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DIVISION COURTS.

OFFICERS AND SUITORS.

OFFICERS.—In the absence of other topics we insert the following Communication respecting the want of Holidays or Vacation in the business of the Division Courts:—

"The Judges and Officers of the Superior Courts enjoy a Vacation, which enables them to throw off the cares of business and take a little necessary recreation. Now, the question naturally occurs, why should not the Judges and Clerks of Division Courts enjoy the same privilege? their labours are not less than those of their fellow officers in the Superior Courts. If the argument for Vacation be good for one, it is equally cogent for the other. Yet there is no Vacation or respite for the Officers of the Division Courts: the business of the Courts imposes ceaseless toil upon them. This is a defect which ought to be remedied, and one month—say August—would not be too much to ask out of the year.

Nor would the closing of the Clerk's Office during that time be really any disadvantage to the public. In case a defendant was about to abscond, the party could obtain a warrant from any Justice of the Peace to seize his property, and in contentious cases it would be a benefit to the community. It is well to have a pause from the strife of litigation; it affords leisure for reflection, for a return of good and neighbourly feelings, for a settling down of the bile stirred up by a Lawsuit. A Vacation would work practically to the settlement of disputes, and only a bitter enmity would live over a month's stagnancy in a quarrel.

The partial inconvenience to a few suitors in waiting four weeks would be more than counterbalanced by its pacific tendencies among the general public. A month without litigation would be a blessing to the country, and as creditable as it would be beneficial.

In any amendment of the Division Court Act the propriety of Holidays should be strongly urged."

We would refer to several Communications from Officers in another page of this number. The more frequently Officers communicate, the more advantage all will derive. The Officer who writes in this Journal has, as it were, a large audience of his own class; he speaks to some hundreds of Clerks and Bailiffs who are readers of this Journal: and if every one would communicate any new point of practice decided in his own Court, a large amount of valuable information would be collected every month. Those Officers to whom any point of difficulty would occur, or who found themselves in a situation to need advice, would, from ourselves or from some experienced brother officer, gain the information sought, and *all* would participate in the benefit.

No question, yet asked, has been allowed to remain unanswered: indeed on more than one occasion queries have called forth able replies from men of experience and high standing.

We would again in the strongest terms urge Officers to avail themselves of these advantages. We do not look for any learned disquisitions, nor elaborately composed epistles; what is required is merely a plain statement of any important point decided—a difficulty pointed out in simple language, questions put in a brief, straightforward way. And surely there are many, very many, Court Officers in Upper Canada capable of doing this.

SUITORS.

Evidence—Sale of Goods.

Goods delivered to a Carrier.—Independently of any express request or order by the defendant, he will in many cases be liable for goods delivered, not only to his wife, or servant, or child, but also to a carrier, or a partner, or an agent.

The delivery of goods by the seller to a carrier, to be conveyed to the purchaser, is in general a good delivery to the purchaser, so as to place the goods at his risk, and consequently, though the goods be lost in the course of the conveyance, he must pay the price. In general, therefore, the plaintiff is not obliged to prove the actual receipt of the goods by the defendant; proof of the contract and the delivery to the carrier will suffice, and the delivery is complete, and the action for goods sold and delivered lies, although the carrier wrongfully refuse to resign the actual possession of the goods to the purchaser, and this more particularly if the latter recover against the carrier in an action of tort for the wrongful detention. However the delivery to the carrier is incomplete to charge the purchaser for the price of the goods, if lost, unless the seller, in so delivering them, exercise due care and diligence, so as to provide the purchaser with a remedy against the carrier in those instances in which some precaution is the duty of the seller; as if he neglect to book or take a receipt for the goods or do not insure where that is necessary.

Delivery to a partner.—A question sometimes arises in actions for goods sold and delivered, whether a person is liable for the goods, as the partner of another by whom they were ordered, and to whom they have been delivered. Where there is such partnership the plaintiff may sue all or any of the parties, if they reside in different Divisions: for the D. C. Act, sec. 29, enacts that

where the plaintiff shall have any demand against two or more persons, partners in trade or otherwise, jointly answerable, but residing in different Divisions, or one or more of whom cannot be found, it shall be sufficient if any one of such persons be served with process and judgment may be obtained and execution issued against the person served, notwithstanding others jointly liable, may not have been served or sued. And where Judgment is obtained against a partner of a firm, and the Judge certifies that the demand was strictly a partnership transaction, the property of the firm may be seized under the execution on such judgment.

The act of one partner made *with reference to business transacted by the firm* will bind all the partners, although in matters *wholly unconnected with the partnership* one cannot bind the other.

(TO BE CONTINUED.)

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(*Continued from page* 182.)

Mode of Taking Down the Evidence.

In England the custom has to some extent prevailed of omitting to take down the Evidence formally and at length, and this laxity is sought to be excused on the ground of its not being necessary to set out the evidence in the conviction.[1] Speaking of this course of proceeding, an English writer on the practice of the Petty Sessions[2] pronounces it altogether wrong, "and founded on the erroneous supposition that as the general form of conviction obviates the necessity of setting out evidence, there is no mode by which the proceedings, with regard to the taking of the evidence, can be reviewed by the Court above. It is true that if a Magistrate has only to satisfy *himself* of the sufficiency of the evidence, he can probably do this more expeditiously and pleasantly by dispensing with the tedious and irksome task of writing down in minute detail the testimony of the witnesses; but although modern statutes, by doing away the necessity of setting out the evidence in the conviction and taking away the writ of *certiorari*, have thrown much greater protection round the Magistracy, yet there are still various modes by which the proceedings may be incidentally brought under the searching review of the Superior Courts, and by which the fortuitous errors and misapprehensions of the careless and unwary, as well as the designed and wilful perversions of the malicious and corrupt may be severely visited."

It is confidently submitted that in every case of summary conviction the evidence given, so far as material, should be taken down, and then be read over to and signed by the witness as well as the Magistrate, and that the depositions, informations, and other papers in a cause should all be put together, endorsed, and carefully preserved by the Magistrate for future reference.

It will be proper for the Magistrate who officiates as chairman, to conduct the examinations, take down the evidence, and manage the business in like manner as the County Judge at the Quarter Sessions, or the duty of taking down the evidence may be committed to the Magistrate's Clerk.

The proper mode of taking down a deposition is in the first person, and as nearly as possible in the words used by the witness, that is, so far as regards the *facts* bearing on the enquiry, and which come within the witness' own knowledge; but hearsay statements, and matters apart from the enquiry in hand, should not be committed to writing. In actual practice it will be found to be a saving in time to let an ignorant person, when examined as a witness, tell his story in his own way, and then to commence committing to writing when he has concluded, rejecting of course extraneous and unimportant statements.

It has been already observed that *before* a witness is examined he should be duly sworn, and not allowed to make his statement first, and then when that is taken down to swear him to the truth of it. The practice of swearing a witness to an examination not taken on oath cannot be too strongly reprobated.

[1] See Nixon v. Nanney, 1 Gale & D. 270. [2] Stone, 89.

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

(*For the Law Journal.*—BY V.)

CONTINUED FROM PAGE 183.

Duties after Court.—The duties of a Bailiff after Court are as important and arduous as those already treated of, and he should bear in mind that the successful party in a suit has now incurred and paid all the costs attending his judgment, and naturally looks for promptitude in collecting the amount and the costs out of pocket. The Bailiff's services are required for this purpose, and they must be cheerfully and zealously given.

Levying Execution on the Goods of the Defendant. This forms the chief, and as it is generally the most important part of a Bailiff's duties after Court, it will be first considered; his duty in arresting and conveying to prison a defendant, or a party convicted of contempt will be noticed afterwards.

The execution may be against a plaintiff as well as a defendant; the officer's duty in either case is the same.

Great caution is required by Bailiffs in acting under execution and warrants, "for they are not "only liable to actions at the suit of defendants "for an excessive or irregular discharge of their "duties, however trifling that excess or irregularity "may be, but at the suit of plaintiffs also for the "slightest negligence, or for favour shown to the "defendants, if such should prove injurious to the "plaintiff; and when the ruinous effects, such an "action might entail, are considered, the necessity "for a strict observance of the law is of paramount "importance."

On receiving the execution from the Clerk of his Court, the Bailiff should see that it is directed to him, that it is signed by the Clerk and bears the seal of the Court, that the debt and costs to be made are properly inserted, and that there is no blank left in date or otherwise. If any error or omission be discovered in the execution, it should be rectified by the Clerk before being acted upon by the Bailiff.

The day when received should be endorsed by the Bailiff on the execution, and if there be more than one against the same defendant received the same day, the hour of receipt should be stated on each in order to show the order in which the executions came into his hands.[a] The Bailiff should proceed to levy the goods of the party without delay, for should any unreasonable time elapse between the receipt of the execution and the attempt to levy, and the party's goods are in the meantime taken away, the Bailiff would be liable to pay the execution creditor the damage sustained, not exceeding the amount for which the execution was issued. The language of the D.C. Act is very pointed on the subject: "In case any Bailiff of any "Division Court, who shall be employed to levy "any execution against goods and chattels, shall "by *neglect*, *connivance*, or *omission*, lose the oppor- "tunity of levying any such such execution," then, on complaint and proving the same to the satisfaction of the Court, "the Judge shall order such Bailiff "to pay such damages as it shall appear the plaintiff has sustained thereby," and the Bailiff is made liable for such payment.

