerous to the peace of Society than this, and we often find that greater wrongs are done in a vengeful act of self-redress, than in the perpetration of the original wrong.

A very cursory examination of our laws will show how many of the rights dearest to man have no legal recognition or protection; how easily and how safely an unprincipled ruffian may injure and destroy the peace of families—the only restraint being the dread of individual vengeance, and this the law, we admit wisely prohibits. But is this demand of forbearance expecting too much of human nature? How can we be astonished when men smarting under a sense of previous wrong, undertake to do justice to themselves when the law denies it? Is it a matter for surprise that this wild kind of of justice leads to excesses dangerous to the well-being of Society? A volume might be written on this topic.

We draw attention to an article from the *Law Times* on another page upon the unsatisfactory condition of the law of defamation in which that branch of the subject is very ably examined. The article will repay a perusal, and we trust may lead some legal member of the Legislature to devise a reform reaching an evil so plainly indicated.

In connection with this point we may mention a minor evil, which, if we rightly remember, has been remedied by an Act of the British Parliament. We mean abusive language by cabmen and stage drivers, &c. Writing from memory, we think that this is made punishable in England on summary conviction before a Magistrate, who is authorized to impose a fine on the offender.

Whatever differences of opinion may exist as to the extent to which verbal slander may be recognized by law as a civil injury, we think that all will agree in the justice of *punishing* persons who use abusive and insulting language, and particularly the class of persons we have named, and with whom the public are most often in contact.

In cities and large towns particularly, such a law is highly desirable.

Were a Justice of the Peace to have power to impose a fine for abusive and insulting language, we would have fewer cases for assaults before Magistrates. It is illegal no doubt to commit an assault however gross and improper the provocation by mere words may be, but the most peaceable men are at times carried beyond the limit of law under such circumstances, and blood from the nose of the aggressor punishes what the law will not reach. Enable the law to punish the original wrong doer, and there will cease to be a shadow of excuse for those who would take punishment into their own hands.

THE DISTRIBUTION OF THE ESTATE OF INTESTATES IN UPPER AND LOWER CANADA.

In our calendar for this year issued with the January number will be found a Table of distribution of Personal Estates of Intestates, according to the laws of Upper Canada, and a similar Table according to the laws of Lower Canada.

Any one who reads them through, comparing them as he reads, will discover a difference between the two Tables. The reason of disagreement is attributable to the fact that the law in each section of the Province has a different origin. That of Upper Canada is as old as the Statute 22 & 23 Car. II. cap. 10, which was passed in the year 1670, and is without alteration or amendment the Law of England to this day. That of Lower Canada is the old French Law preserved to that part of the Province by the Quebec Act, 14 Geo. III. cap. 87.

The question is, which of the two is the more equitable? We cannot help thinking that ours is not. The Student of the Civil Law finds in it traces of the Theodosian Code in its roughest state, unsoftened by the Novels of Justinian, while in the Table of Lower Canada he finds an offspring of the *Corpus Justinianeum*. We require no further proof of this than what we may be allowed to call the *patria postestas*—the right, according to our law, of the father of an intestate to the property of the latter to the exclusion of the intestate's brothers and sisters. This, as mentioned in an article elsewhere, for which we are indebted to the English *Law Magazine and Review*, was the Roman Law until the 118th Novel of Justinian. The Law of Lower Canada is not open to the same objection. If it had nothing more to recommend it than the absence of the *patria postestas*, we should upon this ground alone, all other things being equal, conceive it entitled to rank before ours.

Our object is not, however, urgently to demand an amendment of the Law of Distribution. No such change is positively required, because no hardship is generally felt. Besides, there is not the disposition to change. Many will say that the parent country having for two centuries been contented with the Act of Charles the Second without amendment, it would ill become us to show dissatisfaction. That respect which age begets surrounds the handiwork of Sir Walter Walker, (see 1 Lord Ray'd. Rep. 574) and may probably preserve it for generations to come.

Most men who die intestate leaving property are married men having families. When such is the case, the widow is in Upper Canada entitled to one-third, and the children to the remaining two-thirds. In Lower Canada the children take the whole of their late father's personal property, to the exclusion of the mother. But owing to the *Commu-nauté de biens*, a rule of law which exists in Lower, but not in Upper Canada, the widow is not in such case left destitute. Though giving the preference to the law of distribution in Lower Canada, we do not think it free from objection. There are points in each Table of Distribution open to objection; from which circumstance we argue that a better table than either might be produced from a combination of both.

It is seldom that an Upper Canadian lawyer gives himself any trouble about the Laws of Lower Canada, or *vice versa*; but we hope to see the day when such will no longer be the case. As Upper and Lower Canada compose one Province, having one Legislature, it ought to have one set of laws, civil as well as criminal. From what we know of the laws of Lower Canada, there are many good things which we might adopt with advantage. Those in Lower Canada who know anything of our laws will, we believe, return the compliment. The truth is, that neither system is perfect, and that neither section of the Province will adopt the whole law of the other to the entire exclusion of its own. The first step towards assimilation is inquiry. Until our legislators deem it wise to have the inquiry made by means of committees or otherwise, we must remain as we are—alien to each other. Our country is the same. Our wants are the same. Our hopes are the same. Our destiny is, we trust, the same. We are subjects of the same Queen, and should be governed by the same laws.

The recent codification movement of Mr. Cartier, the Attorney General of Lower Canada, is deserving of support. The more the law of Lower Canada is reduced and systematized the better shall we be able to understand it. The more we understand it, the better we shall like it. The more we like it, the more likely shall we be to assent to a fusion, and the less likely in so doing to create confusion.

Judging from the speech of the Governor General on the opening of Parliament, (noticed elsewhere,) an effort will be made during the present session to assimilate the commercial law of Upper and Lower Canada. We hail the announcement with delight. Every such step is an advance in the right direction—a partial realisation of an end most devoutly desired.

COUNTY CROWN ATTORNEYS' ACT.

In our February Number we drew attention to two or three of the provisions of the County Crown Attorneys' Act, and offered some suggestions in reference to the prohibition contained in the fourth section by which County attorneys and their partners in business are debarred from acting or being concerned for a party charged with a criminal offence.

With many candidates for the office in each county it would seem almost impossible to guard against a retainer that might afterwards, when a party received the appointment, militate against the enactment in the fourth section, and we have received some communications which leave no room for doubt. The question is now what course should be taken by a county attorney who has by himself or his partner in business been concerned and acted for a party bound over for trial at the sessions before such County attorney actually received the appointment.

In the first place, it must be perfectly obvious that if not illegal it would be objectionable to act for the Crown against such party, notwithstanding the county attorney might not have had personally any knowledge of the case. There would be a feeling of suspicion in the mind of the party aggrieved and prosecuting, and perhaps also on the part of the public that the conduct of the prosecution was more or less affected by previous relations and knowledge of the case.

True or false, such a position should on every account be avoided. If the county attorney was in fact personally *engaged and concerned, his after acting in the prosecution* would seem to be a palpable violation of the law.

We think that the provisions of the tenth section afford the means of escape from the dilemma. It provides that in case of the illness or *unavoidable absence* of the county attorney the senior Judge may appoint a barrister to act for him. Now in the case put there arises a valid cause of "unavoidable absence." In every day practice we see Judges absenting themselves from the trial of a cause because of some near relation being a party to the action, or because of their having some interest in the cause. This principle applies in a degree to the matter under consideration, for if it would be manifestly improper or a violation of law, for the County attorney to act for the Crown in any particular case, his absence must be considered *unavoidable.*

What we have said of course applies to the retainer of the individual or his partner in business *before* his appointment as county attorney; for if he be concerned after his appointment it would seem to work a forfeiture of the office; at least it would be a sufficient cause to justify the officer's removal.

To any one unfortunately placed in the dilemma referred to, we would suggest an early communication of the facts, accompanied by a request from the county attorney to the county Judge to appoint a Barrister under the tenth section of the Statute to act in the particular case.

This should be done at once, and certainly before the sittings of the Quarter Sessions, that the Barrister appointed may have time to examine the papers and get all necessary proofs ready for the trial.

As we read the Act the Barrister appointed must have the statutory qualification; for by the second section no person "shall *act in the capacity* of County attorney" who shall not be a Barrister of three years standing at the Bar of Upper Canada, and a resident in the County.

CHANCERY.—THE SILENT WORSHIPPERS.—THE RECENT ORDERS.

By whomsoever uttered, truth is eternal, and truth fears nothing but to be concealed.

When, not many months ago, we drew attention to the evils of the Court of Chancery, we but gave voice to the muttering of discontent from the profession. Our appeal for assistance in exposing the blotches of the system, was not in vain, as a reference to the communications of "A City Solicitor," and others will show.

Those who worship things as they are, have over and over again been challenged in this Journal to support these idols, but silent have they remained up to this hour. Not one has been bold enough to take the field against us, or any of our correspondents. Is it because they lack the *talent necessary to display their cause in the best light?* No! There are amongst them men of ability and learning. Why is it then that they are "silent still, and silent all?" We answer; because although they may have the stronger sword, we have the better cause—we have truth and justice on our side.

Really we begin to feel some compunctions. It seems ungenerous to taunt those with defeat who do not lift a hand in defence, who have not even uttered the cry of the Barons, *Nolumus leges Angliæ mutari.*

If the contest were personal, we should be without excuse in persevering, but as it affects the public interests largely we cannot remain silent, without a compromise of principle, and even if we ceased, the profession have now taken up the question in one of its details, and public attention has been fairly aroused. From small beginnings much has already arisen,—the spark has fairly caught the dozed parts in the fabric of Chancery procedure, and unless they are completely removed, the edifice will be burned to the ground.

Besides drawing complaints in general, from the profession to charges in particular and directing general attention to the Court, it is possible we may have roused the slumbering energies within, for in addition to the printed rules referred to in the last letter of "A City Solicitor," elsewhere will be found a set of rules issued, which *bear date* the sixth of February, evidently intended to prevent the present delay in proceedings, for adding subsequent incumbrancers.

These rules effect something in that way, and we are thankful for them, but they are too limited, and do not touch the case alluded to in "Coadjutor's" letter, where

the party sought to be added instead of being an incumbrancer, (as mortgagee, &c.,) is a subsequent purchaser of the whole or a part of the equity of redemption. To say that a mode of adding a party who has a subsequent mortgage on the place, or rather the equity of redemption of the place, of double its whole value, frequently allowing him afterwards to set up any defence he can, if sufficient for such purpose, is not also sufficient to add a subsequent purchaser of the equity of redemption of the place, is simply an arbitrary distinction without any difference in principle,—as strange in theory as it is perplexing and injurious in practice. Yet even these last rules by leaving such classes of cases untouched, will have that effect.

CHANCERY.—THE MASTER'S OFFICE.

The importance of the Master's Office to Chancery procedure, is seldom rightly estimated.

It is an office which requires a knowledge of accounts, a knowledge of practice, a knowledge of law, and above all, a clearness of thought and a promptitude of action. What boots it though decrees be obtained ever so quickly, if they are to come to a dead stand in the Master's Office? What is the use of any judgment if it is not to be enforced, or enforced only after months of vexatious and perhaps ruinous delay? In Courts of Law there is "speedy execution," but in Courts of Equity there is no such thing as a "speedy Master's Report."

The delays of the Master's Office having become greater and greater, and consequently more insufferable, a meeting of the profession is summoned. That meeting is convened on 30th January, and a Committee of five is appointed "to report upon the present state of the Master's Office and to suggest reforms." The Committee report, and their report is adopted. What a tale does it unfold? Notwithstanding the assistance of the Judges and of the Registrar, each and all of whom share the work which ought to be done in the Master's Office, the business of that Office is not kept down. Only under *fortuitous* circumstances can an appointment be obtained from the Master at a shorter interval than *five* weeks from its date. When the appointment is obtained, the time allotted frequently proves insufficient in duration to dispose of the matter under investigation. Where, as often happens, proceedings before the Master are of such a nature as to require a series of appointments, a large portion of the time secured by the subsequent appointment is occupied in ascertaining what was done at the previous one, and in endeavoring to resume the investigation at the proper point. Why in the name of common sense this frittering away of time and patience?

The committee not only reported upon the state of the Master's office, but suggested reforms, viz., an *additional* Master, a *new* master of high ability, or references to *persons selected by the Court or litigants.*

Nothing more remains for us to do except to direct attention to the Report of the Committee, and ask for it a careful perusal. It is a temperate and sensible document prepared by men conversant with the evils which they lay bare, and well qualified to suggest necessary remedies. So much we can say with truth; but doubt if much can be accomplished by partial remedies—the evils lie deep. For the present we content ourselves by allowing the Report to speak for itself.

Report of the Committee appointed at a meeting of the Legal Profession, held on the thirtieth day of January last, when it was resolved,

That Messrs. Bacon, Hector, A. Crooks, Hemings, and W. Davis, should be a committee to report upon the best mode of expediting reference and proceedings after Decree.

Your committee after a careful investigation and consideration of the object referred to them by the foregoing resolution, beg leave to report as follows:—

They find that a portion of the business involved in the carrying into effect the Decrees and Orders of the Court, is disposed of by the Judges sitting in Chambers; and that a much greater amount of similar business is transacted by the Registrar.

Your committee find that this interposition of the Judges and Registrar is necessitated by the backward state of the business in the Master's office, but your committee beg leave to observe, that there would be full occupation for the Judges and Registrar, even were their attention solely confined to the discharge of the duties peculiarly appertaining to their respective offices.

Your committee find that only under quite fortuitous circumstances can an appointment be obtained from the Master for the transaction of business at a shorter interval than on an average of five weeks from the time of obtaining the same, and that when appointments are made, the time frequently proves insufficient in duration to dispose of the matter under investigation: that it then becomes necessary to procure another appointment which is not obtainable at a shorter interval than the previous one, and that in many instances a succession of similar appointments at long intervals takes place whereby the progress of the suit is delayed for a period of time exhaustive of the patience of all parties concerned, and in some instances affecting or endangering the efficacy of the relief intended to be conferred by the Decree.

Your committee find that when, as often happens, proceedings before the master are of such a nature as to require a series of appointments, a large portion of the time secured by the subsequent appointment is occupied in ascertaining what was done at the previous one, and in endeavouring to resume the investigation of the case at the proper point. This cause of delay and waste of time would be altogether or greatly obviated were the investigation interrupted by intervals of shorter duration than is now the case, or if the proceedings could be carried on continuously, *de die in diem*, until the matter is disposed of.

Your committee find that with the view to the efficient prosecution of proceedings after decree it is necessary that an appointment should be procurable at a not greater distance

of time than a fortnight, and that when procured sufficient time should be granted to allow the subject under consideration to be disposed of without the necessity of another appointment.

Your committee find that as the business of the Court is increasing, and as a very large portion of the arrearge of business before decree has just been disposed of by the delivery of upwards of sixty judgments, there will shortly be so great an addition to the number of references to the Master, that no appointment will be procurable under three or even four months.

Your committee find that one Master possessing only ordinary ability could not dispose of the business which now properly appertains to his office, meaning by this as well the business now actually transacted by the present Master as that disposed of for him by the Judges and Registrar; and that additional or substituted machinery is absolutely necessary to relieve the Master's office of the continued and increasing pressure of the business peculiar to it.

Your committee would further observe, that some portion of the present arrearage in the Master's office would not have occurred had the Master entrusted his clerk with the taxation of ordinary Bills of Costs and the taking of accounts involving mere matter of calculation.

Your Committee would further beg leave to report that the length of time which elapses between the commencement and final determination of chancery suits, and which is so injurious to suitors and annoying to practitioners of the Court is to a great extent caused by the circumstances in this Report alluded to, and that the profession at large without a single exception known to your committee, however diverse may be their opinions as to the best remedy for the evil, is unanimous in attributing this delay to the Master's office, and that whatever exertion may be made on the part of the Judges and the Bar in the prosecution of suits to Decree, such Decrees are often rendered migatory by the delay occurring in the proceedings on references under them, which references instead of being closed in a few weeks as they ought to be, are prolonged for at least as many months and in some instances for years.