On entering the house or premises where the goods, to be seized, are, the Bailiff should properly demand payment of the amount directed by the execution to be levied, (but in cases of emergency he is not bound to make the demand) and if the same be not at once paid he must seize sufficient goods to satisfy the debt and costs, taking care, however, to leave unseized wearing apparel, and other excepted goods to the value of £5.[b]

The Bailiff should act with discretion in determining the quantity and nature of the goods he seizes; he should take what would be amply sufficient to cover the execution—or if there be more than one, all the executions he acts under, together with his own costs and charges; and in making an estimate he may well take into account that goods generally do not bring the best price at a Bailiff's sale: as to the nature of the goods he takes, when there is a choice, he must be guided by the circumstances of each case—whether he intends leaving the goods on the premises or removing them—whether it will be more convenient or less expensive to seize live stock or ordinary goods; and if he can be safe in doing so, it would be proper for him to follow the wishes of the debtor, and take such description of goods as would least inconvenience: in all such cases he should act as humanely as may be consistent with his own safety and the execution creditor's interests; a good officer will not object to do so, and a good man will ever feel the impulse to execute his office in a kindly way, but nevertheless to *do his duty*.

[a] If the Clerk has directions to issue several executions against the same defendant due on the same day, he should hand them to the Bailiff in the order of Entry, beginning with the date first entered for suit.

[b] Further particulars as to the property exempt from seizure will be given below.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

THE CHIEF SUPERINTENDENT OF SCHOOLS FOR UPPER CANADA, *Appellant*, IN THE MATTER BETWEEN THOMAS GILL, *Plaintiff*, AND HENRY JACKSON, DONALD McISAAC AND ANDREW DENNETT, *Defendants*.

(Hilary Term, 19 Vic.)

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

Alterations of school section—How made—Necessity of upholding acts of trustees de facto—Effect of local superintendent's decision.

In 1853, on application of the resident inhabitants of Oneida, the Municipality passed a resolution to divide the School Section No. 7 in that township, by taking away a part to constitute a new section, (but no by-law was passed until 1855, when one was adopted confirming this resolution.) A meeting was called for the 16th of January 1854, to elect three new trustees for Sec-

tion 7. In the meantime, on the 10th of January, the ordinary annual meeting was held, and a dispute arose as to whether trustees should not then be elected for the ensuing year; some thought not, and left the meeting, while others remained and proceeded with the election. The Local Superintendent being appealed to, declared the election illegal, considering that No. 7 had become a new section, and appointed a new one to take place at the meeting called for the 16th, when the defendants were appointed the three trustees for No. 7 as a new section. In January, 1855, the dispute was renewed; the defendants appointed a new trustee in the usual way, but another meeting was held, at which a new trustee was elected to succeed the retiring one of those first chosen in 1854, so that there were two sets of trustees claiming the office. The first elected trustees in 1854, all stammed from acting for that year and defendants imposed a rate, which the plaintiff resisted.

Held, (affirming Chief Superintendent of Schools v. McRae, 12 U.C.R. 545) that the alteration did not constitute No. 7 a new section, but that the rate was legal, being imposed by the Trustees *de facto*, who had not been removed.

Quære, whether such alteration could be made by resolution only.

Quære, also, whether the decision of the Local Superintendent can be thus incidentally reviewed in an action to recover back the rate.

See these and other points discussed in the judgment of the court below.

[14 Q. B. R. 119.]

Appeal from the Division Court of the county of Haldimand.

In 1853 application was made to the Municipal Council of Oneida by the resident inhabitants of school section No. 7 of that township for a division of the section as then constituted, and the formation of two sections therefrom in the place of one. Upon this the council, in November of the same year, passed a resolution as follows: "That the school section No. 7 be divided, and the line be struck as follows: between lots Nos. 50 and 51 in the 1st concession, between lots Nos. 21 and 22 in the 2nd concession, and between lots Nos. 21 and 20 in the 3rd concession; said school section to be No. 11." No other description was given, and no by-law dividing the section passed until the month of April, 1855, when one was adopted confirming the resolution, and dividing the section as above expressed, adding the following: "The eastern part to remain No. 7, the western part to be called No. 11." After the resolution, and previous to the by-law, on the 24th day of Dec'r, 1853, the clerk intimated by written notice to Mr. Peter Elder, though upon what authority did not clearly appear, that the council had appointed him, in conformity with the 18th section of the Common School Act, to appoint a time and place for holding a public meeting for the election of three trustees in school sec. No. 7, the notice describing the section as "bounded and known as follows: between lots 50 and 51 in the 1st concession, between 21 and 22 in the 2nd concession, and 21 and 20 in the 3rd concession." Pursuant to these instructions Mr. Elder, on the 5th of January, 1854, gave notice of a meeting to be held for the purpose specified, at the section school-house, on the 16th day of the same month; in which notice the description above stated was varied by naming a starting point at lot No. 40 in the 1st concession, and adding south halves of lots Nos. 26, 27, 28, 29 and 30 in the 4th concession; lots not named in the resolution, nor the clerk's notice following it. At the same time the trustees of the section for the preceding year, of whom Mr. Elder was one, had given a previous notice of a meeting to be held at the same place on the second Wednesday of the same month of January (the day fixed by statute for the annual school meeting) for the purpose as expressed, "of receiving and deciding upon the report of the trustees, and to decide upon the manner the school property is to be disposed of belonging to said section," meaning section No. 7 as existing before any action was taken by the council for altering it. A meeting of the inhabitants of No. 7, as existing in the preceding year, was convened on the 10th, the second Wednesday of January, in accordance with the first notice given, at which meeting the trustees' report for that year was received, and a resolution adopted as to the disposal of the school property mentioned in the notice. This being done, the chairman discontinued further proceedings, considering, as did part of the people assembled there, that the proper business of the meeting had been accomplished, while others claimed that the occasion was the lawful one for electing trustees for the ensuing year for the then No. 7 as altered, as then understood by all parties. They who dissented from this opinion having for the most part left the meeting, the persons remaining appointed another chairman and secretary in place of the first chairman and secretary, both of whom had retired, and elected two new trustees, one to supply the place of the place of the retiring trustee of the year, and the other in place of one who by means of the alteration had become a resident of the other section 11. A disagreement thus existing as to the regularity of the proceedings and election then had, it was settled between the parties contending, (though the plaintiff did not appear to have been present or assenting) that the Local Superintendent of the township should be referred to, to settle the matter in difference; and it being submitted to him, he on the same day declared the election to be illegal, and appointed a new election to be held of other trustees at the time and place named in the notice of Mr. Elder, given, as stated, on the 16th of January. On the 16th of January the second meeting was held, and the present defendants were then chosen as three new trustees, to serve in the same section No. 7, as a new section; and in January, 1855, on the day of the annual meeting, appointed one new trustee in the usual way; a meeting on the same day having also been held, and one new trustee also chosen to succeed the retiring one of those first elected in the foregoing year, so that there were two parties claiming the office of trustees in the section. Having been elected as stated, and pursuant to the vote of a meeting of the resident householders and freeholders of the section understood as the new No. 7, the defendants, in the month of June, 1854, imposed a rate on the taxable property therein, for the purpose of building a school house, and rated against the plaintiff the sum for which this action was brought. The plaintiff disputing the legality of the defendants' election, and their right to exercise the office of trustees, refused payment of the amount, and the defendants proceeding to levy the same of the plaintiff's goods he paid it under protest, notifying them that he would sue to recover it back, and for this the present action was brought.

The following judgment was given by the learned judge in the court below:—

STEVENSON, J.—I think that the election held on the 16th day of January was illegal, and that the claim of the defendants to the office of trustees cannot be sustained.

"Supposing, in the first place, that the school section was legally altered, before the council by their by-law of April 1855, declared it to be so, and that their resolution of 1853 was sufficiently definite to effect the object contemplated, yet the effect of the alteration is not to make two new sections of No. 7 divided, but only to detach part of it for the formation of a new one, No. 11, leaving the section No. 7, No. 7 still. This is the view I held at the trial, and I find it to be in accordance with the construction put by the Court of Queen's Bench upon a similar action of the council in the case of Trustees in the township of Moore v. McRae (12 U.C.R. 525), and is the intention the council in this case clearly expressed in their by-law, which, after separating from No. 7 as originally existing part of its territory for school section No. 11, expresses that the other and remaining part shall "remain No. 7,"—therefore an election to be held on the 10th day of January would in my opinion be the legal election, whether the authority of trustees would extend to No. 7 unaltered, until the by-law, or No. 7 as proposed by the resolution; but the uncertainty of the description contained in the resolution of the alteration made is such that it does not appear from it what are the real boundaries of the sections intended, or if so, what part of the section when altered was in fact to constitute No. 7, and what part of it No. 11; for until the adoption of the by-law, either part, for anything appearing in the proceedings of the council to the contrary, was equally entitled to either denomination, and under this description, as required by the 4th section of the school act, to be communicated to the person appointed to call the first school meeting, and by him to the public concerned, a meeting and election might, in my opinion, have been held with equal propriety in that part of the original school section then supposed to constitute No. 11. The definition of the sections intended by the council was not sufficient to identify either of them (and

the description given by the clerk to the person appointed, as stated, by him to hold the first meeting, is still more indefinite); and therefore the defendants could not be legally elected or exercise authority as trustees in a section, the limits of which had not been settled, and could not therefore be ascertained.