Your committee would therefore suggest, that under these circumstances, and with the view of providing a remedy to meet them, the Governor in Council should be respectfully memorialized to take this subject into his consideration.

And your committee would submit the adoption of one of the following modes, without prejudice however to the adoption of any other mode which may hereafter be better adopted to diminish the evil complained of:—

First,—They would recommend that an additional Master should be appointed, and that the Master's clerk should be entrusted with the taxation of costs and the disposal of references which entail only matters of calculation: or,

Secondly,—A new Master might be appointed, but he should by a person of high ability, and of such legal training and qualification, as would enable him to discharge with efficiency as well the judicial as the ministerial functions of his office, and should be assisted by his clerk as above mentioned: or,

Thirdly,—A Jurisdiction might be conferred on the Court to empower it to order references to referees either selected by the parties litigant or by the Court, and giving to such referees and their proceedings the same power and effect as if the reference had been to the regular Masters of the Court.

All of which is respectfully submitted.

(Signed,)

W. VYNNE BACON.
JOHN HECTOR.
ADAM CROOKS.
G. HEMINGS.
W. DAVIS.

THE COUNTY JUDGES AS SERVANTS OF ALL WORK.

The County Judges we have said over and over again, are most convenient functionaries. Whenever a bill is before the Legislative, giving something new to be done, and it is not thought wise to risk the measure by causing any cost to the Country, the anxious stateman, puzzled to know how he can have work done without cost, finds relief in the happy suggestion, "Let the County Judge do the needful." If any measure is brought forward, requiring safe and intelligent local administration, the thought of appointing and paying men for the purpose never presents itself.—The local Judges are pounced upon, and the local Judges are required to do the work. Whether it be a referee to examine a party, or to adjust an account—an auditor to examine public accounts—a parliamentary commissioner to take evidence in a controverted Election, or a medium through whom to obtain land for a railroad that is needed—the work is handed over to the County Judge.

All this is very well within proper limits, and we quite approve of making public servants do a good day's work for a fair day's pay, but if more work is given than can be well performed, some portion will be neglected, or the whole will be imperfectly done. Now, we venture to say, that there are few County Judges who are not fully and constantly employed with their legitimate duties. By legitimate duties we mean the business of the County Courts, the Division Courts, Courts of Quarter Sessions, and Insolvency Courts, together with other local business of a judicial character, and matters referred to them from the Superior Courts. Much of this duty requires to be performed away from home, and involves an absence of many months in the year. No one of course supposes that the whole of a Judge's work is confined to his labors in Court; those in his library, if less trying, are not less arduous, and take up much of his time. A Judge is appointed to perform all the duties already annexed to his office, but we admit there is a tacit understanding that he will perform any additional duties *of a judicial character*, which the Legislature may, from time to time, impose upon him. But there is certainly no undertaking or liability to perform business of a non-judicial character. This should be kept in mind by the Legislature when imposing new duties on the County Judges, as should also their ability to perform additional work of a legitimate kind. If they be over-burthened with business, the suitors who have certainly the first claim, will be the sufferers, and the efficiency of the local Courts must inevitably be impaired by taxing *too* heavily the officer who does the whole work in them.

In England there is the same tendency as here to gorge the County Judges with work, and although there the Judges

have not nearly so much to do as with us, fears similar to those we have expressed are entertained. In the appendix to the Common Law (Judicial business) Commission we find the following language: "With regard to the County Courts, these are no doubt most useful tribunals for the recovery of debts, and the determination of trifling disputes; but if the present system of throwing business of every description into them—insolvency, &c.—is continued, and if their jurisdiction is still further increased, it seems to me to be utterly impossible that the present number of County Court Judges or even double the number can do the work efficiently, and the result must be that yet another system of local Courts must be established, or the County Courts will be neither efficient in small nor satisfactory in important matters."

As we have on a previous occasion remarked, it does not follow that because our County Judges have well and satisfactorily performed the duties imposed upon them that they can do an unlimited amount of work. In Upper Canada as well as in England, to use the words of a cotemporary, "there is no small risk of making the County Court Judges the judicial or rather jurisprudential servants-of-all-work of the State; and that everything of a professional nature which no one else is found to discharge will be given to them to do. We should not be surprised indeed if some of our legislators were to go even beyond this, and were to propose that the County Judges should take the command of the regiments of militia or officiate at the marriage of persons whom the clergy were prohibited by the canons of the Church from uniting in wedlock."

We respectfully suggest that before new judicial work is imposed, the Legislature should ascertain if all the County Judges will be able to perform it without injury to their efficiency, and that on no account whatever should non-judicial duties be assigned to them.

THE LAW OF LIBEL.

Lord Campbell has, in the English House of Lords, introduced a bill to amend the law of libel. Its object is to protect reports of proceedings in Parliament, and all faithful reports of public meetings, where no loss or damage has been done by the publication. This far and no further does the bill go; but it is thought that great efforts will be made to introduce into the law of libel some other of the many amendments which it requires.

DELIVERY OF JUDGMENTS.

Queen's Bench—Monday....1st March, at 10 o'clock, A.M.
" " Saturday..6th March, at 11 o'clock, A.M.
Common Pleas—Monday...1st March, at 2 o'clock, P.M.
" " Friday.....5th March, at 10 o'clock, A.M.

RULES UNDER THE CRIMINAL APPEAL ACT.

Rules made by the Judges of the Superior Courts of Common Law in Upper Canada, under the Statute passed in the twentieth year of Her Majesty's Reign, and in the year of our Lord 1857, *intituled "An Act to extend the right of appeal in criminal cases in Upper Canada."*

IN THE QUEEN'S BENCH AND COMMON PLEAS, HILARY TERM, 21 VIC

IT IS ORDERED,

1stly—That in all cases of appeal from the judgment of the Court of Quarter sessions, under the said statute notice of such appeal shall be given by the person convicted, or his Attorney to the county Attorney for the county in which the conviction shall have taken place within six days from the time of sentence being passed—or in case there shall be no county Attorney for such county, then to the Clerk of the Peace thereof—and an affidavit of service of such notice shall be filed in the superior court appealed to, with the papers directed by the said statute, to be transmitted from the court of Quarter Sessions.

2ndly—That a copy of the indictment and of any subsequent pleadings, and of the verdict indorsed upon the indictment shall be sent with the proceedings directed by the said statute to be transmitted—and that where the new trial has been moved for upon the ground that the evidence did not warrant the conviction, a full statement of the evidence shall be sent with the case, signed and certified in the same manner.

3rdly—That every case sent from the Quarter Sessions shall state whether judgment on the conviction was passed, or postponed; or the execution of the judgment respited; and whether the person convicted is in prison, or has been discharged on recognizance of bail to appear and receive judgment.

4thly—That in every such case of appeal from a court of Quarter Sessions, the original case signed by the Recorder or Chairman of the Court and four copies of such case, one for each Judge—and one for the county Attorney or other counsel for the crown shall be delivered to the clerk of the court appealed to, at least *four* days before the sitting of the said court—provided that where the new trial has been moved upon the evidence only one copy of the Report of the evidence in full need be filed, in addition to the statement of the evidence which has been certified, and that when any case is intended to be argued by counsel or by the parties, notice thereof be given to the clerk of the court appealed to, at least two days before the day appointed for argument—which shall be one of the paper days during the term.

5thly—That upon any application for a new trial to either of the superior courts of common law, by or on behalf of any person convicted before a court of Oyer and Terminer, and Gaol Delivery, a copy of the indictment and subsequent pleadings, if any, and of the verdict indorsed upon the indictment and a copy of any written instrument or writing on which the indictment is founded, the whole to be certified by the clerk of assize or other officer having custody of the same, shall be filed in the court with the motion paper for a new trial.

6thly—That in every such case as is mentioned in the last preceding rule, where the person convicted has been defended by counsel at the trial, a detailed statement of the evidence approved by the judge who tried the case shall be furnished to the court of appeal, by the defendant, at the same time with the copy of the indictment.

7thly—That upon any application for a new trial to either of the superior courts of common law, by or on behalf of any person convicted before any court of Oyer and Terminer, or Gaol Delivery, if such court shall grant a rule to shew cause against the application, such rule may be made upon the At-

torney General, and it must contain a distinct statement of the grounds upon which the new trial has been moved, or such of them as shall have been entertained by the court, and the rule may be made returnable according to the general practice of the court, unless it shall be otherwise ordered; and shall be served upon the Attorney General at least two days before the same is returnable.

8thly—That if in any criminial case in which a question, or questions shall have been reserved for the opinion of either of the superior courts of common law under the statute passed in the fifteenth year of Her Majesty's reign, intituled "An Act for the further amendment of the administration of the criminal Law," the person or persons convicted shall move for a new trial, then in case the court shall grant a rule to show cause, all further proceeding upon the case reserved and stated by the judge who presided at the trial shall thenceforth cease.

9thly—That in all cases of appeal to the court of Error and Appeal under the said act passed in the twentieth year of Her Majesty's reign it shall be written on the back of the copy of the indictment filed in the court where judgment is appealed from that the conviction of the defendant has been affirmed —which minute shall be signed by the Chief Justice, or in his absence by the senior puisne judge of such court; and the allowance of the appeal, when granted under the fourth clause of the said act shall be written immediately thereunder or elsewhere upon the back of the said copy of indictment—and the said copy of indictment and other pleadings, with such minute indorsed thereon, shall be delivered into the court of Appeal in open court by the chief Justice, or in his absence by the senior puisne judge of the court whose judgment has been appealed from, together with such copy or report of the evidence given upon the trial as was in possession of such court.

10thly—And that whenever an appeal to the court of Error and Appeal shall be allowed in any criminal case under the statute a minute of such allowance shall be forthwith sent by the chief justice of the court or by one of the judges thereof, who shall have signed such allowance to the judge who presided at the trial, or in case of his death or absence to the Governor General of the Province in order that the execution of the sentence may be respited when that shall be proper to be done in consequence of such appeal.

(Signed)

JNO. B. ROBINSON, C. J.
WM. H. DRAPER, C. J. C. P.
A. McLEAN, J.
ROBERT E. BURNS, J.
WM. B. RICHARDS, J.
JOHN H. HAGARTY, J.

Toronto, 13th February 1858.

LAW REFORM.

We subjoin an extract from the Vice-Regal Speech delivered on 26th of last month on the occasion of the opening of the Provincial Parliament. It foreshadows the law reforms for which may look during the present session. Several of them have been advocated in the columns of this Journal.

Towards the close of last year commercial relations both in Europe and in America have been very much disturbed. In these matters, as you well know, the welfare of every Country is more or less affected by the condition of others; and thus an effectual remedy for such evils is rarely to be found within the reach of any one community. We have reason to congratulate ourselves on the prudence of our commercial men; and we may be proud of the position of our banks, inasmuch as they stand almost alone on this Northern Continent, in having continued to meet, without shrinking, their obligations to pay in specie. Yet, there is no doubt that the pressure has been, and still is, severe on our merchants, our landowners, and our farmers. There is no doubt, too, that much may be done to amend and improve our own commercial legislation. I earnestly recommend these matters to your attention, and I therefore solicit your consideration of the following subjects.

The expediency of assimilating the Commercial law of Upper and Lower Canada. The law of imprisonment for debt, and the law of Insolvency in Upper Canada. The law regarding fraudulent assignments and preferences, and that relating to the interests of money in commercial transactions of every kind.

It appears to me also that the Jury laws require revision, and that the Municipal law of Upper Canada, may be with advantage amended and consolidated.

There are no Statutory provisions more important to the Country, than those which regulate the franchise, and the trial of Controverted Elections.

Being of opinion that the present Acts require amendment, I trust that you will do all in your power to improve and simplify the existing system. I believe too that it would be expedient to secure the proper registration and protection of all qualified voters.

MAGISTRATES MANUAL.

We have much satisfaction in being able to announce that the continuation of this much needed work will be supplied in the pages of our Journal. Though not generally known, we would mention that it was commenced in Volume I. and continued in Volume II., but owing to pressing engagements of the writer, and other causes, discontinued with the March Number of Volume III. It will in our next number be resumed, and published monthly till completed. We rely upon the support of the Magistrates in this undertaking, and hope we shall not be disappointed.

DECISIONS BY COUNTY JUDGES.

We desire to thank His Honor Judge Chewett, of the County of Essex, for a copy of his useful and interesting judgment in the Essex contested election case. We also thank W. G. Draper, Esq. for his kindness in furnishing us with a report of a decision under the C. L. P. Act, 1856, by the Judge of the United Counties of Frontenac, Lennox and Addington. We are at all times glad to give a place in our columns to well considered judgments delivered by the Judges of County Courts.

HARRISON'S C. L. P. ACTS.

We learn that Mr. Harrison's work on the Common Law Procedure Acts is at length finished and ready for delivery. It may be had upon application to Maclear & Co., 16 King Street East, Toronto. The price is $6.

LAW SOCIETY.

Two permanent lecturers have been appointed by this Society; the one on law, and the other on equity. S. H. Strong, Esq. is the lecturer on equity, and J. T. Anderson, Esq. the lecturer on law. We congratulate the Society upon the selection of two gentlemen so well qualified to give satisfaction.

NEW RULES.

Owing to the obliging attention of Alex. Grant, Esq., Registrar of the Court of Chancery, we are enabled to publish in this number late Rules of the Court of Chancery. We have also to thank L. Heyden, Esq., Clerk of the Court of Common Pleas, for permitting us to copy the Rules promulgated by the Courts of Queen's Bench and Common Pleas, under the Error and Appeal Act of last Session, which rules are also published in this number.

CHANCERY ORDERS.

February 6th, 1858.

PROCEEDINGS IN SUITS FOR FORECLOSURE OR SALE.

In suits instituted by mortgagees or judgment creditors for sale or foreclosure, when all incumbrancers have not been made parties, or further inquiries are sought, the complainant is to bring into the Master's office together with the decree, a *certificate from the registrar of the county wherein the lands* lie, setting forth all the registered incumbrances which affect the property in the pleadings mentioned, and such other evidence as he may be advised; and upon his *exparte* application for that purpose, the Master is to direct all such persons as appear to him to have any lien, charge, or incumbrance upon the estate in question, to be made parties to the cause.

When the bill is filed by a subsequent incumbrancer seeking relief against a prior mortgagee, such mortgagee must be made a party previous to the hearing of the cause. But when the plaintiff in any such case prays a sale or foreclosure, subject to the prior mortgage, such mortgagee is not to be made a party either originally or in the Master's office.

Upon the office copy of the decree to be served upon persons made parties in the Master's office, under the provisions of this order, there must be endorsed a notice to the effect set forth in schedule A. to these orders annexed.

When a reference has been directed as to incumbrances, or to settle priorities, in any case provided for by this order, the Master, before he proceeds to hear and determine, is to require an appointment to the effect set forth in schedule B. to this order annexed, to be served upon all persons made parties before the hearing, whether the bill has been taken pro confesso against such persons or not.

When any person who has been duly served with an office copy of the decree, or with an appointment under the provisions of this order, neglects to attend at the time appointed, the Master is to treat such non-attendance as a disclaimer by the party so making default; and the claim of such party is to be thereby foreclosed, unless the court order otherwise, upon application duly made for that purpose.

The Master's report in the cases specified in this order, must state the names of all persons who have been made parties in his office, and of those who have been served with the appointment hereinbefore provided. The names of such as have made default, having been duly served, must then be stated; and the report must then go on to settle the priorities, &c., of such as have attended, and these latter are to be certified as the only incumbrancers upon the estate.

Where a mortgagee has proceeded at law upon his security, he shall not be entitled to his costs in equity, unless the court, under the circumstances, shall see fit to order otherwise.

MASTERS AND DEPUTY-REGISTRARS.

The Masters and Deputy-Registrars appointed by this Court, shall in addition to the fees already payable to them, be entitled to receive upon the setting down of causes for the examination of witnesses, the sum of one pound and ten shillings for each case so to be set down.

(Signed) WM. HUME BLAKE, C.
J. C. P. ESTEN, V. C.
J. G. SPRAGGE, V. C.

SCHEDULE A.

Whereas a suit has been instituted by the within named complainant for the foreclosure (*or as the case may be*) of certain lands, being the west half of lot No. 10, in the second concession of the township of Toronto, (*or some other sufficient description of the property*) * and I have been directed to enquire whether any person other than the plaintiff, has any charge, lien, or incumbrance upon the said estate, and whereas it has been made to appear before me that you have some lien, charge, or incumbrance upon the said estate, and I have therefore caused you to be made a party to this suit, and appointed the day of for you to appear before me, either in person or by your solicitor, to prove your claims.

Now you are hereby required to take notice:

1st. That if you wish to apply to discharge my order making you a party, or to add to or vary the within decree, you must *do so within fourteen days from the service hereof; and if you* fail to do so you will be bound by the decree and the further proceedings in this cause as if you were originally made a party to the suit.

2nd. That if you fail to attend at my Chambers at Osgoode Hall, in the city of Toronto (*or as the case may be*), at the time appointed, you will be treated as disclaiming all interest in the property in question, and it will be disposed of in the same way as if you had no claim thereon, and your claim will be in fact foreclosed by such non-attendance.

(Signed) A. B., Master.

SCHEDULE B.

A. B., plaintiff,
and
C. D., defendant.

Having been directed by the decree in this cause to enquire whether any person other than the plaintiff has any lien, charge, or incumbrance, upon the lands in the pleadings mentioned, being the west half of lot 10, in the 2nd concession of the township of York (*or some other plain description*), I do hereby appoint the day of at my Chambers at Osgoode Hall, in the City of Toronto (*or as the case may be*) to proceed with the said enquiries. And you are hereby required to take notice that if you fail to attend at the time and place appointed, you will be treated as disclaiming all interest in the land in question, and it will be dealt with as if you had no claim thereon, and your claim will be in fact foreclosed.

(Signed) A. B., Master.

* When the decree is for sale of the debtors' lands generally at the suit of a judgment creditor, say for the sale of all the lands of (*the debtor*), within the county of York (*as the case may be*).

DIVISION COURTS.

OFFICERS AND SUITORS.

BETTER REMUNERATION TO BAILIFFS.

The following is a copy of Petition now in course of circulation, as we are informed. We very willingly give it publicity, and hope it may appear before Parliament numerously signed:—

To the Honorable The Legislative Assembly of the Province of Canada, in Provincial Parliament assembled.

The Petition of the Bailiffs and others of the County of Division Court No.

Humbly sheweth, That in all revisions of Fees and New Tariffs, the interests of the Bailiffs of the Division Courts have been overlooked.

Wherefore your Petitioners humbly pray that the following alterations in the Tariff of Fees may receive your approval, and that relief may be given as speedily as possible; and your Petitioners, as in duty bound, will ever pray, &c., &c.

1st. That the sum of ten cents be allowed for every mile necessarily travelled from the Clerk's office, to serve Summons or Subpœna, and in going to seize on Execution or Attachment, where money made or case settled after levy.

2d. That twenty cents ' . allowed for all Summonses requiring personal service on the Defendant, and fifteen cents for non-personal.

3d. That for enforcing executions under forty dollars, there be allowed the sum of fifty cents; and for all over that sum that there be allowed the sum of one dollar.

4th. That the Bailiffs be allowed the sum of two dollars per day, for their services at Court.

5th. That the Bailiffs be allowed the sum of five per cent. on all monies collected under execution.

6th. That for advertising each sale, the Bailiffs be allowed the sum of fifty cents.

Dated at this day of in the year of our Lord one thousand eight hundred and fifty

Our correspondent from whom this copy of Petition was received, remarks,—"In the February No., 1858, you object to *five* per cent. being allowed on monies collected under writs of execution. Five per cent. is allowed in the Sheriff's office, and there it is on large amounts, whereas our executions are in great part small, say £2, £5, and £10, very seldom £25, and we generally run a greater risk and lose more time in calling for the money, than we should have done by selling the goods. At present we get 2½ per cent. if we sell, but nothing if we do not, which is, in fact, offering us a premium to sell a poor man's goods, instead of giving him a few weeks to collect the money,—I do not think five per cent. is too much." * * * "It must be remembered that we get no pay on executions returned 'no goods,' although we may have had to travel 10, 20, or 30 miles to ascertain such facts. Also on summonses, we may have to go several times to defendant's residence before we can serve him personally, and we can only charge for one mileage. In the Sheriff's office on the contrary, they charge for every trip—if they go a dozen times they charge a dozen mileages—and their service fees are far higher than our I have known instances where the Sheriff's Bailiff has arrested a man, and the poundage amounted to £40, and many similar cases in the opposite extreme to what we are allowed. Our fees for arresting on commitment, are 1s. 6d., 2s., 3s., and 3s. 9d., according to the amount."

Our correspondent is mistaken in supposing that we object to five per cent. when money is made after seizure. Nothing of the kind; but where a defendant pays money to a Bailiff before seizure made, and the latter has merely the trouble and responsibility of handing it over, 2½ per cent. seems ample. Besides, in looking at a tariff of fees, no one item can be considered entirely on its own merits; it must be viewed as a whole, in order to form a judgment as to its fairness—in other words, if upon the whole, it is such as to secure a fair and reasonable remuneration to the officer. Our remarks in the February No. must be viewed in this way.

Now as to the tariff specified in the above petition we have no hesitation in saying, that it is no more than just towards Bailiffs, and reasonable in respect to Suitors. As a whole we regard it with favor, and trust that the suggested Table may receive Legislative sanction.

The Petition and proposed tariff have this great merit, they are *brief*.

SUITORS.

Commitment on Judgment Summons.

Notes of English cases, for information of suitors, (Continued.)

Florance et al. v. *Browne.*

This was a Judgment summons. The plaintiffs were distillers, and the defendant, who was formerly a licensed victualler, had lately attended the County Courts as an agent. The debt was contracted in 1848 for rum, and was to have been paid in 28 days, but the defendant left his house before the day of payment arrived; the plaintiffs, however, found out where he had removed to, and put an execution in his house The defendant then called upon the plaintiffs, and saw Mr. Florance, to whom he offered £5 as a compensation, but which was refused. In a day or two after the defendant called again at the plaintiffs' counting house and saw Mr. Davis, the junior partner, whom he informed that he had seen Mr. Florance, who had promised to withdraw the execution on his paying £5. He then produced a written paper which he requested Mr. Davis to sign to that effect; Mr. Davis did so, and the defendant left some duplicates with him as security for the payment of the money on the following day. The execution was accordingly withdrawn, but the money had never been paid. The signature of Mr. Davis had been surreptitiously obtained, and without the sanction or authority of Mr. Florance.

His Honor remarked that the defendant's conduct had been grossly fraudulent, and ordered him to be committed for 20 days.

Wills v. *Burt.*

It appeared the defendant had called on the plaintiff and stated he had a flourishing school, and wanted credit for goods—that the plaintiff asked him how he proposed to pay, and that he replied quarterly. It appeared that upon this statement the plaintiff gave credit. The defendant did not pay quarterly, and it appeared that at the time he called on the plaintiff the defendant was in a state of insolvency. It also appeared that about six or seven months after this the defendant became bankrupt. *His Honor.*—I think that

the statement by the defendant "that he had a flourishing school," when it was not so, was a false pretence within the meaning of the Act; but it appears to me the plaintiff well knew that the defendant was not in good circumstances, therefore I shall not order the defendant to be committed for a longer period than 20 days.

BROOKING V. PERRY.

This was an application made on behalf of a creditor, that the penal authority of the Court might be put in force against Defendant, for having fraudulently contracted debts and having removed and concealed his property with intent to defraud his creditors. Defendant had formerly carried on business in the shop occupied by Plaintiff, but had since become bankrupt, and at the time of the application lived with his brother He was sworn, and stated that this debt to Plaintiff was contracted on the 29th of May, and Plaintiff also proved having on that day sold 15 cheeses to him—the sum due was £11. The bankruptcy occurred immediately afterwards in the beginning of June, but he said he had no idea he was likely to fail until a demand of £500 was made upon him on the 2nd of June. This was not a debt of his own contracting he said, but belonged to the late Mrs. Martin, (with whom he lived) and that he had made himself liable for it; and that on the failure of Mr. W., the executor of Mrs Martin—Mr. K. came upon him for it. He said that had it not been for this, which he did not expect, he should have been able to pay all his creditors. It appeared, however, from questions put by Stogden, who had been professionally concerned in that affair, that defendant had agreed previously to pay by instalments at least a large part of the sum, although as he protested he was not justly liable for it; and the Bankruptcy Court allowed the whole £500 to be proved for against his estate; he had become bankrupt on his own petition to prevent this one creditor he said from coming in to take all his effects. Defendant had not received his certificate, and his examination was adjourned *sine die*. He was further questioned as to the disposal of his household furniture, which seemed since the death of Mrs. Martin in 1848, to have been got rid of to a considerable extent.

A silver cup he had sold to a Jew whom he did not know; a side saddle and bridle he also sold—a mahogany chest, a handsome desk, and a quantity of cheeses he sold together for £3 or £4 to a stranger who carried them away in a horse and cart. A valuable work box and desk he had given to his sister-in-law, as well as presents to his sister.

In answer to Laidman, who appeared as his advocate, he said that he sold these things which as a single man he did not require at a time when he wanted money very much. He had let his brother, who had advanced him money, have £50 just before he failed; but it was urged in his defence that as the repayment was made before the debt to plaintiff was contracted, there could have been no design of defrauding plaintiff by it, and also that it was made before defendant knew that he should be obliged to "knock up."

The Judge, however, said—I am of opinion that this person contracted a debt with plaintiff when he had not the slightest chance of being able to pay it; and that he had been long previously making away with his money and goods with intent to defraud his creditors; this is my impression. I order him to be imprisoned for forty days for having wilfully and fraudulently contracted a debt with plaintiff, not having a reasonable expectation of paying. Laidman asked that the warrant might not go forth for a week, in order that defendant might meet the debt. H. W. Hooper, however, who appeared with Stogden for the creditors, applied to have the warrant issued immediately. The Judge—I order him to be committed at once from the Court; he knows how to get out if he chooses, and I do not think I should do my duty to the public if I gave him an opportunity of eluding this judgment.

MANUAL ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(*For the Law Journal.*—By V——.)

[CONTINUED FROM PAGE 38, VOL. 4.]

EXECUTING WARRANT AGAINST THE PERSON.

When the Bailiff receives a warrant to arrest for any cause or matter wherein a Division Court is empowered to make an order of commitment, he should proceed with diligence to arrest the party named in the warrant, and lodge him in gaol according to its requirements.

When the warrant is an order for commitment made under the "Judgment Summons" clauses, the Bailiff will be liable to an action at the suit of the party who causes the warrant to be issued, for any injury that may arise from his neglect should he, the Bailiff, not use due diligence to effect the apprehension of the party and his lodgment in gaol. For example, if any unreasonable delay take place between the time when the warrant was delivered to the Bailiff and his attempt to execute it, and in consequence thereof the party escapes. Probably the rule applicable to Sheriffs would under similar circumstances of neglect be held applicable to Bailiffs.

WHEN AND WITHIN WHAT TIME WARRANT MUST BE EXECUTED.

On receiving a warrant the officer should see that it bears the seal of the Court, and the signature of the Clerk, and further, if a commitment for contempt, that it has also the seal and signature of the Judge to it.

The arrest may be made at any hour of the day or night, but must not be made on a Sunday. The date of the warrant will show the day on which the order for commitment was made, (Rule 55) and this is material for the warrant continues in force for three calendar months from such date *and no longer*—(Rule 55.)

An arrest will be good if made at any time before the expiration of the three months from the date of the order of commitment, and the debtor being once lodged in gaol *within that period*, may be kept in prison the number of days specified in the warrant notwithstanding the three months during which it has force expire before the party has completed his term of imprisonment ordered by the Court, (Hayes v. Keen, 19 L. T., 90 C. B., 1 C. C. C., 60,) but the prudent course for a Bailiff is to execute every warrant promptly after receiving it.

HOW WARRANT EXECUTED.

The Bailiff will not be justified in breaking open the outer door of a person's dwelling house to execute a war-

rant, nor indeed in the use of any *force* to effect an entrance even to the breaking of a latch. (5 Coke, 92.) An arrest under such circumstances would be void, and render the Bailiff liable to an action, (see Hodgson v. Towning, 5 Dowl. P.C., 410,) but having once got in he may break any *inner* door—so he may break open the outer door of a barn, stable, or out-house—but what has been before said as to executions against goods, will apply in this particular to the execution of warrants, and the caution is repeated that even where force is necessary a demand for admission should be first made and all fair means resorted to before force is employed. Although an officer having reason to believe that a party is in his house may peaceably enter to arrest him, yet he cannot justify even a peaceable entry into the house of a stranger, except by proof that the party was actually there. (Cooke v. Birt, 5 Taunt., 765; Johnson v. Leigh, 6 Taunt., 246.) If after being once arrested the party escape and shelter himself in the house of another, the Bailiff may enter and take him, provided *it be done on fresh pursuit*. (Coke, 92.) The Bailiff should always keep this in mind, that if a defendant escape from custody through his negligence or want of precaution, he will be liable to plaintiff it may be to the whole extent of the claim.

THE LAW OF DEFAMATION.

It is not long since (29 L. T. Rep. 234) that the notorious case of *Highmore* (clerk) v. *The Earl and Countess of Harrington*, suggested to us some grounds for commenting rather severely on the anomalous and defective state of the law of defamation; and we recommend the abolition of the distinction between slander and libel by making all defamation, whether spoken or written, alike actionable and indictable, without proof necessarily in any case of special damage. Special damage, we submitted, and still submit, ought to be considered only when damages are being computed; but the personal right of action, and the public right of indictment, ought to accrue in every case as soon as language of a defamatory nature, has been spoken or written without sufficient justification against another. It would, indeed, be very proper, and very easy, in every such case to discourage excessive litigation, by applying to such, a general right, the common rule in actions of *tort*, that a plaintiff should not recover his costs, even when successful, in an action, unless he recovered a certain amount of damages—say forty shillings—or obtained a judge's certificate; and that the costs of prosecution and defence should also be in the discretion of the judge. But, with these limitations, we hold that the time is come when the Legislature is called upon to reconcile and simplify a most important civil right, by adopting some such a principle as we venture to recommend. The maxim *de minimis non curat lex* has been carried much too far in this case. Its applicability, if it ever existed, has been getting less and less with the increasing stringency of the laws for preserving the public peace, and with the increasing sensibility of people to insult; a sensibility which is not altogether morbid, but founded in a great measure on the general knowledge and experience of the fact that, in the present high-toned state of public principle, or public profession, reputations which once surmounted openly-avowed scandal, are now demolished effectually by a hint—a breath—a civil sneer: how much more, then, by a coarse word of opprobrium and insult.

The laws have not dealt fairly by the people in these matters. They have repealed all the great laws of nature, and instituted *nothing* like a substitute. A man in the presence of a large company of friends, acquaintances, enemies and strangers, may have every term of insult and turpitude, short of an imputation of an indictable offence, applied to him; he may, without the shadow of a pretext, be overwhelmed, by a blackguard, with nearly every word which rouses the inmost instincts of our manhood into justifiable indignation and fury; he may be called "fool," "liar," "rogue," "swindler," "blackguard," "coward;" he may hear the fond mother who bore him, the sweet sister who dotes on him, the loving wife whose soul he is, the daughter who is his pride and hope, spoken of in terms which we can only write in paraphrase—as the vile creatures of the town and the conventionally degraded—why, we could never understand—female portion of the canine species. A man may, and often does—even in what is conventionally the society of gentlemen—hear such language applied to himself, or may learn that it has been applied to him in his absence, and in the presence of others who are almost identical with himself. But the law says:—you must not knock the blackguard down; you must not even raise a menacing finger against him; you must not even, if both you and he are conventionally gentlemen, call him out and shoot him in fair combat; the law will hang you if you do; and society will cut you if you do not; but the law does not notice the latter certainly. Moreover, you cannot indict the slanderer, although you may, perhaps, obtain leave to exhibit articles of the peace against him, by confessing an apprehension of violence from him. You cannot bring an action against him; no, not even if you can prove beyond question that all your friends have cut you in consequence of the charge, or from your toleration of it. Such conduct would probably be held by the wisdom of the law to be very hard towards you, and very unreasonable on the part of your friends. But the damage would not be legally natural or special. It would be too remote—not the natural consequence of the treatment you had suffered—and, therefore, not the foundation of an action. On the other hand, let any of the above aspersions be put into writing, or anything of a derogatory nature, and suddenly there exists, very properly, an actionable libel, although you have suffered no special damage from it.