2nd—The statute 13 & 14 Vic., cap. 48, sec. 4, enacts "that whenever any school section shall be formed in any township, as provided in the 18th section of this act, the clerk of the township shall communicate to the person appointed to call the first school meeting for the election of trustees the description and number of such school section, and such person shall within twenty days thereafter prepare a notice in writing, describing such section, and appointing a time and place for the first school section meeting." The legislature, intending that it shall be publicly notified that the freeholders and householders resident within the sections so to be described, and they only, should vote in the election of trustees to be chosen also from residents within the limits prescribed; and the section described in the notice of the meeting given by Mr. Elder, on receiving the communication in this case from the township clerk, containing lots not named in that communication, or the resolution of the council preceding it, it must be assumed that the election had must be held and conducted as well by residents of these parts of the original section, as of that intended or described by the council, and any election so had would, for this reason, also be illegal and void.

3rd—Supposing the resolution of the council and the communication of the clerk defined with sufficient certainty the school sections intended to be established by the alterations made in the section originally existing; that the notice of Elder had been given in conformity therewith; and that the resolution, if sufficient for the purpose, had created a new section No. 7, I am nevertheless of opinion, that the original section could not be affected by the resolution only, and that the same was not legally altered as proposed until the passing of the by-law in April 1855. The Common School Act of 1850, in assigning to township councils the duty of forming and altering school sections within the townships subject to their jurisdiction, does not specify any mode by which they shall or may do so, and the Act being silent as to this, it must, in my opinion, be inferred that the Legislature intended they should proceed in these duties according to the same forms required in other matters in which their acts are to bind the public concerned in them. These acts are authorized by municipal statute 12 Vic., cap. 81, to be by by-law to be expressed by the corporate seal of the township, to be the act of the municipality whom the council represent, and the alteration of a school section is in the nature of those proceedings which require to be thus signified. A resolution is sufficient to express the opinion of the council, and to govern the course of its own proceedings, or the conduct of its subordinate officers, but it is not binding publicly; and therefore I do not think that the limits of the section were legally altered by it at the time of the rate imposed, or that the defendats had any lawful authority to require payment of the same by the plaintiff.

As to the intervention of the Local Superintendent in this matter, and the effect of his decision upon it, the Legislature has empowered this officer to decide upon differences existing between parties interested in the administration of the school law; and, to use the language of Mr. Justice Burns in the case of Roman Catholic Trustees v. Trustees of Belleville (10 U.C. R. 469), has provided a domestic forum for questions to be determined. By the 31st clause of the Common School Act of 1850, it is made the duty of local superintendents of schools "to decide upon any question of difference which may arise between interested parties under the operation of this or any preceding Act, and which may be submitted to him, and by the 14th section of Supplementary School Act of 1853 it is provided that each local superintendent of schools shall have authority, within twenty days after any meeting for the election of common school section trustees within the limits of his charge, to receive and investigate any complaint respecting the mode of conducting such election, and to confirm or set it aside, and appoint the time and place of a new election, as he shall judge right and proper." The question in difference between the parties contending for and against the election of the 10th of January having been submitted on the same day to the local superintendent for decision, and he having within the time allowed set aside the election then had, and appointed a meeting for a new one at the time stated in the evidence, and the defendants having then been elected trustees, this act of the superintendent, if the section in reference to which it was exercised had legally existed as a new section, might have given legality to the second meeting, and to the authority of the defendants in this action as trustees then elected; but the original section No. 7 being in my opinion neither an altered section nor a new one, I do not think that the law gives the superintendent power to cause to be displaced any trustees legally in office by virtue of election in the preceding years, or to cause to be elected any greater number of trustees than could or should be appointed at any election set aside by him. Here he has caused three new trustees to be elected in a school section not altered, and not only one, an act the law did not intend in my opinion to authorize.

Judgment is therefore given for the plaintiff for three pounds and thirteen shillings, the assessment levied and paid.

I have not expressed any opinion upon the question who are the legal trustees of the section, it not being necessary for the adjudication of this case that I should do so. I may say, however, that I think the trustees in office in 1853 continued so until after the election in January 1855, and that the two of those remaining after that election, and the one then appointed, constitute the present corporation of trustees—the first election of 1854 having been set aside, and the second in the same year being, as adjudged, illegal; and further, that the by-law No. 44, altering school section No. 7 will take effect according to statute on the 25th day of December next.

From this decision the defendants appealed.

G. Duggan, for the appeal. *Read*, contra.

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

Referring to the judgment of this court in a case of the township of Moore v. Mellae, (12 U.C.R. 525) we need only say in this case, that we do not think that the taking away a part of the old school section No. 7, in order to constitute such part a new school section, had the effect of giving to what remained of No. 7 the character of a new section, and that there was therefore no propriety in treating it as a new section in consequence of the change. That at least was the opinion expressed by this court in the case referred to, though one can see that there may be inconvenience in taking that view of it, for a part or all of the existing trustees may be resident in that part of the section which has been taken away. However, there was an unfortunate irregularity in this case, the resolution (if that alone would have sufficed to make the alteration) not specifying with any distinctness what was thereafter to form section No. 7, and what to form section 11.

The authorities upon the spot, both no doubt wishing to do what was right, differed in their view of what were the legal consequences of such an alteration in regard to the necessity for a new election of trustees for the part of the section which retained its old name; and in consequence, it seems, of the difference, two elections were holden, and two sets of trustees chosen. Then the Local Superintendent was appealed to for his decision, or rather he was appealed to after the first election of school trustees had taken place at the ordinary annual day of meeting for that purpose, treating what remained of school section 7 as an old section, and he determined that that was illegal, and that it was necessary there should be a day specially appointed for an election of trustees in the residuary school section No. 7, as if it were a newly created section. According

to his decision, such an election took place, and new trustees were elected—namely, the present defendants. Thus there were two boards of trustees; but there was so far an acquiescence in the course recommended by the superintendent, that the first elected trustees abstained from acting for the year, and left it to the new trustees to appoint teachers, raise rates, &c.

They, in the course of what they took to be their duty, demanded from the plaintiff Gill the small rate which has given rise to this lawsuit, and he paid it under protest, disputing the legality of the election of the new trustees. He has brought this action in the Division Court to get back the money. The learned judge of the Division Court went very carefully into the consideration of the question, and has stated his views distinctly, concluding that the new trustees were not then legally elected trustees, and therefore could not legally impose any rate. But, independently of the question whether the Local Superintendent's decision upon the point can be thus incidentally overruled in an action, the learned judge left out of view that the trustees who imposed and received this rate were the trustees *de facto*, and that, until they are removed, the acts which they do in the ordinary current business of trustees must of necessity be upheld, or everything would fall into confusion.

We are of opinion that the judgment given below must be reversed, and judgment given for the defendant.

Appeal confirmed.

REGINA v. THE MUNICIPAL COUNCIL OF PERTH.

(Easter Term, 19 Vic.)

(Reported by C. Robinson, Esq., Barrister-at-Law.)

Improvement of highway by raising it along plaintiff's land—Right to compensation—12 Vic., cap. 81, sec. 195; 16 Vic., cap. 181, sec. 33.

Owners of land upon a highway have no claim to compensation for anything done by municipal corporations in the proper exercise of their powers, within the line of the road as originally laid out.

The applicant owned land, with dwelling houses and a foundry thereon, fronting upon a public highway. The municipal council passed a by-law for making, grading, and gravelling this road, and the effect of the work was to raise the road along the applicant's land from five to twelve feet.

Held, that he was not entitled to an arbitration under 12 Vic., cap. 81, sec. 105, as amended by 16 Vic., cap. 181, sec. 33, to determine the amount of damage to be paid to him, the injuries not being such as could give him any right to compensation.

[14 Q. B. R. 156.]

In this matter a writ of mandamus *nisi* issued, of which the following is a copy:—

"Victoria by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith,

"To Thomas Boy Guest, Esquire, warden of and for our county of Perth, greeting: Whereas, we have been given to understand in our court before us, that on the 7th day of June, 1853, a certain by-law was passed by the Municipal Council of the said county of Perth, for the purpose, amongst other things, of authorizing the making, grading, gravelling and changing of certain roads within the said county, and that after the passing of the said by-law, to wit, on the 29th day of June, and 15th day of August, 1855, respectively, one Thomas Smith, of the village of Mitchell, in the said county, the owner of certain property said to be injuriously affected by the making, grading, gravelling and changing of the said roads, having named an arbitrator on his own behalf, did give notice thereof in writing to the clerk of said municipal council, and did request and demand of you, the said Thomas Boy Guest, as such warden as aforesaid, to name an arbitrator on behalf of the said municipal council, according to the provisions of the statute in that behalf; yet you, the said Thomas Boy Guest, well knowing the premises, but not regarding your duty in this behalf, did then and there absolutely neglect and refuse, and have ever since absolutely neglected and refused, to name an arbitrator on behalf of the said Municipal Council, to the great damage and grievance of the said Thomas Smith, and to the manifest injury of his estate, as we have been informed from his complaint made to us; whereupon he hath humbly besought us that a fit and speedy remedy may be applied in this respect; and we, being willing that due and speedy justice should be done in this behalf, as it is reasonable, do command you, the said Thomas Boy Guest, so being such warden as aforesaid, firmly enjoining you that immediately after the receipt of this our writ, you do name an arbitrator on behalf of the said Municipal Council of the said county of Perth, and give notice thereof to the said Thomas Smith, to which said arbitrator, together with the arbitrator named by the said Thomas Smith and a third arbitrator to be appointed by the said two arbitrators, it may be referred to determine upon and award the amount of damage, if any, to be paid to the said Thomas Smith, by reason of the making, grading, gravelling and changing the Huron road from the Wilmot line to Carron Brook, in the said county of Perth, or by reason of the making, grading, gravelling and changing the new Mitchell road, and the old Mitchell road, in the said county, according to the directions of the statute in such case made and provided, or that you do show us cause to the contrary thereof, lest on your default the same complaint should be repeated to us; and how you shall have executed this writ, make appear to us at Toronto, on the first day of Hilary Term next, then returning to us this our said writ.

"Witness the Honourable Sir John Beverly Robinson, Baronet, Chief Justice, at Toronto, this 1st day of December, in the nineteenth year of our reign.

"By rule of court. By the court.

"CHAS. C. SMALL."

The Reeve made a special return; and, by consent of the parties, the facts were stated in the form of a special case, as follows:—

"Thomas Smith, at whose instance the writ was obtained, is the owner of certain lands with dwelling houses and foundry thereon, situate in the village of Mitchell, in the county of Perth, and fronting upon the Huron road and the new and old Mitchell road in the said county, the said roads being public highways. The Municipal Council of the said county, on the 7th of June, 1853, passed a by-law (of which a copy is filed on the application made for a mandamus, and which is to be referred to as a part of this case) for the purpose, among other things, of making, grading, and gravelling the Huron road from the Wilmot line to Carron Brook, in the said county, and for making, grading, and gravelling the new Mitchell road in the said county, and for making, grading, and gravelling the old Mitchell road in the said county.

"In consequence of work done under this by-law, the said roads in front of said Smith's property were heightened more or less along his frontage, causing an embankment varying from five to twelve feet, whereby he is deprived of such convenient access to his land as before, and has been put to expense, and as he alleges the value of his property is much decreased.

"The question is, whether he is entitled to an arbitration under the 12 Vic., cap. 81, sec. 195, or any other statute, for the purpose of determining the amount of damage, if any, to be paid to him.

"If, under the circumstances, the court should be of opinion that the injuries above mentioned, or any of them, entitle the owner or occupier of the said property to such arbitration, a peremptory mandamus is to issue.

"If the court should be of a contrary opinion, the rule for quashing the return is to be discharged."

C. Robinson, for the applicant, cited—Sutton v. Clarke, 6 Taunt. 29; the Governor, &c., of Cast Plate Manufacturers v. Meredith, 4 T. R. 791; Boulton v. Crowther, 2 B. & C. 703; Doswell v. Impey, 1 B. & C. 163; Leader v. Moxon, 2 W. Bl. 924; Croft v. The Town Council of Peterborough, 5 C.P. 141; Scott v. Mayor of Manchester, 37 L. T. Rep. 82.

D. B. Read, contra.

The statutes referred to are noticed in the judgment.

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

The single question for us to determine upon this special case is, whether the statute 16 Vic., cap. 181, sec. 33, entitles the

applicant, Thomas Smith, to compensation for the injury which he states himself to have received. It appears that the injury is not occasioned by any alteration made in the line of the street or road as originally laid out by public authority, but is merely the consequence of the corporation having made and shaped (and as we must suppose properly) the public allowance for road which existed at the time the plaintiff's lot was laid out.

We do not think that the statute was intended to apply, or does in terms apply to any such case, but only to cases where the original allowance for road has been *changed*; that is, altered or diverted from its course; whereby it is taken for the first time through the private property of an individual, or is otherwise injurious to him, as it may be, even where it does not encroach upon his land.

We think the provision referred to, forming, as it now does, part of the 12 Vic., cap. 81, is to be looked on as one of a series of clauses intended to protect private proprietors against injurious consequences from alterations made by the municipal council in the line of any road. It might be reasonably assumed that such *changes* in the road could not have been foreseen, when the property was built upon, or till possession of the land, and that the consequences of the change might expose them to injuries which they could not by any reasonable caution have guarded against. And it is not just that the benefit to the public of giving them a shorter or a better road than that which had been provided for them, should be conferred at the expense of individuals.

There are some cases, perhaps, where, without making any change in the line of the road, the method taken of improving it, either by raising or sinking it, according to circumstances, may prove so injurious to the owner of adjoining land as to make it appear reasonable that he should be compensated, and and the present may be one of those cases.

But we have no discretion to distinguish between cases all depending on the same principles in regard to the right. As a general rule, it does not seem that the claim to compensation for the consequences of improvement made in the proper original line of the highway can be recognized as just and reasonable, because the proprietor of land taking possession of his lot, which has a street running past it, is called upon to consider that for the sake of the public the street will in progress of time be made as level and dry as it may be, either by raising the ground where it is low, or by reducing hills which are inconveniently steep; and having due regard to the make of the ground in its natural state, he has an opportunity of foreseeing such alterations in the level of the street as a regard to public inconvenience will lead to, and he should be governed by that in placing his buildings so as to suit such probable alterations.

In some cases it may be that from the nature of the ground the proprietor could not so place his building as to escape inconvenience from a change made in the level in the road, and in those cases the claim to compensation would be more reasonable. We say nothing of any fair ground of complaint that may arise from any abuse of the power given by law. Such abuse is not shown to exist in this case, and it would point to another remedy; but what we determine is, that anything done within the proper line of the road as originally laid out, for making the use of it more convenient to the public, is not a "*changing*" of the road, such as was intended to give to the adjacent private proprietor a claim to compensation under the statute 12 Vic., cap. 81, as it is now to be read, or was originally framed.

We do not think the legislature meant the clause referred to to be so applied, nor that the words they have used fairly import it. If they did mean it, and we are in error in our interpretation of the clause, it will be necessary for them to make the intention more plain. But we apprehend it has not hitherto been considered, that as a general rule there is any claim to compensation, either by arbitration or by action, where the line of road has not been altered, and where no unnecessary injury has been done. There are numerous instances throughout the country, where parties coming to occupy their lands at an early day, have built close to the front of their lot, along the slope of a hill. They had no right in such cases to assume that the public would never make an improvement in the hill by digging it down, and it would be obvious that if ever they should do so the buildings which they had placed close to the road must be left in an inconvenient situation.

The legislature could hardly mean to make compensation to all such proprietors, and we cannot discriminate between them according to the circumstances of each case. No such case, in our opinion, is provided for by the statute.

Judgment for defendants.

McMURTRY v. MUNRO.

(Easter Term, 19 Vic.)

(Reported by C. Robinson, Esq., Barrister-at-Law.)

County Court—Jurisdiction of, where sum reduced by payment—Evidence of account stated.

Appeal from a County Court. The declaration contained three counts, claiming each £50, but the damages were laid only at £50, and the particulars were for account rendered £55 15s., less by cash £22 10s.—£33 5s. At the trial the plaintiff relied on the count on account stated, in proof of which he produced a draft by himself on defendant for £55 15s. 1d., "being the balance in full of your account;" and proved that when presented defendant acknowledged the amount to be correct, but refused to accept it, as he was afraid he would be sued. A verdict having been found for £33 3s. 3d.,

Held, that the claim was within the jurisdiction of the Co. Court; and *Semble*, that the evidence of an account stated was sufficient.

[14 Q. B. R. 100.]

ASSUMPSIT.—1st count—£50, for goods sold and delivered; 2nd count—£50 for interest; 3rd count—£50 on account stated; claiming £50.

Pleas. First—Non-assumpsit.

Second—Payment in full before action brought; on which issue was joined.

The particulars of demand were:—

	"May 8th, 1855.
To amount of account rendered.....	£55 15 0
By cash.....	22 10 0
"Interest."	£33 5 0

At the trial the evidence given for the plaintiff was as follows:—

George E. Jones, sworn—Knows the defendant, presented him with the draft now produced. He acknowledged the amount therein stated to be coming to the plaintiff. He said he would not accept it, though it was correct; he was afraid witness would sue him if he did so. The following is a copy of the draft produced:—

"MR. C. J. MUNRO,

Sir,—You will please pay to Mr. G. E. Jones, or bearer, fifty-five pounds fifteen shillings and one penny, being the balance in full of your account, and oblige

Your obedient servant,

£55 15s. 1d. cy. (Signed) THOS. McMURTRY."

A rule *Nisi* was obtained to set aside the verdict and enter a nonsuit, on the grounds that the amount claimed exceeded the jurisdiction of the County Court, and that no sufficient evidence was given of an account stated; and upon hearing the parties, this rule was made absolute to enter a nonsuit. The plaintiff appealed.