If an additional argument for speedy legislation on this subject is required, it will be found in the actual uncertainty of the very defective law which exists. As in former times, when grand larceny was a capital offence, judges and juries snatched eagerly at technical quibbles which have lately been swept away, because it is no longer necessary to pervert law in order to prevent judicial murders; so it is curious to notice how distinguished judges and authorities have struggled lately to reconcile law with justice in cases of slander. The result is neither happy nor clear, and there is manifestly a conflict of authority even on first principles. Lately justice has been done in some cases by a sacrifice of law. Thus, in the cause of *Brown* v. *Hill*

and another, tried in the Exchequer before Pollock, C. B. and a jury at the sittings after last Michaelmas Term, the slander substantially alleged and proved was that the female defendant had called the plaintiff a "strumpet," and also "J. E.'s w——," in the presence of J. E., to whom the plaintiff was then engaged to be married. The damage proved by J. E. himself was, that he had, in consequence of these words, refused to marry the plaintiff until she had cleared her character; and the marriage was actually postponed until the action should be settled, although it did not appear that the marriage was unlikely to take place if the plaintiff gained a verdict. Pollock, C. B. was understood to direct the jury, on this evidence, that even if J. E. had refused to marry the plaintiff on the mere words of the female defendant that the plaintiff was "J. E.'s w——," although he must have known whether the charge was false or true; yet J. E. might also not unreasonably infer a general imputation on the plaintiff's character from the specific charge, which would justify him in delaying the fulfilment of his contract to marry the plaintiff. It may be doubted, with great respect, whether this ruling was good law, although it was excellent common sense; but as there was also evidence that the female defendant had applied the term "strumpet" generally to the plaintiff in J. E.'s hearing, there was manifestly sufficient proof of special damage to support the verdict, which the plaintiff fortunately obtained, with £50 damages.

The doubt which is suggested as to the accuracy of the Chief Baron's ruling is founded on the established principle of law, that words of mere abuse, unless spoken of a person in the exercise of his calling, are not actionable in themselves, nor without special damage, which must not only be proved to be the actual consequence, but also the natural and reasonable consequence, of the spoken words. The leading case on this subject is *Vicars* v. *Wilcocks*, 8 East, 1; 2 Smith's L. C. 423. There the slander charged was, that while the plaintiff was in the service of J. O., the defendant accused the plaintiff to J. O. of having cut some flocking cord of the defendant, by reason of which imputation J. O. discharged the plaintiff from his service, and R. P. consequently refused to employ the plaintiff. This declaration was proved, with the variance that R. P. had been partly induced to refuse to employ the plaintiff on the simple fact that J. O. had discharged him. The Court confirmed a nonsuit, which was entered on these facts, chiefly on the doctrine that the plaintiff's discharge by J. O. was "not a legal and natural consequence of the words spoken, but a mere wrongful act of the master, for which the defendant was no more answerable than if, in consequence of the words, other persons had afterwards assembled and seized the plaintiff, and thrown him into a horse-pond by way of punishment for the supposed transgression." As to the damage alleged to be sustained by R. P.'s refusal to employ the plaintiff, it was held that it could not be computed, as R. P.'s refusal to employ the plaintiff proceeded probably as much from the tortuous act of J. O. as from the words spoken by the defendant.

This case has been followed by several which support the same rule that special damage in slander must be a natural and not a remote consequence of the slander. There would, perhaps, be little reason to question this rule if its application had been left to juries, and not restricted, as it has been, by the technical views of judges. As it is, the law as laid down in *Vicars* v. *Wilcocks*, although supported by many later cases, has also been much questioned; and doubts have been thrown out by learned judges, and have been adopted by learned commentators, as to how far *Vicars* v. *Wilcocks* can be supported; and part of that case, viz., that which decides that actionable slander will not lie on special damage accruing from the wrongful act which a third person has been induced to commit by the influence of the slander, may be considered as exploded: (see generally notes to *Vicars* v. *Wilcocks*, 2 Smith L. C. 426, 432; to which add *Hatton* v. *Lott*, 24 L. J. 49, C. P.) But the general principle remains, that special damage in actions of oral slander must be the *natural*, and not the *capricious* consequence of the slander. It may be safely affirmed that this distinction is at once arbitrary, unintelligible, and impracticable; and that all the cases, especially those of a later date, prove that such is its character. Thus, in *Kelly* v. *Partington*. 4 B. & Ad. 645, as in *Vicars* v. *Wilcocks*, although the words were not actionable in themselves, yet they were clearly of a defamatory nature, and were as clearly the cause of the special damage which the plaintiff had actually suffered; and there can be little doubt that if those cases had been decided by the judges who subsequently decided *Knight* v. *Gibbs*, 1 Ad. & Ell. 43, that the damage would have been held to be sufficiently "natural." It was perhaps on this authority, and with reference to the actual fluctuations of judicial opinion on the general principle, that the Chief Baron in *Brown* v. *Hill* thought J. E.'s refusal to marry the plaintiff on account of a specific immorality which the defendant imputed to her with J. E., would in itself have been a natural, and not a capricious and merely wrongful, consequence of the slander as it would seem to have been if *Vicars* v. *Wilcocks*, and *Kelly* v. *Partington* and such cases are law. It is also to be remarked that in *Vicars* v. *Wilcocks* and *Kelly* v. *Partington* and other cases in which the damage has not been held to be "natural," the words may fairly have been considered to have been spoken of the plaintiffs in the way of their business, as they actually lost employment in consequence of the slander. Perhaps, however, the most monstrous case on this subject is one which seems to have been left unnoticed by recent authorities, although itself of recent date. It is that of *Galway* v. *Marshall*, 23 L. J. 78, Ex., in which words spoken of a clergyman and imputing incontinence to him, were held not to be actionable as spoken of him in his profession, because he was not a beneficed clergyman. Had he been beneficed, the imputation would have been actionable *per se*. With such a decision actually law, although doubted at the time by Platt, B., it is unnecessary to multiply arguments to show that all language by which the person of whom it is spoken may be expected reasonably in the minds of a jury to lose standing in the eyes of society—in short, all words, whether spoken or written, which a jury may think to be of a disparaging nature—ought, for the sake of the public peace and private rights, to be actionable, with a judicial discretion as to costs when less than forty shillings is recovered; and while, as in other torts, especially trespasses, the measure

of damages should be unlimited, proof of special damage should only be required at the option of the plaintiff in order to guide the jury in their assessment.—*Law Times.*

THE DISTRIBUTION OF INTESTATES' ESTATES.

It is singular that in this discussive age our statutory scheme of distributing intestates' personal estates has never been impugned, or even considered. It has been accepted at all hands as a piece of unimproveable wisdom, adapted to all conditions of life and all statistics of society; and so thorough has been this acceptation, that its origin has excited no one's curiosity, and its discrepancies from the Novells of Justinian and the continental system, have neither occasioned surprise nor received explanation.

The rude idea, however, of the English mind has been, that this scheme of distribution is either a direct adoption, or an indirect reflection from the civil law, though what may be meant by that ascription is never clearly stated by those who assert it. They leave us in obscurity greater than doubt as to what is the body of Roman law which our countrymen have borrowed their principles from, and at what epoch and under what circumstances they may have done so. They do not tell us whether it is the original system under which the stern republic brought up her hardy children, the system which Gaius and Ulpian elaborated at the close of the second century of our aera, under the influences of the Stoic philosophy; or the system which expanded into truer equity, under the open and acknowledged forces of Christianity. And, if it be imputable to the latter, they do not trouble themselves to tell us whether it is the European system of Theodosius the Second, or the final perfection of the civil law, which the Novells of Justinian founded in the east and for the east. Yet it is plain, that whatever partial assimilation our system may exhibit to all of these, it can only be the legitimate child of that one of them which it resembles in essentials. Such is the common idea upon this subject; but it is remarkable that Mr. Justice Blackstone, whose historical acumen is not in excess, has in his notions upon it stumbled much nearer the truth. He says, (Book II. chap. 32,) "It (*i.e.*, the Act for the distribution of intestates' estates) is little more than a restoration, with some refinements and regulations, of our old constitutional law, which prevailed as an established right and custom, from the time of king Canute downwards, many centuries before Justinian's laws were known or heard of in the western parts of Europe." This is not very scientifically put, but it would show that he was acquainted with the great and grave discrepancies between our system and the constitutions of Justinian, and he felt therefore that it was impossible to identify the one with the other; and as, in the then state of learning on the subject, he could not bring his mind to the conception of any Roman jurisprudence other than the *Corpus Justinianeum*, he could do nothing else than Anglo-Saxonize our law of distribution. He did not know that the common law of Europe was for many centuries a præ-Justinianean Roman law, and that, as it was only exchanged for the other at a late period in Europe, and under circumstances of the freest election, our own law of distribution might more plausibly be ascribed to the former than to an supposed Teutonic custom.

In this state of the question, we think that any inquiry into the true origin of this section of our law may not be a mere matter of curious historical research, but will tend to show in a clearer light certain imperfections appertaining to it, which, though long and unaccountably acquiesced in, are not the less unreasonable and indefensible defects.

The Roman law having been, as we all know, established in Britain, underwent with the rest of the empire all these changes in its principles which were elaborated at headquarters. The great collection of laws embodying these improvements, which bound all Europe, was the code of Theodosius II. This code, which was promulgated A.D. 438, was the common law of Europe for many centuries after the great work of Justinian had become law for the East, and it is to this code that we must ascribe the origin of our own law of distribution. For in it, and in it alone, we find certain specific crudities of legislation which denote the older system rejected by Justinian.

We have evidence of a law of distribution in this country in Anglo-Saxon times. Cnut distinctly declares that an intestate's inheritance shall be divided legally between the wife and children, or amongst the nearest of kin, according to their degree of relationship. It is impossible to state in general terms a law of distribution more intelligibly than this is stated. A law of the same effect is recognized by the conqueror and his successors up to the time of Magna Charta, when the jurisdiction over intestates' estates was solemnly consigned to the ordinary. That the law of Cnut (or the Anglo-Saxon common law), and the law ratified by the Norman Sovereigns of England, and handed over by them to the Ecclesiastical Courts, were identical, can be incontestably proved. The Norman authorities did not introduce the French law on this point; for, far from making this or any other innovation on the plan of distributing Englishmen's effects, they would not willingly allow any distribution at all for many generations after the conquest. This common law of distribution has descended to us in the present day; for we have it contained and confirmed in the 22nd & 23rd Car. II., c. 10. This celebrated statute at its passing made legislatively no new law, but merely enacted the old law, and that old law was not Justinianean; for the five civilians whose opinion is appended to the judgment of Chief-Justice North upon that act, in Lord Raymond's Reports, use this remarkable expression, "our civil law, and the practice of the Ecclesiastical Courts." We also know historically that the Norman kings resolutely prohibited the propaganda of the Justinianean body of laws in this country, after the rest of Europe had established professorships for teaching it, and had greedily embraced its principles.

It is thus certain that we owe our law to another authorship than that of Justinian, and the question remains—is it of Anglo-Saxon creation? or is it an adoption from the European system of Roman law which the Theodosian code contains? We think that there can be no doubt of the latter; for it is preposterous to suppose that the German invaders of our country founded a new private law for their subjects, and that their subjects suddenly forgot their own native private law. Both suppositions are incredible and

must be dismissed. But the private law of the Romanized Briton was the civil law of the Theodosian code, which France herself did not discard for the *Corpus Justinianeum*, "until," says De Fresquet (Traité Elémentaire de Droit Romain, vol. i. p. 40), "an unknown epoch, but which may be placed from the 9th to the 11th century."

Now, our law of distribution, as shown by the statute, is just about the state and degree of the law as laid down by Theodosius—neither better nor worse. In proof of this assertion, we will select one great and salient point of our own law—the right of paternal succession. In this point we are at the stage which Theodosius reached in advance of Pagan law, which Justinian outstripped, and which the French code has finally put upon a just and satisfactory footing. Under the second system of Roman law, before mentioned by us, the Roman father had a right to the *peculium* of his son, to the exclusion of that son's children if he had any. Ulpian says, "Si filius familias miles decesserit, siquidem intestatus, bona ejus non quasi hæreditas sed quasi peculium patri deferuntur."* This harsh principle, though softened by the first Christian emperor, remained substantially the same until Justinian, by his 118th Novell, made the father no more than a joint-heir with the intestate's mother, brothers, and sisters.† In these two contrasted laws we have modes of succession, not merely discrepant, but diametrically opposed in their principles. In the one, the father is all; in the other, he is one amongst many. In the one, we have traces of a hard and artificial social system; in the other, we have nature and equity. But, strangely enough, it is in the early and cramped system that we find the prototype of our own existing rule of paternal succession. And this, while it is a proof amongst others of the source of our law of distribution, is the greatest and most condemnable instance of its insufficiency and want of adaptation to modern times.—While other nations have voluntarily brought themselves within the principles of the Novells, we have with rigid obstinacy kept outside, hugging ourselves the while upon a peculiarity of law which the rest of Europe has been ashamed of for nearly eight hundred years—the old Roman *patria potestas*. Under that power the Roman father had a right to his son's purse because he had a right to his son's person. But the British father, who claims no right to the one, enjoys the other with a total disregard to logic in an unmodified plenitude. Though this is the real and historical origin of the right, no one could be hardy enough to defend it on such merely conservative ground in an age like ours, which has begun to demand a *rationale* for most institutions. Accordingly we find that attempts are made to support this institution by means of reasoning, and this reasoning we will now state and confute.

In the first place, the vindicators say that the father, having alimented and advanced his son, has a right to his sole succession on the ground of that maintenance and advancement. But if the right to a sole succession be founded on such a ground only, it should not be confined, as it now is, to the father alone; for cases continually occur where a widowed mother or an elder brother does precisely the same thing. But no one has ever thought of allowing them the same exclusive right of succession. Again, it cannot be said, because the father aliments and advances the son, that he is therefore entitled to be reimbursed his charges and expenses. For in this view the father does not give as nature would prompt, but he lends merely to be repaid, perhaps with a usurious interest for his risk. And in all this there is no attempt to distinguish between the son's property, derived from his own young-hearted labour and success, and that which is purely *ex re patris*.

In these arguments the true theory of the right to succession *ab intestato* is entirely lost sight of. This right is a logical consequence from the moral right which the successors had to be alimented by the predecessor (to use the terms of our late comprehensive fiscal statute) during his lifetime. For example, a man supports his wife and children whilst he lives, and upon his death they take his property to themselves in the place of the previous alimentation, and this is equally applicable to parents or to brothers and sisters. In regard to mediate and more distant relatives, the same principle of old applied with equal force and stringency. But it was in that case the connection of the tribe or larger family. All who have studied Roman law in its original institutions will readily understand this.

We have here a test to apply to this part of our scheme of distribution, and tried by it we shall find the principle of sole paternal succession, not only to be wrong, but to be precisely the reverse of what is right. The succession to property, as we have shown, is due to those who would have been alimented by the deceased if they had needed such aid, and not to those who, in like circumstances of necessity, would have alimented the deceased himself.—The person whom the deceased would have alimented would not be the father alone, but the mother, and the brothers, and sisters. The love is equal, and the natural proximity is the same.