J. D. Armour, for the appeal, cited Jordan v. Marr, 4 U. C. R. 54; Kimpton v. Willey, 19 L. J. (C. P.) 269.

Read, contra.

ROBINSON, C.J.—In the first place, did the plaintiff prove an account stated by Mr. Jones' evidence? That may be doubted. It was a conversation with a third party, not an agreement of the plaintiff's, or with any view to settling a balance between them. It was evidence of an admission of a debt to that amount, such as would enable the plaintiff to recover on a count

suited to the nature of the demand, but I doubt whether it proved an account stated. In Bates v. Townley (2 Ex. 152) this point was carefully considered, and it was laid down that the account must be understood to be stated *between the parties*, and that it must be shown to be stated with the defendant or his agent. Parke, Baron, says, "It is settled that there cannot be an account stated by a defendant, except with the plaintiff or his agent, and he cited Breckon v. Smith (1 A. & E. 488); and Platt, Baron, said, "An account stated is a settlement of account, in which both parties or their agents agree upon the amount due from the one to the other."

In several books it is stated that the admission, to be evidence of an account stated, must be made to the plaintiff "or a person sent by him." That I take to mean a person sent by the plaintiff to obtain a settlement of accounts. There is, however, a peculiarity in the case before us, for the plaintiff in the draft given to Jones requests the defendant to pay £55 15s. 1d., "*being the balance in full of your account*,"—so that here we have the plaintiff assenting on his part to that sum as the balance, and perhaps we may look upon Jones as a person *sent* by the plaintiff to obtain an assent to the balance stated, and also payment of it upon that draft. I consider the point so far doubtful, that if an appeal were before us on that point alone, against the legality of the verdict given for the plaintiff, I should have been unwilling to disturb it.

The learned judge of the County Court has nonsuited the plaintiff on another point, which it is necessary for us to determine; namely, that the Court had no jurisdiction in the case, for that the amount of the plaintiff's claim exceeded £50, and was not proved by the signature of the defendant. On that ground I think there was an error committed, for I apprehend that the commmon course has been to allow a plaintiff to sue in the County Court for the balance of a debt originally above £50, but reduced by payments, not by set off.

In Walker v. Watson (8 Bing. 414) the court sanctioned that course of proceeding in regard to a suit brought in an inferior court for a demand originally beyond its jurisdiction, but reduced by payment, and there are many other cases to the same effect. On the whole, I think we shall pursue the best course by reversing the judgment granting the nonsuit, and allowing the verdict to stand.

CHAMBER REPORTS.

HALL v. BOWES.

Rule 20 does not debar a Judge from ordering on motion such further particulars as he may think fit.

[Sept. 19, 1856.]

A summons having been obtained, calling on the plaintiff to show cause why he should not furnish the defendant with further particulars of his claim,

Smith now moved the summons absolute.

Eccles showed cause. Rule 20 provides, that in case the particulars should exceed three folios, the plaintiff should only be required to give a statement of the nature of his demand, and that statement had already been given along with the declaration.

Smith, in reply—The only statement furnished is, that the defendant sues for £7000 on a running account, extending over a period of several years, giving the date of its commencement. This is not a sufficient compliance with rule 20; but even if it were, there is nothing either in the act or the rules to prevent the Judge, in the exercise of his discretion, ordering further particulars, if necessary.

RICHARDS, J.—Without deciding whether the particulars furnished are sufficient under the rule or not, I will grant the order for further particulars. I am of opinion that there is nothing in the rule to limit a Judge making any order he may think fit, as before; as to the furnishing of particulars, I think the mode of proceeding pointed out in the rule, where the particulars exceed three folios, was chiefly designed to affect the question of costs.

Summons made absolute.

ROSSE v. DOLSON.

Plea of "non-assumpsit" to a promissory note struck out under the 101st section of the C. L. P. Act.

[Sept. 19, 1856.]

McDonald moved a summons absolute to strike out a plea of *non-assumpsit* to an action on a promissory note.

For the defendant, it was contended, that the plea was good under the 140th section of the C. L. P. Act, which referred to the forms contained in schedule B. as "sufficient." No. 33* of those forms was *non-assumpsit* ("that he did not promise as alleged") as a fit plea in actions on contracts. To it was added, in a parenthetical note, the following words: "This plea is applicable to other declarations on simple contracts not on bills or notes, such as those numbered 16 to 19. It would be objectionable to use 'did not warrant,' 'did not agree,' or any other appropriate denial." The first sentence was punctuated as above, with a comma only after the word "notes," and it ought therefore to be construed as affecting bills and notes, such as those numbered 16 to 19. But on looking to forms 16 to 19, they were found not to refer to bills or notes at all, but to breach of agreement to marry, breach of warranty, &c. The mention of the words "bills and notes" must be therefore construed as a mistake, or else as not referable to bills of exchange or promissory notes. *Non-assumpsit* was accordingly pleadable to actions upon them, as simple contracts. At all events, even if it were not, the proper course would be to sign judgment upon it, treating it as a nullity, and not to move to strike it out. (*Kelly v Delaboye*, 3rd Jur. 1172; *Fraser v. Newton*, 3rd Dowl. 773, cited in Cameron's rules, note, page 55.)

McDonald, in reply:—The words appended to form 33 plainly re-enact the old practice, which laid down that *non-assumpsit* was pleadable in actions on bills or notes. The words "not on bills or notes" must be taken parenthetically; and what followed, namely, "such as those numbered 16 to 19," was referable to what went before the parenthesis. The meaning of the sentence would then be, that the plea was *pleadable to such actions as those referred to in forms 16 to* 19, but not to actions on bills or notes. The plea should therefore be struck cut—such was the proper course under the 101st section.

RICHARDS, J., ordered the plea to be struck out; and the summons was made absolute accordingly.

STREET v. DOLSON.

The C. L. P. Act applies to action of dower.

[Sept. 22, 23, 1856.]

Declaration in dower. Defendant pleads three pleas without leave of Court

J. Paterson moved summons absolute to strike out pleas, or be allowed to sign judgment, on the ground that leave so to plead should have been obtained under the Common Law Procedure Act. Independently of that the third plea was bad as setting forth assignment of dower, which was impossible.

C. Patterson showed cause.

BURNS, J.—In this case of Street v. Dolson, the pleas were filed since the Common Law Procedure Act came into force. There are three pleas:—1. *Ne unques seizin que dower*; 2, *Ne unques accouple*; 3, That after the demandant's right accrued, and before the commencement of the suit, she con-

* This and the ensuing numbers mentioned in this case refer to the figures immediately preceding the words of the form to which they are attached, and not to figures in the margin, which denote the corresponding portions of the English Act.

veyed and assigned her dower to a certain person unknown. The demandants obtained a summons on the 16th September to set aside those pleas as being irregularly pleaded, without leave of a Judge to plead double. This is opposed on the ground that the Common Law Procedure Act does not apply to dower actions. I think the Act does govern actions of dower, as well as other actions, in all such cases as its different provisions can be made to apply. With respect to obtaining speedy execution after a trial, the 182nd section, by using the terms "demandant" and "tenant," shows that this provision will apply to actions of dower. The 13 & 14 Vic., cap. 58, abolished the writ in the action of dower, and substituted a declaration and notice in place of the writ. The provisions of the Common Law Procedure Act, with respect to the record, the manner of regulating addresses to the jury, how witnesses may be discredited, and all other matters to judgment in the action must surely apply to an action of dower as to any other action. I see no sensible reason why the 130th section should not apply to dower cases, or why the tenant should have the privilege of pleading as many pleas as he pleases, where other defendants are compelled to ask permission to do so. Perhaps the demandant might, under the 135th section, have in this instance signed judgment and compelled the tenant to apply on an affidavit of merits. She has, however, applied for leave to sign judgment, or to compel the tenant to elect one out of the three pleas, or to strike out the third plea. If the tenant asked to be allowed to plead the first two pleas together, that would have been granted; and therefore I shall make an order to strike out the third plea, and order the tenant to pay the costs of the application.

Davis v. Carruthers.

Plaintiff allowed to amend irregularity in a writ of summons on condition of re-service.

[Sept. 22. 23, 1856.]

In this case a summons had been obtained to set aside the service of a writ of summons, on the ground that the copy contained no endorsement of the plaintiff's claim, nor of the attorney's name who issued it. On the motion to make the summons absolute, plaintiff applied to be allowed to amend, which *Burns, J.*, granted, but on terms of re-service of the defendant.

Gamble v. White.

Amendment of Writ of Ca. Sa. granted on payment of costs, without setting aside arrest of defendant under it.

[Sept. 24, 25, 1856.]

Carroll moved summons absolute to set aside a writ of *Ca. Sa.* on the ground that it did not contain the necessary endorsement of the name of plaintiff's attorney, and also to set aside the arrest of defendant.

McMichael asked for leave to amend under 37th section without setting aside the arrest.

Burns, J., granted *McMichael's* application on payment of costs. The summons is in the alternative to set aside the writ, or that it should be amended by the plaintiff on payment of costs. The 37th section does not apply to a case of this kind, but the 291st section will embrace what is asked for.

Warren v. Munroe.

A summons only will be granted on the first application under the 286th section of the C. L. P. Act.

Sept. 24, 25, 1856.]

In this case an application was made for an injunction against the defendant under the 286th sec. of the C.L.P. Act.

Burns, J.—I thought at first, from the wording of the section, that I ought to grant an injunction at once, on the *ex parte* application of the plaintiff. But I find that the English practice is to grant a summons—*Gethins* v. *Symons*, 15 C. B. 362. A summons is all, therefore, that I can grant.

Goldbergh v. Leeson.

"Not guilty" and justification cannot be pleaded together.

[Sept. 25, 1856.]

Declaration in trespass for assault.

Defendant having obtained a summons to plead several matters, now moves it absolute. Pleas are, "not guilty," "*son assault demesne*," and justification, that the trespass was committed in defence of defendant's possession.

Blevins, contra.—"Not guilty" and justification in defence of possession are inconsistent pleas, and not pleadable together. *Baker* v. *Westbrooke*, 2nd Strange, 949.

Burns, J., ruled that the defendant should elect to plead either of the other two pleas, along with *son assault demesne;* but it was inconsistent to deny the trespass, and at the same time to justify it: both could, therefore, not be pleaded.

[*Blevins* subsequently made an affidavit that interlocutory judgment had been signed in this case before the summons was served, and on this ground the summons to plead double was altogether discharged with costs.]

Cameron v. Brantford Gas Company.

Section 193 C. L. P. Act does not apply to Corporations.

[Sept. 25, 1856.]

In this case a summons had been taken out under the 193rd section of the C.L.P. Act to examine the President, Secretary or Treasurer of the Company, as to the debts due to them.

Burns moved the summons absolute.

Burns, J.—In this case a summons was taken out under the 193rd section of the Common Law Procedure Act. No cause has been shown. The summons is that upon the third day after service of it upon the President, Secretary or Treasurer of the Company, that the Company do show cause why the President or Secretary or the Treasurer should not attend and be examined *viva voce* as to the debts of the debtors due and owing to the defendants. Although no cause is shown against this summons, yet there are two questions involved necessary to be determined, before any order I could make, be considered as legal and binding upon the parties desired to be examined: the first is, whether the 193rd section of the Act applies to corporations. I have no doubt that the 194th section, and the subsequent sections, will comprehend corporation debtors, so that judgment creditors of corporations can attach the debts due to such debtors; yet it is difficult to say how the provisions of the 193rd section, for the purpose of discovery as to these debts, can be carried out. It is the judgment debtor that is to be examined, and to be examined orally, and that examination to be conducted in the same manner as in the case of an oral examination of an opposite party. In the 176th section the examination of parties is provided for, and bodies corporate, as far as examination of the officers is concerned, is mentioned. The 193rd section says, that the examination should be conducted in the same manner as in an oral examination of an opposite party. This appears to me to refer to the mode pointed out in the 176th section, which still refers to the examination of a party. It is unfortunate if the Legislature intended that the officers of the corporation might be examined in respect of debts due the corporation, that some such explicit words as contained in the 176th section had not been introduced. I doubt whether the 193rd section can be held to extend to corporations. Secondly: The form of this summons, however, would prevent any order being made upon it; the judgment debtor could of course tell, upon being examined, who were indebted to him, and there would be no difficulty in making the required order upon him and enforcing obedience to it. Here it is asked

that the President, or Secretary, or Treasurer shall be examined. Not one of those officers is called upon by this summons to answer why he should not be examined; but it is the Company that is called upon to answer why they should not. Suppose an order were now made that one of the officers named, or that all these who are named should be examined, we must be satisfied how this order is to be enforced, before we can say the section applies. I know of no way to enforce the order against the corporation, and I do not see any way clear to enforce any obedience against the officers to an order that might be made without calling upon the persons filling those situations in the corporations, to answer why they should not be examined. On the whole I shall decline to make any order.

Summons discharged accordingly.

BARROW v. CAPREOL.

Between July 1st and August 21st, 1856, arrest on bailable writ and proceedings thereon were valid under 2 Geo. IV., cap. 1. sec. 8, 5 W. IV., cap. 3, sec. 1 & 2. and 5 Vic., cap. 6, and not under 8 Vic., cap. 48, sec. 44. which was only in force until the end of the Session (July 1st); nor under C. L. P. Act. which did not come into operation till August 21st.

The affidavit on which such writ is sued out does not state that the writ was not required from any vexatious or malicious motive whatsoever of defendant towards plaintiff. *Held.* this is only an irregularity waived by the defendant on putting in special bail; but without prejudice to any future remedy against the plaintiff.

[Sept. 26, 1856.]

In this case a summons had been obtained to set aside the proceedings upon a bailable writ under which the defendant had been arrested, and put in special bail. The writ had been issued on the 12th of August, and

J. B. Reid now moved the summons absolute, and sought to set the writ aside on the ground that there was no law authorising such an issue in force from the 1st of July, the day on which the last Parliamentary Session ended, and the 21st of August, when the Common Law Procedure Act came into force.—There was also an objection to the writ on the ground that the affidavit upon which it was sued out did not state that the plaintiff did not act from any vexatious or malicious motive whatever.

McMichael showed cause, on the ground recapitulated in the judgment.

BURNS, J.—In this case a bailable writ was issued on the 12th of August, 1856, to hold the defendant to bail in £783 4s. On the same day the defendant was arrested and gave bail to the Sheriff, and on the following day special bail was put in, and subsequently the plaintiff, on the 17th day of August, delivered a declaration and notice to plead with particulars of demand. On the 19th September the defendants obtained a Judge's summons to set aside the arrest, on the ground that there was no law in force authorising the issuing of bailable process between the 1st of July 1856 and the 21st of August, the day on which the Common Law Procedure Act came into operation, as if the defendant could be arrested during that time; yet the arrest was illegal, because there was no affidavit such as would be required in law, upon which to found the writ. The question raised by this application is a very singular one, and it is a proof that sometimes legislation is rather hasty, and without a due regard to the existing state of things. The Common Law Procedure Act was passed on the 19th of June to come into operation on the 21st of August. The law of arrest had long existed in the Province, but the amounts for which arrests were allowed, and which should be set forth in the affidavit to hold to bail, have been raised from time to time by different acts of the Legislature. The last of these was the 44th section of 8 Vic., cap. 48, which was continued in force by 18 Vic. cap. 85 to the 1st of January 1856, and from thence to the end of the next ensuing Session of Parliament, and no longer. The last session of Parliament ended on the 1st July 1856, and cap. 85 passed on the first of July continues 8th Vic., cap. 48, except the 44th section. So far therefore as this last act affects the question, the 44th sec. was allowed to expire on the 1st of July 1856, and if there be nothing else affecting the question we should have to fall back upon whatever the law was anterior to 8 Vic., cap. 48. The Common Law Procedure Act in the 318th section enacts, that from and after the time when this Act shall commence and take effect, the 44th section of 8th Vic. cap. 48 shall be repealed, except so far as the same may be necessary for supporting, continuing and upholding any writs that shall have been issued, or proceedings that shall have been had or taken before the commencement of this Act. It is evident the Legislature must have contemplated the continuing act, and the C. L. P. Act should act contemporaneously; but there is a hiatus of time between the doing so as respects the 44th section, and had that section been continued along with the other provisions of the Act, then all would have been harmonious. The question is whether by force of the concluding words of the 318th section, it can be held that the 44th sec. of 8th Vic., cap. 48, can be resorted to for the purpose of upholding the arrest upon a writ sued out before the 21st of August. I am of opinion that it cannot. The Act continuing that section declared it should be in force no longer than the end of the Session of Parliament next after the 1st of January 1856.—Now it would require a pretty strong inference to be drawn that the section was continued, which in its operation might operate to deprive a person of his personal liberty. I have no doubt the Legislature supposed the section would remain in force until the commencement of the other Act; but it does not appear to me it can be held to have any force by reason of the words of the 318th section; for they only contemplate looking back at the state of things existing on the 21st of August for the purpose of upholding the writ. If this application had been made before the 21st of August, I do not see how it is possible to say the 24th section of 8th Vic., cap. 48, was then in force. Then putting this out of the case, we must fall back upon the 2 Geo. IV., cap. 1, sec. 8, and 5 Wm. IV., cap. 3, secs. 1 & 2, made perpetual by 5 Vic., cap. 6, The writ bailable for arresting the defendant is therefore under these Acts authorised, but the question is whether the affidavit to hold to bail warranted the writ. The 8th section of 2 Geo. IV enacts that it shall not be lawful to proceed to arrest the body of the defendant unless an affidavit be first made; in which, in addition to stating the cause of action, and the amount due, the party making it must state, he is apprehensive that the defendant will leave this Province (then Upper Canada) without satisfying the debt, and that the party does not sue out process for *any vexatious or malicious motive whatever*. The affidavit in the present case contains all that is requisite to warrant the writ, except that of stating that the writ was not sued out from any vexatious or malicious motive whatever. The defendant put in special bail without questioning the regularity of the writ. The case then is reduced to the consideration, whether the want of this allegation is only an irregularity, or whether it is such a defect as to render the arrest altogether void. It appears to me it is only an irregularity. There is an affidavit swearing to a debt due, and that defendant is about immediately to leave Upper Canada, with intent and design to deprive the plaintiff of the said debt. I think it was competent for the defendant to waive a provision made in his favour, in which light I look at the words required to be inserted in the affidavit. It is true that they might be supposed to impose some obligation on the plaintiff or party suing out the writ; but I do not see that the defendant by his omission of them, is deprived of any legal rights he may have against the plaintiff, either for when arresting when no debt was due, or because there was no reason for apprehending that the defendant would leave the Province. I am therefore of opinion that the defendant has waived the irregularity of the arrest by having put in special bail to the action.