But the father's claim to the whole of his son's estate is otherwise a clear fallacy. When the son had no legal right to property, the father might logically take all that the son possessed, as the English husband does in case of his wife, and as the American slave-owner does in case of his slave. But it being granted that the son can have a separate estate, the father's claim to it is no better than those of the mother and the brothers or sisters. For, as it is no longer supported by the *patria potestas*, it can only have such force as reason can give to it; and the just and well understood policy of the law is to distribute, and not to favour or compel accumulation in the hands of any single person. But assuming that the father is nearer (artificially speaking) than a brother or sister, that proximity is not of itself conclusive to entitle him to the son's entire succession; for, in other points, our law has unhesitatingly disregarded mere conventional symmetry, where equity and natural considerations have not applied also. The mother, being nearest of kin, does *not* oust the brothers and sisters, though they are a degree more remote than herself. The brothers and sisters *do* oust the grandfather, though their calculated kindred is supposed to be equal. In both cases the admission and the exclusion are founded on principles of nature and equity, not of mere artificial and conventional symmetry.

* De Fresquet, vol. ii. p. 13; and Troplong, "De l'Influence du Christianisme," p. 258.

† Troplong, p. 259, 260.

We have said enough, we think, to show the shortcoming of our scheme of distribution on one point, and that it needs such an alteration as shall bring us within the European family in respect of private law. But there is another and a graver point upon which we have even less hesitation in avowing our distaste of English law. It is one in respect of which England stands alone in Europe—we mean the law which allows every testator under all circumstances, without regard to nature or justice, to alienate the whole of his personal estate to the dishorison of his wife and children. By virtue of that conflict of principles which dogs English law every where, a man must support these persons so long as he lives; but at his death, though possessed of ample means, he may leave them penniless, and a burthen upon the stranger or the parish. Caprice or cruelty may impel him to do so, and the law requires no better justification of an act which it affects to consider to be a legitimate consequence of constitutional liberty. In this, as in many other points, the law is not *in equilibrio* with the intellect and feelings of the community. Our state of society demands a better law than the unnatural formula, "*dicat testator et erit lex.*" It requires that the children at least should derive such a benefit from their father's estate by law at his death, as shall relieve the public from their being a burthen upon it, however light. The poor-law does much, but here it is of course inoperative. The restoration, however, of the old common-law of England, the *partes rationabiles*, would affect this justice, and remove the painful inconsistency which we have referred to.—*Law Magazine & Review*, May, 1857.

U. C. REPORTS.

QUEEN'S BENCH.

Reported by C. Robinson, Esq., *Barrister-at-Law.*

Boulton v. NoursE.

Insolvent—7 Vic., chap. 10—19 & 20 Vic., chap. 93.

Defendant was a trader, within the 7 Vic., ch. 10, but first became so after the expiration of that Act, and he became insolvent before the passing of 19 & 20 Vic., ch. 93.

Held, that he was clearly entitled to take the benefit of the latter Act.

This was an action brought by the plaintiff against the defendant for the recovery of the amount of a promissory note made by the defendant to the plaintiff, for the sum of £45, dated 1st of June, 1850, and payable three months after date. And by the consent of the parties, and by the order of the Honorable Mr. Justice *McLean*, according to the Common Law Procedure Act, 1856, the following case was stated for the opinion of the court, without any pleadings:

"The defendant, on the 30th March, 1857, obtained from the Judge of the County Court of the United counties of Northumberland and Durham a final order in insolvency, under the Statute 8 Vic., ch. 48, extended by 19 & 20 Vic., ch. 93.

"It is admitted that the defendant was a trader within the meaning of the Bankrupt Act, 7 Vic., ch. 10, but first became a trader after the expiration of that act, and became insolvent before the passing of the act 19 & 20 Vic., ch. 93.

"The question for the opinion of the court is, whether the defendant, as such trader, came within the description in the last mentioned act set forth, and so was entitled to avail himself of its benefits.

"If the court shall be of opinion in the negative, the judgment shall be entered up for the plaintiff for the amount of the said note and interest, and costs of suit. If the court shall be of opinion in the affirmative, then judgment of *non pros.*, with costs defence, shall be entered up for the defendant."

Eccles, Q. C., for the plaintiff. *C. S. Patterson*, contra.

Robinson, C. J., delivered the judgment of the court.

The defendant, it is admitted, first became a trader after the Bankrupt Act, 7 Vic., ch. 10, had expired, but while he was in business he was such a trader as would have come within the terms of that act, if it had been then in force. It is admitted also that he became insolvent before the passing of the act 19 & 20 Vic., ch. 93, and that on the 30th of March, 1857, he obtained a final order as an insolvent from the judge of the County Court, under the statute 8 Vic., ch. 48, extended by 19 & 20 Vic. ch. 93.

I cannot, I confess, see any room for a question. The defendant having become a trader after the 7 Vic., ch. 10, expired is clearly not against him, for the 19 & 20 Vic., ch. 93, expressly takes in such cases; then it must be admitted that he was insolvent before the 19 & 20 Vic., ch. 93, was passed, and still it is objected that he is disabled from obtaining a discharge under that statute. That statute, it is true, does apply in its operative words to such traders only as come within the preamble of it; and as the legislature were in great haste to repeal that act in the following session by 20 Vic., ch. 1, as being prejudicial to the public interest, we should not feel ourselves at liberty to extend the operation of the act to any case that does not come strictly within it.

Now the preamble of the chapter 93 runs thus: "Whereas there *are* many persons, who, having been traders in Upper Canada within the meaning of the statute 7 Vic. ch. 10, either before or since the expiration thereof, *have become* insolvent, but by reason of such expiration *have been* unable to avail themselves of its benefits." All these persons are by the act enabled to avail themselves of the benefit of the insolvent act 8 Vic., ch. 48.

As this defendant comes precisely within the preamble, I do not see where the question is. If he had become insolvent after the passing of the act 19 & 20 Vic., ch. 93, it might be objected that the act in its language applied only to past cases of insolvents; but having become insolvent before, the objection is precisely within the letter of the preamble, and therefore within the act.

Judgment of *non pros* must be entered.

CHAMBERS.

(*Reported for the Law Journal, by* C. E. English, Esq. and A. McNabb, Esq.)

Smith *v.* Crooks.

Practice—Security for Costs.

In an application for security for costs, the affidavit should state *positively* the absence from the Country, and residence abroad.

In general an order for security for costs will not be granted unless a clear and positive case be shewn.

(10th November, 1857.)

This was an application for security for costs; defendant swore (6th Nov.) that the Record was entered for trial in this cause at the Assizes for the County of Wentworth; that he believed that plaintiff had left his place of abode in West Flamboro', with his family and effects, about ten days previously, and removed to the United States for the purpose of residing there permanently, and that he had no intimation of his intention to remove until that day, and that if a verdict were rendered for him in the cause he would be deprived of his remedy for costs, unless security were given for the same. He demanded security for costs from plaintiff's Attorney on 7th November, and was refused.

Cause was shewn against the summons for security, on the grounds that it was too late to apply, and that the affidavit was not sufficiently positive.

No affidavits were filed in answer.

The following cases were cited:—Joynes *v.* Collinson, 2 D. & L., 449; Sandys *v.* Hatler, 6 Dowl., P. C. 274; Dowling *v.* Harman, 6 M. & W., 131; Gell *v.* Curzon, 4, Ex. 318,

Robinson, C. J.—I think in so late a stage I ought not to grant this order. The Assizes at Hamilton commenced on 28th October, and have been sitting twelve days. After a large amount of costs may have been already incurred for witnesses, I think I should not interfere with such an order on an affidavit resting only on

information and belief that the plaintiff has lately removed. It might turn out to be a mistake, and then great inconvenience and expense would be occasioned. It could surely have been positively sworn to if plaintiff has lately left his late place of residence, and his family also, and at least it should have been stated positively. It is different from the statement as to plaintiff's living abroad permanently, because defendant may not be able to swear so positively to that. Order refused.

WALSH v. BROWN.

Injunction.

A writ of Injunction under the 286th section of the C. L. P. A. 1856, will only be granted to restrain the Defendant in an action at law from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract, or injury of a like kind arising out of the same contract, or relating to the same property or right.—Where under a clause contained in a contract for the sale of timber the vendor brings an action claiming a forfeiture for default in payment of the purchase money, a writ of Injunction will not be granted to restrain the Defendant or his assignee, from cutting down timber.

(January, 1859.)

The plaintiff in this action obtained a summons to show cause why a writ of Injunction should not issue against the defendant to restrain him from cutting down, or cutting up and carrying away the timber, on Lot 26, in the 1st Concession of Dereham, or from removing the house and boilers thereon. The summons was moved upon an affidavit of the plaintiff, who also put in an agreement for the sale and purchase of the timber made between himself and one Howatt, and a copy of an assignment to defendant, of Howatt's interest under the contract.

Burns, for defendant, showed cause against the summons, and contended that the Common Law Procedure Act, 1856, did not entitle the plaintiff to the Injunction claimed.

Burns, J.—The action is ejectment brought by the plaintiff, by reason of the non-fulfilment of an agreement to purchase a quantity of standing timber. The defendant's assignor had entered into an agreement to buy the standing timber on Lot No. 26, in the 1st Concession of Dereham, for £1,125 payable by instalments and permission given to enter and remove the timber, and also permission given to remove any machinery erected upon the land, which might be considered fixtures, at the expiration of the time given for removing the timber, viz., 6th December, 1862. The instalment of the purchase money, due 1st August, 1857, was not paid, and the saw-mill erected being destroyed by fire, the plaintiff brought his ejectment to recover back the possession upon a clause in the agreement for re-entry in case of non-payment.

During the pendency of the action the plaintiff has applied for, and obtained a summons for an Injunction to prevent the defendant to whom the purchaser has assigned all his property, from cutting down the residue of the timber, and from removing the boilers which remained in the mill after the fire, and from removing a small house built upon the lot. The plaintiff has made affidavit that the instalment remains unpaid, that the purchaser has removed a large quantity of the timber, and that the remainder standing upon the lot will not pay the plaintiff: that he, the plaintiff became security for the payment of the mill machinery, and that he is looked to for payment thereof, and that the debtor has absconded, and he claims a writ of Injunction, as mentioned.

It seems to me quite clear that the plaintiff in this action is not entitled to claim a writ of injunction for any of the purposes mentioned. The application is made under the 286th section of the C. L. P. Act, 1856, during the pendency of the suit. That section gives the power *after the commencement of the action*, to obtain an injunction in the meantime, but we must return to the 283rd section, to see the kind of action in which an Injunction is to be granted. There we find, that it is in cases of breach of contract, or other injury, where the party may maintain his action in like case and manner, as provided for, with respect to *Mandamus*, and the action should be to claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or recommittal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right. As regards this defendant no contract exists between him and the plaintiff at all; but if we should suppose that a duty was cast upon the defendant by reason of his having taken an assignment of this timber, yet upon looking at his contract I find no stipulation whatever to restrict the purchaser in the mode in which he was at liberty to cut down and remove the timber. He for all that appears may have have been at liberty to remove every tree from the whole 200 acres the next day after the agreement was signed, if he could by possibility have produced the means and power to do it. So far from there being any stipulation against removing machinery the privilege is the other way, to enable the purchaser to remove any that might be considered fixtures. The breach of the agreement is the non-payment of the purchase money, and because of that breach the action is brought. The other branch of the clause is *in all cases of other injury*, and it is equally clear that the present case does not come under that head. The agreement for removing the timber does not retard the purchaser or his assignee from removing when he pleases, but gives express authority to remove, and that authority I cannot treat as being ended or curtailed by the non-payment of the purchase money, or because the agreement gives the plaintiff a right of entry in case of non-payment.

Besides this, the action of ejectment is not in its nature for the purpose of continuing the agreement and preventing a breach or preventing an injury, but it is rather to put an end to the agreement and to put the plaintiff in possession of land to which he has a better legal title than his adversary.

Besides these arguments we find that the 283rd section gives the right to claim a writ of injunction, in like case and manner as with respect to the writ of mandamus, and that the 275th section excepts the remedy for mandamus from actions of replevin and ejectment. The same reasons which would apply to the one equally apply to the other. Summons discharged.

This decision seems to conflict with Robins v. Porter 2 U. C. L. J., 230; Bell v. White 3 Ib., 107; and Fraser v. Robins 3 Ib., 112.

MCKINSTRY v. ARNOLD.

Practice—Special Endorsement—Judgment by default.

Accounts delivered but not liquidated by admission of Defendant do not come within meaning of 41st Sec. C. L. P. Act as to claims which may be specially endorsed.

When such accounts have been specially endorsed and final judgment signed by Defendant, a judge will set aside judgment without costs.

[31st October, 1857.]

This summons was granted by Hagarty, J., on plaintiff, to shew cause why the judgment for want of appearance, and all subsequent proceedings should not be set aside.

1. Because the judgment was signed before the time for appearing had expired.

2. Because it was signed upon a specially endorsed writ, and that such special endorsement was not warranted by the C. L. P. Act in a case like the present.

3. Because the amount so endorsed, and for which judgment had been signed, or a great portion thereof, was not due at the time of issuing the summons or at the time judgment was signed, the goods sold having been sold on a credit.

Or why judgment should not be set aside on the merits and on payment of costs.

The writ was served on Tuesday, 6th October, 1857. It was endorsed that Plaintiff claimed £300 for debt and £4 10s. for costs.

And particulars of the claim were thus given:—

1857.

Sept. 9th. To amount of account for goods sold and delivered by plaintiff to defendant, as per account rendered to this date, £227 15s. 3d., and interest on £227 15s. 3d, from 9th Sept., 1857, till judgment.

Final judgment was entered 16th October, 1857, for £233 9s. 9d. damages and costs.

On 20th October defendant's attorney demanded particulars of plaintiff's demand, with dates, which the latter refused to give.

The defendant swore that he verily believed the summons was not served on him before 9th October, and that appearance was entered for him on 19th October.

That he had in vain demanded particulars of plaintiff's demand, with dates, and that he had no means of ascertaining the particulars otherwise than by the endorsement on the writ.

That the goods plaintiff was suing for were bought upon a certain fixed credit and at various times.

That the credit for a very small portion of the goods may have expired before action, but not as to nearly the whole of the goods.

That without further particulars he could not say as to what amount the credit had expired. That if plaintiff had ever rendered a full and particular account of his claim, it was lost or destroyed. Defendant swore to merits.

Plaintiff made affidavit that it was not true that the goods were sold upon a fixed credit.

That according to plaintiff's understanding of the sale, the whole amount sued for was due before action.

That an invoice was sent to defendant with each purchase, containing full particulars.

That defendant gave his note for £53 15s. 8d. for one portion of the amount, which note was dishonoured and in plaintiff's hands unpaid.

ROBINSON, C. J.—The allegation that the summons was not served till the 9th is not made in positive terms and cannot therefore be taken as a denial of the bailiff's affidavit, that he served it on the 6th October. The objection is not pressed on that ground.

The judgment as upon a specially endorsed writ can hardly be sustained, for independently of the objection that the plaintiff claims £300 in one part of the endorsement and a much less sum in another, I should have great difficulty in saying, that this is a case within the clause respecting specially endorsed writs.

It certainly does not come within the language of the clause itself—whether the Schedule A, No. 5, can be taken to have the effect of extending the operation of the clause to cases which certainly are not within the terms of the clause itself is a question, and it is one on which I have much doubt. It is a case in which the illustration by example goes decidedly beyond the rule. If this case could be brought under the 41st clause it would only be by reading the Schedule A, No. 5, as part of the clause itself; and then this case, it might be contended, would come within that part of the Schedule No. 5 which relates to accounts referred to as delivered.

I make the summons absolute for setting aside the judgment, but without giving any direction as to costs. It is fit, on the affidavits, that the defendant should have an opportunity of contesting on the trial whether the credit had expired in respect to all the goods. Order accordingly.

ARNOLD v. ROBERTSON.

Practice.—Interlocutory Judgment.—Merits.

Under very special circumstances an interlocutory judgment (final) may be set aside after a trial has been lost.

In such case, a very strong case must be shown, and the delay should be satisfactorily explained.

(10th November, 1857.)

A summons was granted on 28th October, 1857, on the plaintiff, to show cause why the judgment by default signed in this cause should not be set aside and the defendant admitted to plead on payment of costs.

The action was commenced by summons, on 10th June, 1857, which was served on 11th June, 1856, and specially endorsed.

Final judgment was signed 22nd June, for want of appearance, for £178 15s. 8d. (besides costs). A *fi. fa.* was issued 30th June, and delivered to the Sheriff (not shown whether it had been acted upon, and if not, why not).

Defendant swore that he made the note payable to Joel Carpenter or order, for the accommodation of Carpenter—note dated 20th September, 1856.

That Carpenter & Co. discounted the note, and took it up at maturity, or soon after.

That defendant never received any consideration for the note; and that after it had been settled it was never considered that it gave to *payees* any claim upon defendant.

That defendant instructed an attorney to defend for him, who neglected to do so.

That Carpenter & Co. had become insolvent.

That defendant had a good defence on the merits.

That if he were allowed to plead he was willing to go to trial at the then Toronto Assizes.

That the plaintiff sued as assignee of Carpenter & Co., whose property, debts and effects, had been assigned to him; and that their books, in plaintiff's possession, showed that this note was an accommodation note.

In answer, an affidavit of Carpenter was filed, in which he swore:

That he believed the defendant to be in insolvent circumstances, and that if the judgment were set aside the debt would be lost.

That the debts and effects of himself and partner were assigned to plaintiff.

That while Carpenter & Co. were carrying on business defendant was largely indebted to them, and gave this note to them on account of his debt.

That often before assigning the note to plaintiff, Carpenter had asked defendant for his account against the firm, but never could get it; and that before assigning the note they endorsed on it what they believed to be the amount of the credit which defendant was entitled to for work done for Carpenter & Co., in Hamilton, as a carpenter.

The defendant also swore that the plaintiff received the note under a general assignment made by the firm to him for the benefit of their creditors; that he took it after it was due and gave no value for it, and had no personal interest in it; and he gave reasons for his not having appeared, and for his delay in applying.

ROBINSON, C. J.—The defendant does not satisfactorily account for his delay and want of attention to his defence, but his affidavits are very strong. It is not denied, but is admitted, that plaintiff is suing merely as assignee of the estate of the insolvent firm, and he stands therefore in no other situation than Carpenter & Co. would do if they were suing.

Unless the defendant has perjured himself, gross injustice would be done by compelling the defendants to pay the note; for they swear that they really are not indebted to Carpenter & Co. in any amount, though they had large transactions together, but they hold unpaid notes of theirs to a larger amount than this note; and all this is in addition to the defendant's positive declaration that he made the note solely for the accommodation of Carpenter & Co.

Though it is seldom that an interlocutory judgment is set aside where a trial has been lost, yet on the statements made in this case I think it right to do it; but I exact as a condition that the defendant shall secure the debt and interest to the satisfaction of the Clerk of the Court of Common Pleas, and pay the costs of the judgment and of this application, and plead issuably within a fortnight.

Order accordingly.

BANK OF U. C., v. KETCHUM & ROMAINE.

Practice—Pleading—Costs.

When a plea has been struck out as false and bad in law, another plea setting up identically the same defence, but so worded as to make it *good in law*, will not in general be allowed.

The truth of a plea cannot be tried on affidavit, though in particular cases when the plea has caused different issues, has been exceedingly intricate, or has been a mocking of the proceedings of the Court, a discretionary power may be exercised by the Judge.

Pleading a second time without paying the costs of previous pleas struck out *with costs*, will not make the latter pleas irregular.

(3rd December, 1857.)

This was an action against Ketchum as maker, and Romaine, as endorser of a note; Ketchum pleaded on 7th November, 1857, that before and at the time of indorsement of the note, the other defendant—Romaine owed him an amount exceeding the note, on an account stated, and that Romaine in fraud of Ketchum and in collusion with plaintiff, and to deprive him of his right of set-off endorsed the note to plaintiff who sued as Romaine's agent, and on the understanding that the amount was to be collected from Ketchum, though Romaine is joined as defendant.

On behalf of plaintiff, affidavits were filed, one by Romaine showing that the plea was false and by the Discount Clerk of plaintiffs that the note was discounted by plaintiffs for Romaine, while current and the proceeds placed to his credit.

By an order of Mr. Justice Richards, dated 24th November, 1857, drawn up on hearing the parties, this plea was ordered to

be set aside as bad in law and false in fact,, and it was also ordered that Ketchum should pay the costs of the application.

On the same day and before taxation or payment of costs, Ketchum's attorney filed and served another plea, being a general plea that the note was obtained from defendant Ketchum by plaintiffs, and by defendant Romaine, in collusion with plaintiff, by fraud, covin and misrepresentation.

The present application was by plaintiffs to have this plea also set aside as false in fact and the same in substance as the plea already pleaded, and because it was pleaded before payment of the costs under the first application, and that plaintiffs be at liberty to sign judgment.

A summons was granted on the affidavits and papers filed on the first application, and on another affidavit stating the additional facts and that the plea was substantially the same and was also wholly untrue.

Cause was shewn by *McIntyre* for Ketchum, no affidavit was filed, and it was conceded that no other fraud or defence was relied on under the second plea than under the first—but it was insisted, that being a plea good in law its truth could not be enquired into on affidavit, and that as leave to sign judgment for want of a plea, was neither asked nor granted on the first application—that the second plea was regular.

For plaintiffs were cited—*Oulds* v *Harrison*, 10 Ex., 372; *Bowes* v. *Howell*, 2 U. C. Ch., 134; *Sherwood* v. *March*, 1, Ib., 176.

For Defendant—*Watkins* v. *Henderson*, 9 M. & W., 432; *Brooke* v. *Arnold*, Tay. U. C. R., 25; *Emanuel* v. *Randall*, 8 Dowl. P. C., 238; *Natt* v. *Rush*. 7 D. & L., 192; *Levy* v. *Raulton*, 14 Q. B., 148; *West* v. *Brown*, 3 U. C. Q. B., 291; *Bank of Montreal* v. *Humphries et al*, Ib., 463.

HAGARTY, J.—The case strikes me as being in this position: a plea was pleaded shewing at large the particular facts of defence relied on. This was set aside as bad in law and false in fact.

A general plea of fraud is then offered, and in answer to affidavits that it is also false and substantially the same as the first plea the defendant files no affidavits, and on argument admits that he has no other defence to offer under it than under the first, and simply rests on his technical right to plead as he has done.

It appears to me that I would be sanctioning a very improper trifling with the administration of justice if I did not strike out this last plea. A competent authority orders the defence which would have spread upon the record all the facts relied on by the defendant to be set aside as bad in law as well as fact. The defendant admits on the hearing of this application, that it is on the same facts he relies to support the general plea now pleaded. He thus by an evasion or a change of words desires to force the Court to try an issue on matters already very properly decided to be no defence, and to delay the course of justice for a long time by allegations which after all that has taken place he must know to be untrue.

If the defendant Ketchum really desire to urge any tenable defence he has twice had the opportunity of doing so, and even now could be heard on affidavit for such purpose.

It is on these grounds I decide against the plea. I do not proceed on any assumed right to try on affidavit the truth of a general plea of fraud in any ordinary case, nor do I see my way to yielding to plaintiff's argument, that the second plea was irregular as pleaded without leave and before payment of costs of first application.

In one of the strongest cases for defendant, *Smith* v. *Backwell*, 4 Bing., 512, one of the learned judges in summing up the cases in which the truth of a plea would be enquired into, says: "When "the plea has raised different issues, has been exceedingly intri- "cate, or has been a mocking of the proceedings of the Court, a "discretionary power has sometimes been exercised by the judges."

I think this case comes emphatically within the last of the three rules of the above category.

I direct that the plea be set aside, and that plaintiffs be at liberty to sign judgment. Under the circumstances I think the costs should be costs in the cause.

Order accordingly.

COUNTY COURTS, U. C.

In the County Court of the United Counties of Frontenac, Lennox & Addington. (Before KENNETH MACKENZIE, Esq., Q. C., Judge.)

(*Reported by* W. G. DRAPER, Esq., M. A., *Barrister-at-Law.*)

FRONTENAC DIVISION NUMBER TWO, SONS OF TEMPERANCE OF CANADA WEST v. RUDSTON AND STACEY.

This was an action of replevin, brought to recover possession of certain goods and chattels taken by defendants. The main object of the plaintiffs was to recover the specific articles taken. The writ was placed in the hands of the Sheriff, who was unable to replevy the goods. Before the writ was served, *Draper* obtained a summons, under sec. 176 of the C. L. P. Act, 1856, calling on defendants to show cause why they should not answer certain interrogatories, on grounds disclosed in affidavits.

The affidavit of plaintiffs' agent stated the nature of the action, and the object in view—viz., to obtain back the particular chattels: that the plaintiffs had a good cause of action: that material benefit to the plaintiffs would be derived from the discovery sought, and that ineffectual attempts had been made by the Sheriff to recover back the chattels, which deponent believed to be in possession or custody of the defendants, or some one of them.

An affidavit of plaintiffs' attorney, to the same effect, was also put in.

Also a copy of the interrogatories which it was desired to administer.

Henderson showed cause, and objected—1st. That the defendants were not before the Court, as they had not been served with the writ, and therefore that the application was premature.

2nd. That even if the parties were before the Court the interrogatories could not be delivered until declaration was served. He cited *Martin* v. *Heming*, 10 Ex. 486.

Draper, in reply, urged that the appearance of the parties to the summons was a waiver of any objection as to their not being before the Court; and that interrogatories could be administered at any time by leave of the Court, provided the Judge was of opinion that they were reasonable or necessary.

He cited *Flitcroft* v. *Fletcher*, 2 Jur. N. S. 191; *Croomer* v. *Morrison*, 2 Jur. N. S. 163; *Pohl* v. *Young*, 1 Jur. N. S. 1139.

MACKENZIE, J.—I dismiss this application, because I think the defendants are not properly before the Court. I do not consider their appearance here to day as a waiver. I think further that the discovery contemplated by the Statute is restricted to matters of pleading and evidence, and not such as is sought here. It is not intended to assist the officers of the Court in executing their duty.

Summons discharged, without costs.

NOTE.—The interrogatories pointed altogether to a discovery of the place where the chattels were concealed.

(*Before* A. CREWETT, ESQ., *Judge of the County of Essex.*)

IN RE ESSEX ELECTION.

Controverted Elections.—Statute 20 *Vic. cap.* 23*—Service of Notice.*

It is not essential to the due service of the notice made necessary by sec. 1 of the Statute 20 Vic., cap. 23, that it should be made in the manner prescribed by that Act. Where, therefore, the sitting member removed himself and his family, so as to avoid a personal service, and continued absent or concealed for the fourteen days allowed by the statute for personal service or service at his residence upon a grown up person of his family service, by nailing a copy of the notice on the door of his residence, and by leaving a copy with his brother, who was also his agent, was held sufficient.

This was an application under Stat. 20 Vic. cap. 23, for an appointment to take evidence on behalf of the petitioner, Arthur Rankin, Esq.

On the 8th February, 1858, the application was made in writing to the County Judge, on affidavits, shewing a substituted service for the notice required by the statute by leaving a copy of it at the residence of Mr. McLeod, the sitting member, with some grown up person of his family. The affidavits showed that he removed himself and his family during the whole fourteen days required for service and that none of them could be found. That the notice was nailed to the door of his residence within the proper time, and that a copy was served on his brother Charles, his agent

and man of business. They also showed that previously every reasonable effort had been made to effect a personal service, and that afterwards, on 2d February, the notice was personally served. The sitting member thereupon served his answer, in which he protested against the legality of the service of the notice. This point having been raised *in limine* was presented for decision.

Chewett, Co. J.—The late Stat. 20 Vic. cap. 23, sec 10, provides that the Controverted Elections Act of 1851, 14 & 15 Vic. c. 1, shall *with it* be construed as one Act, as if *its* provisions were *contained*, in the Act of 1851, and provides by its 6th sec. that the County Judge shall be in the place and stead of the commissioner therein mentioned to all intents and purposes saving as is mentioned in the 6th section.

The 155th sec. of the Act of 1851 provides that the *omission* to observe strictly any directions or provisions in it shall not be fatal if declared by the Election Committee not to affect the substantial questions at issue or the true merits thereof, except only where by the use of negative as well as affirmative terms an intention is manifested that such course of proceeding and no other as to time, place, and circumstance should be followed.

The 9th section of the Act of 1857 provides that nothing in *it* shall prevent the application of the 160th section of the act of 1857, in any case not provided for by the act of 1857.

The 160th sec. of the Act 1851, provides, "That if *any* case arises for which no express provision is made by the Act, and in which (if treated as a case wholly without the purview (*i.e.* body of the Act) there would be a manifest failure of justice without any error, fault, or neglect of the party interested, *then such case shall not be held to be omitted*, but it shall be lawful for the Speaker, General Elections Committee, Chairman's Panel, Select Committee, or Commissioner, to adopt such proceedings as they shall deem most consonant to the express provisions, spirit, and intent of the Act, and report the same to the House, which proceeding shall not be held illegal unless inconsistent with some express provision of the Act or some other existing provision of law."

I am of opinion that there are no negative terms in the Act as to service of this notice, manifesting an intention that the course of proceeding as to services mentioned in its 3rd sec. should be followed and no other. And I consider that if the words of the last Stat. 20 Vic. cap. 23, were adhered to as regards the service without looking at the Act of 1851, of which latter the former forms a part, it would cause a manifest failure of justice *without* the error, fault, or neglect of the party interested. And I consider, the service for the present sufficient under the circumstances, and as complying with the spirit and intent of both Acts *read as one* under the several sections above cited so far as to authorise me to make the necessary appointment and go on with the examination of witnesses under these Statutes. In doing so I am adopting a proceeding most consonant to the express provisions, spirit and intent of these Acts. I shall report the same with other proceedings to the House for its information, leaving it to the House or Committee to decide if this course be inconsistent with these Statutes, or with some or any other existing provision of law bearing on the questions involved.

CORRESPONDENCE.

To the Editors of the Law Journal, Toronto.

GENTLEMEN:—May I ask your attention to the following:

In the County Court of the United Counties of Frontenac, Lennox, and Addington.

FRONTENAC DIVISION No. 2, SONS OF TEMPERANCE OF CANADA WEST v. RUDSTON AND STACEY.

On the twelfth of February, *Henderson* obtained a summons, calling on the plaintiff to show cause why the service of the Writ of Replevin issued in this cause, should not be set aside, on the ground that the Sheriff had not replevied the goods and chattels, or any part thereof, as by law he is required to do.

On the thirteenth, *Draper* shewed cause, and argued that as the Writ was issued, and all the proceedings taken under the Act amending the Law of Replevin, that it was not necessary that the Sheriff should seize the goods at all, that the action then became one in the nature of trespass or trover, and that under the Act damages might be recovered in place of the chattels themselves. That as the defendants had been parties to the removal of the goods, and refused to produce them to the Sheriff, it did not lie in their mouths to raise this objection, and that the effect of Mr. Henderson's motion would be to do away with all the benefit intended to be conveyed by the Act.

Held by Kenneth McKenzie, Judge, that the service was good. Summons dismissed without costs.

The point was decided upon the meaning to be given to the words at the end of the proviso to the first section of 14 & 15 Vic. cap. 64, passed 1851, "By reason of the same not being in the possession of the Defendant or of any person for him." The Judge held that the word "same" referred to the *property* and not to *the residue* mentioned in the proviso.

As it is a very important question, will you give through the medium of your paper an opinion? Has the point been decided in any of the Superior Courts. A SUBSCRIBER.

Kingston, Feb. 27, 1858.

[We cannot undertake to sit in Appeal on a decision of the Judge of the United Counties of Frontenac, Lennox, and Addington. A comparison of section 6 with the part of section 1 of 14 & 15 Vic. cap. 64, referred to by our correspondent leaves little room for doubt as to the true meaning of the latter. The only decided case at all bearing upon the question of which we have any knowledge is Crawford v. Thomas, 7 U. C. C. P. 63.—EDS. L. J.]

To the Editors of the Law Journal.