Summons discharged, but without costs.

Da Costa v. The Gordon Estate.

Notice to admit documents at trial—New Practice.

[Sept. 22, 1856.]

In this case a summons had been obtained calling on the defendants to admit documents under the 165th section, following the old practice.

Burns now moved that the summons be made absolute.

For the defendants it was urged that the summons should be set aside with costs. Rules 29 and 30 prescribed the mode and form in which parties should be called on to admit. It should be by notice to the party called on, or his attorney, and in case of refusal, the Judge at *Nisi Prius*, and not the Judge in Chambers, was the proper person to decide on the matter of costs; and the object of the Common Law Procedure Act was to do away with summonses to admit, and orders upon them.

Burns, J., ordered the summons to be discharged with costs, on the ground that the new practice, as contended for the defendant, is the proper construction of the Common Law Procedure Act.

Moffatt v. Fitzgibbon.

Taxation of Costs on entering Judgment in the Superior Courts, on a confession in a case marked "inferior jurisdiction."

[Sept. 24, 1856.]

This was an application to procure the decision of the Judge on a point relative to the taxation of costs. On now entering judgment on a confession obtained in April last, the officer of the Queen's Bench was of opinion that he had no power to grant any costs. The 155th rule under the Common Law Procedure Act provided, that in cases of the proper competence of the County Court in which final judgment shall be obtained without a trial, and in which the papers shall *not* be marked "inferior jurisdiction," no more than County Court costs shall be taxed without special order of the Court or a Judge. In this case the papers were marked "inferior jurisdiction," and the officers thought he had no power to grant any costs. According to the old practice the party entering judgment would be entitled to County Court costs.

Burns, J., decided that in such cases County Court costs should be taxed.

Horsman v. Horsman.

Interrogatories for the discovery of the nature of the defendant's title, under 176th Sec. allowed upon summons to show cause.

[Sept. 27, 29, 1856.]

In this case, which was an action of ejectment,

M. Vankoughnet moved absolute a summons obtained under the 176th section to file interrogatories to the defendant. The plaintiff's affidavit was exactly in the form given in *Chitty's Archbold*. A similar application had been made to Mr. Justice Hagarty, under the Evidence Act, before the Common Law Procedure Act came into force, who had some difficulty in deciding it, and referred the applicant to the full Court; but meanwhile the Common Law Procedure Act came into operation, which left no doubt on the subject. The object of the interrogatories was to obtain a discovery of the nature of the defendant's title, and were copied almost word for word from those which were allowed in the case of *Flitcroft v. Fletcher*, 33 L. & Eq. 505, 25 L. J. Ex. 24.

Carrall showed cause: The word "discovery" in the 176th section only included such documents as would have been the object of a bill of discovery in equity, under which the general practice was not to compel a defendant to disclose his title.—*Martin v. Henning*, 10 Exch. 478, Storey Eq. Jur., section 14917. [Burns, J.—That is all altered now by the Law of Evidence Act, which allows a party to be examined orally as to all matters touching his own case.] The mode under the Common Law Procedure Act, by which defendant was compelled to disclose the nature of his title, was by a statement filed along with plea, pleaded under the 224th section.

Vankoughnet.—Plea was filed in this case before the Act came into force. Finlason's note to sec. 51 of the English C. L. P. Act, states that the plaintiff is entitled under it to the discovery of the nature of defendant's title, but not of the evidence by which he intends to support his title.

Burns, J., granted leave as required to file the following interrogatories:—

First—In what character or on what right do you claim to be entitled to the possession of the premises for which this action is brought?

Second—Do you claim to be entitled to the same under the will of the late John Horsman of Nissouri?

Third—Have you any right or interest in the said premises except as aforesaid,—and if so, what is the nature of such right or interest?

Duggan v. Bright.

Upon a summons for reference under the 143rd section an order granted under 84th.

[Sept. 27, 1856.]

In this case *Paterson* had obtained a summons for a reference to the Master of the Queen's Bench under the 143rd section. The action was for a bill of costs in Chancery, and judgment had been allowed to go by default.

McMichael, for the defendant, would prefer a reference to an arbitrator under section 84, who understood the subject of costs in Chancery better than might be expected of the Master of the Queen's Bench.

Burns, J., granted an order under the 84th section.

Moore v. Cotton.

Affidavit unnecessary on an application for a summons to plead double.

[Sept. 26, 1856.]

In this case *J. B. Reid* obtained a summons to plead double without filing any affidavit.

Gill v. M'Auley.

Absent defendant—Practice.

[Sept. 27, 1856.]

The writ having been issued before the Common Law Procedure Act came into force, and served on the defendant, a resident in Ogdensburgh, U. S., service was allowed under the Absent Defendant's Appearance Act, 14 and 15 Vic. cap. 10. Plaintiff now moved for an order to proceed as the Judge might think fit, under the 35th and 36th secs. of C. L. P. Act.

Burns, J., granted an order to proceed by sticking up the proceedings in the Crown Office, and serving the defendant through the post.

McCallum v. McCallum.

The 251st section is applicable to judgments entered after the C. L. P. Act came into force, even where proceedings commenced and verdict had under the old practice.

[Sept. 29, 1856.]

This was a motion upon a summons to set aside a judgment in ejectment, entered in the name of a dead defendant.

Burns showed cause.—Although the previous proceedings had been taken under the old practice, judgment had been entered since the Common Law Procedure Act came into force. The death of the defendant in the present case had taken place after verdict, and by the 251st section in such case, the plaintiff was entitled to judgment, without suggestion

or revision, as if no such death had taken place; and he could proceed for the recovery of costs against the legal representatives of the deceased.

Paterson, contra—Defendant died before the Common Law Procedure Act, and therefore judgment should have been entered according to the old practice, either by suggestion of the death or by rule to enter judgment *nunc pro tunc*.

BURNS, J.—The summons must be discharged. Judgment was entered after the Common Law Procedure Act came into force, and therefore the plaintiff was right in proceeding according to the 251st section.

MORRIS v. SMYTHE.

Practice—225th section.

[Sept. 29, 30, 1856.]

An application was made under the 225th section to substitute the name of Baron de Rottenberg for that of the defendant. The premises sought to be recovered in ejectment were held in the name of the applicant, as official depositary of arms. Summons granted.

A. Cameron now showed cause.—De Rottenberg held merely as the tenant of Smythe, and the act was not meant to apply in such cases. Even supposing De Rottenberg to give up possession, Smythe could still hold on his own right.

Contra.—An affidavit was read which stated that Smythe was merely the agent of Baron de Rottenberg.

BURNS, J., granted the following order:—

(In the Common Pleas.)

The Hon. JAMES MORRIS, pltff, } Upon reading the Sum-
TERENCE SMYTHE, deft. } mons issued in this cause, and hearing the parties, I do order that George Frederick de Rottenberg be substituted for Terence Smythe as defendant in this cause, and that he be allowed three days from this date to enter an appearance and plead, and that all further proceedings in the meantime be stayed against Smythe.

TORRANCE v. GROSS.

Summons for security for costs must either state that issue has not been joined, or else that the defendant did not become aware of the plaintiff's residence until after issue joined.—Application cannot be renewed on amended affidavit.

[Sept. 25 & 26.]

Carrall, for the defendant, moved absolute a summons for security for costs.

Jackson showed cause. The affidavit on which the summons had been obtained did not state that issue had not been joined, as was required in ordinary cases—(R. 23.)

BURNS, J.—A summons was obtained by the defendant for security for costs, on the 24th of September. The affidavit upon which the summons was obtained, states that an appearance has been entered for the defendant, but does not state in what state the suit now is. It is objected, that the affidavit should show the state of the case at the time of the application being made. On the part of the defendant, the case of *Jones v. Jones*, 10 L. J. Ex. 77, is relied upon to show that if the defendant is not entitled to security for costs, it should be shown by the plaintiff in answer to the application. It is said in *Chitty's Archibald* that the case of *Jones v. Jones* is very doubtful authority, and I agree with the observation. I find a case in C. & J. 207, in which Bayley, B., says that the defendant makes the application at his peril, and it rests with the plaintiff to show that the application is too late. In *Suzalatti v. Powell*, 1 Marsh. 376, the Court of Common Pleas held that it was necessary to state in what state the proceedings were on making the motion. It is required by rule to make his application promptly and before issue joined, and if he make the application after issue joined then he must show that he was not aware of the place of the plaintiff's evidence earlier. Now, if the defendant need not show in what stage the proceedings are, it follows that the Court, in the first instance, cannot know the ground upon which the defendant applies, and if a defendant should make the application upon an affidavit, merely stating the place of evidence of the plaintiff to be abroad, and if the plaintiff met that affidavit by showing that issue was joined in this cause, the defendant would be asking to meet that again by showing that he did not become aware of the plaintiff's place of residence till after he had pleaded. The object of the rule in compelling the defendant to apply promptly is that expenses need not be incurred, and if he himself takes steps, after becoming aware of the place of plaintiff's residence, he then waives his right to ask for security. I take it, the reason for asking the information as to the state of the proceedings from the defendant, is that the court may know if he does come promptly, either according to his right or when he first became aware of plaintiff's residence. When granting the rule *nisi*, or summons, there should be a *prima facie* right to it shown by the party applying, and that it should appear whether he is applying according to his right to do so before issue joined, or whether it be upon the ground that he first became aware of the plaintiff's residence. I shall therefore discharge the summons as having been granted upon insufficient grounds, costs to be costs in the cause.