GENTLEMEN,—I feel it must be as gratifying to you as it is encouraging to me, to find that hitherto by a happy concatenation of circumstances, which I trust will continue until we have accomplished our undertaking, each publication by you of each article or communication upon Chancery reform, has been followed by some attendant result more or less beneficial; though all of them, I hope, but the shadows which coming events cast before them. Thus your editorial was immediately followed by the remedial statute alluded to in my former letter; that letter by the new rules of Chancery of the 23rd. Dec., 1857, and the letters of our assistants, "X. Y. Z." "a Country Solicitor" and "Coadjutor," by a general meeting of the Toronto branch of the profession, for the purpose of petitioning Parliament to take the subject into consideration, and to grant us some relief from the unendurable monster grievance of the Master's "circumlocution office." What our assistants say as to the effect of the additions they suggest to my former letter is undeniable, but nothing is lost to the cause, for it comes much better and more ably from them. In my letter it would have assumed the aspect of assertion. In theirs it gains the additional quality of corroborative evidence, and besides we should remember that Mungo Park when he published his travels, and by the advice of judicious friends, reluctantly omitted some of the most startling, though undoubted truths of the *terra incognita* through which he passed, even n found to his cost, how dangerous an experiment it some-

times is to tell too much unexpected truth to the multitude at one time. His veracity was impugned, and he himself ridiculed for publishing what that very same multitude without difficulty afterwards implicitly believed together with all he omitted, simply because subsequent travellers reasserted the assertion of the first discoverer. The case "Coadjutor" mentions is bad enough, but the worst of it is not merely that it is undoubted Chancery law, and that the Judges could not as the law stands, do otherwise, but also that it does not show the full extent of the evil which is as appears by a late English case in 30 *Law Times*, that even judgment creditors are at liberty to treat the whole proceeding as a useless expensive sham, by paying no attention to it, in which case in England they must be added as parties to the suit by supplemental Bill, and by analogy here by the mode our rules have specified instead.

As to the new rules of 23d December, 1857, they will undoubtedly have an excellent effect partly by enabling the Judges at the hearing, to have some personal knowledge through one of their number of the description of the witnesses who give the evidence upon which the decree of the Court is to be founded, and manner in which they give such evidence, but chiefly by abolishing one of the main branches of the useless and frightful system of delays and disbursements practised and fostered in the Master's "circumlocution office."

Still those rules are imperfect in this respect, that in order properly to carry out the analogy to the Common Law Nisi Prius, (which is what was intended by the Statute,) the presiding Judge, (unless where he shall not conclude the taking evidence for some sufficient cause shown to him, or unless where the case is so special that in his opinion it cannot properly be then decided,) should proceed forthwith to make his decree in the suit; which decree, like a verdict, should be final, unless questioned in the next ensuing term by either party, in which case the whole Court should make such decree, as they should judge fit to be made under the circumstances irrespective of the Nisi Prius decree, if we may call it so. No new trials ought to be granted except in very special cases, where the Court should have liberty to grant them, to ascertain facts by a jury, if necessary for the ends of justice.

The Court should also have power if they choose to appoint any other day in Chambers for taking any additional evidence they might think fit to receive as having been improperly rejected, or for any other sufficient reason, and besides what I have above stated, those new rules making the hearing terms only half yearly instead of quarterly, as heretofore, (although I have no doubt the change was unavoidable in order to enable the Judges to get through their work, which I admit is excessive, and more than they ought to be called on to perform, being an attempt to compel three Judges in Chancery to accomplish the same amount of work as keeps six Common Law Judges very busy in properly performing, in the Common Law Courts,) will, it is apparent, most materially retard business, and shows with painful distinctness, how absolutely necessary it is as a preparatory step to any improvement to alter the present condition of the Court of Chancery, by one or other of the modes suggested in my former letter; either of which will enable the business of the Court to be properly and promptly performed by supplying a sufficient amount of Judges to go Circuits, and a sufficient number of tribunals to dispose of the business with reasonable celerity. Until that is done matters must remain much as they are at present. Every effort of the Court to do good in one direction, can only be accomplished by doing an almost equal amount of damage in some other direction. A change of evil is all we can expect, and we should esteem the change a lucky one, when it succeeds in giving us a lesser for a greater.

Nor can any person hope to avert the odium which attaches to the system, by attempting to impute to the judges, personally, any portion of the pernicious results produced by the practice they found established in their Courts, and are bound to administer, as they find it. On the contrary, its Judges as a body are admitted to be men of very high judicial attainments and qualifications. No men so circumstanced could do otherwise than they have done.

It is true, a few isolated instances occurring from time to time might be pointed out where individuals who had unfortunately received all their legal education in the Master's office, and who being forced to expend all their energies, the best part of their lives, exclusively in attempting to surmount the various perplexing intricacies, and in distinguishing, separating, and classifying the various arbitrary distinctions, without being differences, which form the code of that department and the duty of its head to perform, happening to be elevated to the Chancery Bench, have from mere force of habit, without any ill intention, in some instances applied the objectless arbitrary rules of the Master's "circumlocution office," to questions which should have been decided according to the general maxims of equity, and thus by losing sight of great principles and sticking upon decided cases, and refusing to go beyond their letter, and endeavouring to make the decision of every case depend on fine drawn hair-splitting distinctions with which they were familiar, instead of the comprehensive fundamental maxims of equity, the knowledge and application of which were wholly unknown to them, regardless of the good old maxim, "*qui hæret in litera, hæret in cortice*," and by so doing, have in some measure added to the confusion. Still the number of such instances are not sufficiently numerous, nor their influence sufficiently great to render them worthy of consideration in the discussion of a question like the present. The truth is, that Judges, Bar, and Clients are alike the victims, though not in the same degree, of the same judicial monster; and when it is apparent that such is the case, and when no one in Canada has been found sufficiently reckless of character and consequences, to attempt to disprove it although tempted by the exhibition of a few not perfectly accurate statements of details, (not, however, affecting the merits,) purposely held out as a bait to draw out advocates of the present state of affairs, if there were any such to be found, which, I am happy to see there are not, it seems to me there is really but one question worth considering, and that is, are we, or are we not, to continue to proceed as heretofore, with the dilatory removal piece by piece, of that immense mass of gross abuses, which from time to time has grown out of the

parent trunk, and taken root, propagated, and spread over its whole surface, until the original is completely enveloped, and nothing is left apparent but one heterogeneous mass of useless corroding legal *fungi*,—passing one whole statute this year to remove one solitary excrescence, which statute the Court may next year, make rules to carry into effect, which rules if they have good luck, may apply to cases which will occur the year after, in the vague hope, that ultimately, at some almost inappreciable distance of time, posterity whose ancestors are yet unborn may derive the full benefit, of what we at any time, and now might accomplish at one stroke; instead of proceeding at once, with manly alacrity, and determination to give that stroke by simply passing some such statute as was suggested in my former letter, although after all, having become habituated to the existing evils by such long and tame submission, that might perhaps be justly considered too bold a course for us to pursue. And on sober second thoughts, it might be a better and more philosophical attitude for us to assume, to sit down tailor-fashion, and with folded arms, eyes shut, and mouths wide open, continue as heretofore, inwardly to pray and patiently wait for Providence to drop into the gaping aperture, some panacea capable of curing those evils which we have not the energy to eradicate; and who knows but that Heaven, wearied at length by our passive endurance, may as of old, in pity for our forlorn condition, relieve us by some appropriate miracle, and spare us the necessity of any exertion.

Yours, &c.,

A City Solicitor.

MONTHLY REPERTORY.

COMMON LAW.

Ex. Hudson v. Baxendale. *Nov.* 19.

Carriers—Refusal by Consignee to receive goods—Duty of carrier thereupon—Liability for loss by leakage.

There is no general duty imposed upon carriers to give notice to the consignor of the refusal by the consignee to receive the goods.

A puncheon of gin was sent by a carrier from L. to B.; upon its arrival at B., the consignee declined to receive it; the carrier without giving the consignee notice, although he knew his address, placed the puncheon in a warehouse at B., where it remained for several months, at the expiration of which time it was found to have been diminished to the extent of 35 gallons, which had probably been improperly abstracted. *Held*, that if it was a question of law these facts did not give rise to any duty on the part of the carrier to give notice to the consignor of the puncheon being declined; and if a question of fact, that a finding of the jury negativing any such duty was warranted by the facts.

Where there was some evidence of a cask of gin having leaked during the transit—*Held*, that it was rightly left to the jury to say whether the leakage was in consequence of the negligence of the carrier, as the word negligence was used relatively to the cask being leaky, and the direction did not negative the liability of the carrier as an insurer.

Q. B. Levy, *et al*, v. Green. *Nov.* 24.

Sale of goods—Vendor sending goods in excess—Right of Rejection.

The defendant, a shopkeeper at Peterborough, on 29th December, 1856, ordered of the plaintiff, wholesale dealers at Bristol, a quantity of earthenware of the value of £5 18s. 6d, and in giving his order desired that it should not be exceeded. A crate containing, beside the goods ordered certain other articles of earthenware, to the amount of £1 2s. 6d., was on the 24th October forwarded by the plaintiff to the defendant; and in the invoice all the goods so sent were lumped together and charged to the defendant.

The defendant on the arrival of the crate refused to accept it alleging unreasonable delay in the execution of the order, but making no objection to the extra quantity. The plaintiff having brought his action for goods sold and delivered, the jury found that there had been *no* unreasonable delay; but the defendant claimed a non-suit on account of the goods in excess having been sent. The plaintiffs having had a verdict for the amount of the goods ordered, subject to leave reserved for the defendant to move to enter a non-suit if the Court should be of opinion that the sending of the additional goods entitled him to reject the whole.

Held by Lord Campbell, C. J., and Wightman, J., that the defendant was, but by Coleridge and Earle, J. J., that he was not entitled to reject the whole on account of the excess.

C. C. R. Regina v. Poole and Yeates. *Nov.* 21.

Larceny—Animus furandi—Intention to divest owner's property.

It is essential to larceny that there be the intention to divest the property of the owner by wrong. Where therefore the servants of a glove-maker broke open a store-room on their master's premises, and removed to another room, in the same premises a quantity of finished gloves, with the intent of fraudulently obtaining payment for them, as for so many gloves finished by themselves; *Held*, that they were not guilty of larceny.

C. C. R. Regina v. Watson. *Nov.* 21.

False pretences—Obtaining money by fraudulently inducing a person to enter into a partnership and advance money—Exaggerated statement of profits.

Upon an indictment containing several counts for obtaining money under false pretences, the evidence went to show that the defendant had by fraudulent misrepresentations of the business he was doing in a trade induced the prosecutor to enter into a partnership agreement, and advance £500 to the concern; but it did not appear that the trade was altogether a fiction or that the prosecutor had repudiated the partnership. The question for the Court being whether upon such evidence, the jury were bound to convict the defendant; *Held*, that he was entitled to an acquittal as it was consistent with the evidence that the prosecutor as partner, was interested in the money obtained.

C. C. R. Regina v. Essex. *Nov.* 14, 30.

Embezzlement—Evidence—Trustee of a Savings' Bank.

In an indictment for embezzeling money, the property of a trustee of a saving's bank, it is *not* enough to show that the trustee merely acted as such on one occasion, without producing direct evidence of his appointment as such trustee.

C. C. R. Regina v. William Castle. *Nov.* 30.

Fictitious process of a Court—What not such a process.

A. delivers to B. a document requiring him to produce accounts &c., at a trial in a County Court, intituled of the Court, and giving the names of plaintiff and defendant, with a statement in the margin of the amount of the sum claimed, no such cause really existing.

On an indictment against A. for feloniously causing to be delivered to B. a paper purporting to be a copy of a certain process of the County Court of L.

Held, that the document above mentioned was a notice to produce documents, &c., between party and party, and not a process of the Court, nor did it purport to be so.

REVIEW OF BOOKS.

THE COMMON LAW PROCEDURE ACT, 1856; THE COUNTY COURTS' PROCEDURE ACT, 1856; AND THE NEW RULES OF COURT, with Notes of all decided cases directly explaining or otherwise elucidating the Statutes and Rules—together with an Appendix containing the COMMON LAW PROCEDURE ACTS OF 1857. By Robert A. Harrison, B. C. L., Barrister at Law. Toronto: Maclear & Co., 16 King Street East; A. H. Armour, & Co.; and H. Rowsell. London: V. R. Stevens, and G. S. Norton.

We venture to say that in commencing this work the author had very little idea of the great and protracted labor before him. Had he annotated the Statutes with a view merely *to sell* the work, or had the notes been as limited as we usually find them in productions of the kind, he might have brought his labors long since to a close. But from the first Mr. Harrison went thoroughly into his subject, and to repeat language used by us in the columns of this Journal in October, 1856, (nearly a year before we had any editorial connection with Mr. Harrison,) "We saw after examining the first thirty pages that the work *must* issue in parts."

We think that Mr. Harrison made a great mistake, so far as he himself is concerned, in presenting the result of his labor and research in the form of *notes*, for in good truth he has produced a work containing in itself all the matter for a *Treatise*. The material found in the notes would only require to be recast in the shape of a treatise to form a work fully equal to any modern English work of the kind, and more copious in matter. Probably Mr. Harrison felt this, for great pains have evidently been taken to make the index analytical, and for verbal reference all that can be desired. The index is certainly an admirable one—and thus to a great extent the work will serve the purpose of a treatise.

We have examined all the English annotations of the Common Law Procedure Act, and we have no hesitation in saying that the book before us is more complete and more carefully got up than any of them. It contains twice the number of cases cited in the elaborate work of Finlason, and four times the number of cases in Kerr and Markham. "It is not necessary to mention," says Mr. Harrison in his preface, "to any one who may open this volume that it has been a work of great labor, not at all lightened by the responsibility under which I wrote. The immense number of cases consulted with a view to the extraction of guiding principles, being no less than *six thousand*, and the placing of these cases when approved, in proper order, has been a task requiring no ordinary perseverance and patience."

The object of the author was to produce "a useful, complete, and reliable *vade mecum* for the legal profession in Upper Canada." He has done more: his book will be valuable to the English lawyer, who will find the subjects embraced as well, if not better handled than by any English writer; and in addition, all the cases in the Common Law Procedure Acts brought down to the hour of publication. Upon this point we must allow the Author to speak for himself. "I may be allowed to observe that I have had a great advantage over my fellow-laborers in England, and have endeavoured to avail myself of it, so as to render my book more complete and reliable than any similar work hitherto published either in England or Ireland. I am the latest commentator on the Common Law Procedure Acts, and have not only the benefit of the experience of my predecessors, but the benefit of decisions pronounced by the Courts since the publication of their works."

More than 900 cases have been decided in England since the passing of the English Acts, and our Acts upon the construction of one or other of them, and all these are noted in the work. The work in fact, though not in form, is a Treatise on the Law and Practice of the Superior Courts and County Courts, and displays throughout immense industry and research. It is elaborate certainly for the subject is extensive but the information it gives is at the same time sufficiently condensed. It does great credit to the author, and well entitles him to the gratitude of the profession for so valuable an aid to the performance of their daily duties.

Mr. Harrison has spared neither pains nor expense in accomplishing the object he had in view, and well deserves the patronage of those whom he sought to serve.

Familiar with such matters and competent to form an opinion we know that the publication will not, under the most favorable view, realise "the money out of pocket." The author must be content with other reward. He has at all events by the work before us established a well-earned reputation as an industrious and able legal writer.

With our limited space it would be quite impossible to review the book at any length—at least for the present. It is the only elaborate legal work which has ever been published in Canada, and we can add with truth that the typographical execution is excellent. The contents are as follows:—

The Common Law Procedure Act, 1856; the County Courts' Procedure Act, 1856; the New Rules of Practice; the New Rules of Pleading; Forms; Table of Costs in Superior Courts; the Error and Appeal Act; the Common Law Procedure Act, 1857; the County Courts' Procedure Act, 1857; Index; Addenda et Corrigenda; with the Table of Cases (over 48 pages), and the Index (64 pages). The text is in Long Primer and the notes are Brevier solid. The price, Six Dollars.—(Sen'r Ed. L. J.)

APPOINTMENTS TO OFFICE, &C.

CORONERS.

DAVID MACKINTOSH, Esquire, M. D., to be an Associate Coroner for the City of Hamilton, and for the County of Wentworth.—(Gazetted February, 6th, 1858.)

ABRAHAM L. ROGERT, Esquire, to be an Associate Coroner for the County of Hastings.—(Gazetted Feb. 13th, 1858.)

JOHN LORN McDOUGAL, Esquire, to be an Associate Coroner for the United Counties of Lanark and Renfrew.—(Gazetted Feb. 20th, 1858.)

THOMAS GRAHAM, Esquire, to be an Associate Coroner for the County of Lincoln.—(Gazetted Feb. 20th, 1858.)

ALEXANDER RICHARD STEPHEN, Esquire, Surgeon, to be an Associate Coroner, for the County of Simcoe.—(Gazetted Feb 20th, 1858.)

GABRIEL BALFOUR, HENRY LEMMON and ROBERT HILL DEE, M. D., Esquires, to be Associate Coroners for the County of Brant.—(Gazetted Feb. 27, 1858.)

ALEXANDER RICHARD STEPHEN, Esquire, Surgeon, to be Coroner for the Town of Collingwood.—(Gazetted Feb. 27th, 1858.)

NOTARIES PUBLIC.

ROBERT CHARLES MANNERS, of Strathroy, and WILLIAM HERMAN, of Hamilton, Gentlemen, to be Notaries Public for Upper Canada.—(Gazetted Feb. 6th, 1858.)

SIMPSON HACKETT GRAYDON, of London, Esquire, Attorney at Law.—(Gazetted Feb. 13th, 1858.)

THOMAS PARTRIDGE, of London, Esquire, Attorney at Law.—(Gazetted Feb. 13th, 1858.)

CHARLES P. P. HUTCHINSON, of Guelph, Esquire,

DANIEL O'CONNOR, junior, of Ottawa, Esquire, Attorney at Law, and

HENRY MASSINGBERD, of London, Esquire, Attorney at Law, to be a Notary Public, for Upper Canada.—(Gazetted Feb. 20th, 1858.)

EDWARD E. W. HURD, of Toronto, Esquire, to be a Notary Public for Upper Canada.—(Gazetted Feb. 27th, 1858.)

COUNTY ATTORNEYS.

Carleton	ROBERT LEES,
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TO CORRESPONDENTS.

ROWLEY KILBORN, SMART A. MACVICAR, } Communications received too late for this number.

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CROWN LAND DEPARTMENT.

Toronto, 21st Oct. 1857.

NOTICE is hereby given that the Lands in the Township of Barrie in the County of Frontenac, U.C., will be open for Sale on and after the 17th of next month, on application to the Resident Agent, Allan McPherson, Esq., at Kingston.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. McPherson.

ANDREW RUSSELL,
Asst. Commissioner.

11—6 in.

CROWN LAND DEPARTMENT.

Toronto, Oct. 13th, 1857.

NOTICE is hereby given that the Lands in the Township of Rolph in the County of Renfrew, U. C., will be open for sale on and after the 11th next month, on application to the Resident Agent, William Harris, Esq., at Admaston near Renfrew.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. Harris.

ANDREW RUSSELL,
Asst. Commissioner.

11—6 in.

DIVISION COURTS.

MACLEAR & Co. desire to call especial attention to their Stock of BLANK FORMS for Division Courts, which are got up suitable for every County in Upper Canada, are well printed on good paper, and embrace all the Forms requisite for these Courts.

Procedure Books, Cash Books, Execution Books, Judges' Lists, &c., &c., always kept on hand, and sold at prices which defy competition.

Toronto, January, 1858.

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ASSIGNMENTS OF LEASE.
BONDS TO CONVEY LAND ON PAYMENT OF PURCHASE MONEY.

INSPECTOR GENERAL'S OFFICE.

Customs Department,
Toronto, October 30, 1857.

NOTICE IS HEREBY GIVEN, That His Excellency the Administrator of the Government in Council has been pleased, under the authority vested in him, to direct an order that, in lieu of the Tolls now charged on the passage of the following articles through the Ottawa Canals, the Tolls hereinafter stated shall be hereafter collected, viz:

Iron Ore, passing through all or any portion of the Ottawa Canals, to be charged with a toll of *Three Pence* per ton, which being paid shall pass the same free through the Welland Canal.

Rail-Road Iron, to be charged *One Shilling* per ton, including Lachine Section, St. Ann's Lock and Ordinance Canals, and having paid such toll, to be entitled to pass free through the Welland Canal, and it having previously paid tolls through the Chambly Canal, such last mentioned tolls to be refunded at the Canal Office at Montreal.

The toll on Barrel Staves to be *Eight Pence* on the Ordnance Canals, and *Four Pence* on the St. Ann's Lock and Lachine Section, making the total toll per thousand, to and from Kingston and Montreal, the same as by the St. Lawrence route, viz: *One Shilling* per thousand.

By command,
R. S. M. BOUCHETTE
Commissioner of Customs.

NOTICE.

WHEREAS Twenty-five Persons, and more have organized and formed themselves into a Horticultural Society for the Village of Fergus, in the County of Wellington in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic., cap. 22, and have subscribe a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration, written and signed as by law required, to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of the said Society, as "The Fergus Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

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Toronto, January, 1858. 1-ly.

NOW READY,

THE COMMON LAW PROCEDURE ACT, 1856. The County Courts Procedure Act, 1856, fully annotated, together with the C. L. P Acts of 1857; and a complete Index of cases and of subject matter, $7. By Robert A. Harrison, Esq., B.C.L.

MACLEAR & Co., Publishers, Toronto.

PROVIDENT LIFE ASSURANCE COMPANY,

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With Agencies in the Principal Towns in Canada.

Montreal, January, 1855. 1-ly

NOTICE.

PROVINCIAL SECRETARY'S OFFICE,
14th January, 1858.

TO MASTERS OR OWNERS OF STEAM VESSELS.

NOTICE IS HEREBY GIVEN, That on and after the opening of Navigation in the Spring of the present year, a strict compliance with the requirements of the several Acts relating to the inspection of Steam Vessels will be insisted on, and all penalties for any infraction thereof rigidly enforced. By Command,

E. A. MEREDITH,
Asst. Secretary.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Town and Township of Niagara, in Upper Canada, by signing a declaration in the form of Schedule A. annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds, to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the said Society as "The Niagara Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Hamilton, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of of the said Society as "The Hamilton Horticultural Society," in accordance with the provisions of the said Act. P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more. have organized and formed themselves into a Horticultural Society for the City of Kingston, in Upper Canada. by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture:

Therefore, I, the Minister of Agriculture, hereby give notice of the said Society as "The City of Kingston Agricultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics.
27th January: 1858.

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OPINIONS OF THE PRESS.

This is a very useful monthly, containing reports of important law causes, and general information connected with the administration of justice in Upper Canada. Although more particularly intended for the profession, yet every man of business may learn much from it that may be of real advantage to him. It has hitherto been published in Barrie, but will henceforth be in Toronto. We rejoice to see that Robert A. Harrison, Esq., B. C. L., is to be connected with the journal. He is a young gentleman that has already highly distinguished himself in his profession, and with literary talents of no ordinary kind, he will prove to be of great advantage to the Law Journal.—*Brampton Times.*

We are pleased to notice that this able monthly is, for the future, to be edited and published in Toronto, and that Robert A. Harrison, Esq., B.C.L., is become a joint Editor. His accession to the editorial staff must prove to the profession to whom he is now so well known as the author of so many works in general use, no small gain. With Mr. Harrison is associated W. D. Ardagh, Esq., who has for some time been favorably known as an Editor of the *Journal*. Notwithstanding the public caution of the *Journal* in Barrie, it has under the management of the Hon. James Patton acquired a very wide and extended circulation. Now that it is to be published in Toronto, it is reasonable to expect that its circulation will be increased It is a paper which should be in the hands of every Judge, Lawyer, Coroner, Magistrate, Clerk, and Bailiff in Upper Canada. We hope, however, that the conductors will see fit to widen the list of their exchanges and so increase the circle of their usefulness.

It is a great mistake to suppose that Judges, Lawyers, Division Court Clerks, or Bailiffs are the sole persons interested in the administration of justice. The public at large have a deep interest in, and feel a lively sympathy with the sentiments of a writer who propounds measures of law reform calculated to advance the public good. No discussion however well attended upon subjects of legal interest, can be satisfactorily carried on by the lay press.

The public require to be informed not only as to the existence of an abuse which needs a remedy, but as to the nature of the remedy required. For such information the more proper and more prudent course is to turn to the columns of a newspaper conducted by men whose whole lives and training peculiarly befit them for the expression of sound views. The number of the *Journal* before us which is that for August is replete with legal lore. The Editorial Department bears marked evidence of knowledge and ability.—*Toronto Times.*

Upper Canada Law Journal, edited by Messrs. Ardagh and Harrison. The office of publication of the above excellent journal has been removed to Toronto The *Journal* contains a variety of legal decisions and information interesting to solicitors, conveyancers, insurance agents, division court clerks and municipal officers, which cannot be obtained elsewhere. —*Stratford Examiner.*

We subjoin an article from the *Law Journal*, a legal periodical—indeed the only one published in Uppper Canada—shewing the immense progress of the Division Courts.

This periodical, which is now published in Toronto, is conducted with much ability and is very useful to all having business in the Superior and Division Courts.—*Advance.*

We have received the last three numbers of this able legal serial although from various causes we have laid them on one side. Neglect has not been the cause of this apparent indifference, but the very contrary. We wished for learned leisure to do them justice; and we have been favored with the assistance of a friend, abler than ourselves to give an opinion on the merits of a purely professional Journal. From him we understand that the *Journal* is mainly edited by R. A. Harrison, Esq., B. C. L., Barrister-at law, a gentleman whose name is a sufficient guarantee of its value and ability. He is well known as the joint compiler of Robinson's and Harrison's Digest, a work whose merits are familiarly known to all Canadian lawyers. His more recent work on the "Common Law and County Courts' Procedure Acts" will doubtless add to his professional reputation.

The November number of the *Law Journal* contains some forcible observations on the present unsatisfactory condition of the Law of Dower. The remarks on the liability of Bank Shareholders are also deserving of attention.—*Cobourg Star.*

The extensive usefulness of this Journal is not appreciated as generality as were desirable. It is not as many conceive, useful alone to the lawyer and the Student Men of business, bankers, the community will derive the greatest benefit from the persual of its pages. In a country such as ours, where almost every individual we meet is either a plaintiff or defendant, it is a duty which a man owes to himself to learn something of the operation of the laws by which we abide and are governed. For this the Law Journal is of incalculable service. To our young men we would especially recommend its careful and attentive study, and we undertake to warrant that after a few months they will obtain more business and legal knowledge than they could otherwise acquire from as many years study of the largest black letter tomes. The Law Journal is presided over by Mr. Harrison, of the Attorney General's Department—a gentleman of varied and extensive erudition; and who has thus far given evidence of a high order of ability which must rapidly command for him a foremost position in his profession. We wish the Law Journal every success. —*Catholic Citizen.*

Somewhere it has been said that to know a people thoroughly, it is necessary to study their laws—to ascertain how life and property are protected. This ably conducted Journal tells us how the laws enacted by government are administered in Upper Canada. It tells us—what everybody knows—that law is expensive, and it adds that cheap justice is a curse, the expense of the law being the price of liberty. Both assertions are certainly truisms, yet a litigious and quarrelsome spirit is not invariably the result of that combativeness which belongs to such men as those who, under any circumstances. and at whatever cost, will assert their rights. It is not our burpose to review the *Journal*, but to praise it, seeing that praise is deserved. The articles are well written, the reports of cases are interesting, and the general information is such, that the *Journal* ought not only to be read, but studied by the members of the bar, the magistracy, the learned professions generally, and by the merchant.

The *Law Journal* is beautifully printed on excellent paper, and, indeed, equals in its typographical appearance, the legal record published in the metropolis of the United Kingdom. $4 a year is a very inconsiderable sum for so much valuable information as the *Law Journal* contains.—*Port Hope Atlas.*

We have to return our thanks to the conductors (or publishers, we do not know which,) of this valuable publication for the present January number, together with an ample index for, and list of cases reported and cited in the second volume of these reports for the year 1856.

The ability with which this highly important and useful periodical is conducted by W. D. Ardagh and Robert A. Harrison, B. C. L., Esquires, Barristers at Law, reflects the greatest credit upon these gentlemen, and shews that the esteem in which they are held by their professional confreres and the public, is deservedly merited and nothing more than they are entitled to. We have much pleasure in earnestly recommending the members of the bar for this section of the Province to support the Upper Canada Law Journal, by their subscriptions,—taking leave to assure them that it is well worthy of it, and that they will find it a valuable acquisition to their libraries as a legal work of reference and high authority. It is printed and published by Messrs. Maclear, Thomas & Co., of 16 King Street East, Toronto, and the typographical portion is very creditable to that firm.—*Quebec Mercury.*

The Upper Canada Law Journal, and Local Courts Gazette, is a publication of which the legal profession of the Province need not be ashamed. The *Journal* has greatly improved since the removal of the office of publication to Toronto. It is edited with ability by W. D. Ardagh, and R. A. Harrison, B. C. L., Barristers-at Law. The January number, which is the first of the fourth volume, appears in a considerably enlarged form. The fourth volume will contain at least one-third more reading matter than its predecessor. A very important question, "Shall we have a Bankruptcy Law?" is discussed at length in a well written editorial in the January issue, to which we shall refer on a future occasion. "License of Counsel," is an original article which probes barristers in many tender spots. The *Law Journal's* circulation should not be confined entirely to the legal professsion.—the Merchant, and general business man would find it a very useful work. The price is $4 a year in advance, or $5 otherwise. Now is the time to send in orders.—*Port Hope Guide.*

In its first number of the fourth volume this interesting and valuable publication comes to us highly improved in appearance, with a much wider range of editorial matter than formerly. The *Journal* has entered upon a broader career of utility, grappling with the higher branches of law, and lending the strength of a full, fresh intelligence, to the consideration of some very grave wants in our civil code. The necessity of an equable and efficient "Bankruptcy Law" is discussed in an able article, instinct with astute and profound thought, coupled with much clear, subtle, legal discrimination.

It is the intention of the Proprietors to institute in the pages of the *Journal* a "Magistrate's Manual:"—provided that that body meet the project in the proper spirit, and contribute an adequate subscription list to warrant the undertaking. To prosecute this contemplation, could not fail to be productive of incalculable advantage, as well to the community as to the Magistracy. We sincerely hope that this latter body will bestow a generous patronage, where so laudable an effort is made for their advantage.

The *Law Journal* is presided over by W. D. Ardagh, and R. A. Harrison, B. C. L., Barristers-at-Law. It is a periodical that can proudly compare with any legal publication on this Continent. We wish it every success. —*Catholic Citizen.*

This Journal which is published monthly, appears this week much improved in size, appearance and matter. It was formerly published in Barrie, but has for some numbers back been published in Toronto, and has acquired aid in the editorial staff by the addition of Mr. Harrison, who is well known in the profession from his numerous publications on legal subjects. Under the management of Mr. Ardagh and Mr. Harrison, this Journal promises fair to become an important publication, not merely to the legal profession, but to other important classes of the community, as particular attention is given to Municipal affairs, County Courts and Division Courts; Magistrates' duties also receive a considerable share of consideration. It will contain original treatises and essays on law subjects, written expressly for the *Journal*, besides reports from the Superior Courts of Common Law and the Court of Chancery. Proper selections will also be made from English periodicals. To the profession the reports from Chambers of decisions under the Common Law Procedure Acts, and the general practice, are of particular interest. These the *Journal* supplies, being formerly reported by Mr. F. Moore Benson, and latterly by Mr. C. L. English, M. A. We would advise all municipal officers, Division Courts officers, Magistrates, and particularly the profession, to patronize this publication, as it cannot be sustained without their aid. The subscription is only $1 a year in advance.—*Leader.*

The January number of this valuable Journal has come to hand, and is as usual replete with legal decisions, articles on commercial law, &c., &c. We republish from this number, an able article on the subject of a Bankrupt Law for Canada.—*Canadian Merchants' Magazine.*