Jackson stated that the case of *Huntley v. Bulwer*, 6 D. 633, supported his lordship's view of the case; also, 2 Archibald's Practice, 1332, 9th edition.

Carrall subsequently asked a summons on an amended affidavit, but *Burns J.*, refused it on the authority of *Joynes v. Collinson*, 13 M. & W. 558.

MOBERLY v. BAINES.

Defendant files without serving a defence, and at the same time obtains a summons to amend declaration, which was made absolute. On the amendment being made, plaintiff signs interlocutory judgment, for want of plea served, but afterwards serves notice of trial.—Interlocutory judgment set aside on application of defendant, but without costs, as defendant should have treated it as waived upon notice of trial served.

[Sept. 27, 1856.]

Crooks showed cause against a summons which had been obtained to set aside an interlocutory judgment, on the ground that it had been signed after plea filed. The plea, although filed, was not served,—and as the plaintiff had no notice of it, the interlocutory judgment was perfectly regular.

For the defendant: In this case the declaration had been amended by order of *Richards, J.*, in Chambers, on the application of the defendant. Section 139 provided that in such a case the defendant should have two days more to plead. Interlocutory judgment, however, was signed immediately, and that was one ground why it was irregular. A plea had been filed before the amendment, but pending the application, it was thought not necessary to serve it on the plaintiff. The 139th section provided that if no new plea was pleaded within two days, the plea filed should stand and be considered as pleaded in answer to the amended declaration. The plaintiff should not in any case have signed judgment, but if no new plea was pleaded, should have joined issue on the plea before filed. Another reason why interlocutory judgment should be set aside was, that notice of trial had been given after it was signed.

BURNS, J.—The notice of trial was a waiver of interlocutory judgment, therefore the defendant should have gone to trial without taking any notice of it. On the other grounds, however, I will set aside the interlocutory judgment, but without costs.

DARLING v. MAITLAND.

Practice—19 and 20 Vic., cap. 91.

[Sept. 30, 1856.]

Paterson obtained an order *ex parte* to commence a suit in the Superior Court in the United Counties of York and Peel, marked "Inferior Jurisdiction," on the ground that a material witness resided in Lower Canada, and that it was necessary to obtain his testimony.

In re Glasse v. Glasse.

No affidavit necessary to obtain a summons to change an attorney.

[Sept. 25, 1856.]

In this case *J. Dempsey* obtained from *Burns J.* a summons to change the attorney of the plaintiff from J. Bolton to R. Dempsey, without an affidavit. Rule 4. Finlason 520, note.

Kane v. Kane.

Defence in ejectment informal under 224th section—Summons granted to set it aside and enter judgment—Defendant allowed to amend on payment of costs.

[Sept. 30 & Oct. 3.]

This was an application to be allowed to enter final judgment in ejectment, on the ground that the appearance was informal in not having filed along with it the necessary notice required by the 224th section. Service of the writ had been on defendant's wife, and the application was made under R. 92.

Burns, J., granted a summons to set aside the defence and enter judgment.

No cause could be shown to the summons, but the defendant was allowed by *Burns, J.*, on payment of costs, to amend his defence.

Brown v. Benniger.

Upon a summons to show cause, an order granted for the oral examination of defendant under the 193rd section, where the plaintiff had other means of satisfying his claim besides attachment of debts.

[Sept. 30, Oct. 1.]

An application having been made to *Richards, J.*, for an *order* orally to examine the defendant under the 193rd section, a summons only was granted.

Jackson now showed cause.—The summons ought to be discharged, as the plaintiff was only prompted by vexatious motives in applying for it, and could, if he wished, satisfy his claim without having recourse to any oral examination, which only intended to be resorted to by the Act where other attempts to recover satisfaction failed. In this case also the defendant had been arrested, and the arrest operated as a satisfaction of the debt. Then the plaintiff could have proceeded against the lands of the defendant. The defendant had filed an affidavit stating that lands were conveyed to him, and that he was ready to convey them to the plaintiff.

A. Crooks, contra.—The arrest was no satisfaction of the debt, (see Act of 47) and as long as the judgment was not satisfied the plaintiff was at liberty to proceed under the 193rd section. Defendant in his affidavit plainly admits that certain debts are coming due. [*Jackson*—Mr. Justice Hagarty decided that debts not due, but about to become due, could not be attached.] Mr. Justice Hagarty's decision applied only to liabilities; and the words of the 194th section "owing or accruing" shows that debts *in futuro* as well as *in presenti* are liable to attachment. All the remedies provided by the Common Law Procedure Act are concurrent if necessary, and are intended to facilitate the speedy recovery of debts.

Burns, J.—In this case the summons must be made absolute. The order, however, is only as to the defendant's examination, and does not decide anything in reference to what debts are or are not attachable.

Green v. Horton.

The Venue must be laid in the first instance in the county where the writ of Summons is sued out, when it is sued out of a deputy office.

[Oct. 1, 1856.]

Jackson obtained a summons to set aside the declaration on the ground that the writ of summons was issued from the office of the Deputy Clerk of the County of Elgin, and the Venue was laid in Middlesex. The action was on a promissory note.

Carrall, for the plaintiff, had no cause to show.

Burns, J., in setting aside the declaration, observed that he was not aware of anything in the Common Law Procedure Act to change the practice in this respect. In the first instance the venue, according to the old practice, should be laid wherever the writ was sued out, when it is sued out of a deputy office; and as no cause is shown, I suppose it is conceded that such is the practice still.

Housen v. Stickles.

Practice—25th Section.

[Oct. 1, 1856.]

For the defendants a summons was obtained, calling on plaintiff's attorney to declare the residence and occupation of the plaintiff, and to file in the proper office his warrant or authority to prosecute the action.

The attorney, in showing cause, filed an affidavit stating that the plaintiff was dead, but that he was unaware of it until after action commenced; also, that since action commenced one Ira Shibley had called on him and stated that he was authorised to pay the debt—that he did pay part of it, and promised the rest.

Under these circumstances Burns J. discharged summons without costs.

Allan v. Skead.

Order for reference under 143rd section—Practice.

[Oct. 2, 1856.]

This was an action on a promissory note, in which the writ of summons had been issued under the old practice. There was no appearance, and interlocutory judgment had been signed. The proceedings had been carried on in a Deputy Clerk's office.

Burns, J., granted a summons to refer the matter to the County Court Judge, in order to ascertain the amount of damages under the 143rd section.

Nimmo v. Welland.

Affidavit in support of a summons under 193rd section need not state that defendant has debts due to him.

[Oct. 3, 1856.]

A summons for the examination of the defendant having been granted under 193rd section,

J Dempsey showed cause. The affidavits on which the application was grounded was insufficient, as they did not state that there were any debts due to the defendant.

Burns, J.—That is exactly what the defendant wishes to discover by the examination. The summons must be made absolute.

Gifford v. Johns.

An order of reference of a bill of costs between attorney and client granted on the ex parte application of defendant.

[Oct. 4, 1856.]

This was an application on the part of defendant to grant a reference to the master of a bill of costs between attorney and client. Defendant's affidavit stated that the case had been tried at last Cobourg assizes, when the plaintiff had been nonsuited.

Burns, J., granted an *order*.

Street v. Proudfoot.

Interrogatories will not be allowed to be put for the discovery of matters on which to found a plea, but must be in support of pleas already pleaded.

[Oct. 3 & 4.]

S. M. Jarvis, for the defendant, obtained a summons to administer interrogatories to the plaintiff under the 176th section.

Paterson showed cause. The action was one of dower. The interrogatories were all framed with a view of discovering

if the plaintiff had released her dower, and assigned the right of action; but neither of those facts were put in issue by the pleas which had been filed, and therefore the discovery sought by the interrogatories could not affect the case as it stood on the record. On these grounds such interrogatories ought not to be allowed.

Jarvis, in reply. Our object is to get evidence on which to found a plea. The equity on bill can be filed for discovery, and then a bill filed upon that discovery, and by analogy the the interrogatories ought to be allowed in this instance.

BURNS, J.—The summons in the case must be discharged. The interrogatories must be such as will affect the pleas already on the file. The questions are not such as would be allowed to be put at *Nisi Prius*, were issue joined with the pleas already on the file. The proper course, after having already pleaded, would be to get leave to file an additional plea first, and then to ask to be allowed to put interrogatories for the discovery of matter affecting it. In equity a proceeding analogous to this would be called a "fishing bill," and would be disallowed. Some statement must always be made on which to ground a bill of discovery. No doubt before pleas were pleaded interrogatories might be put with a view to framing a defence, without any leave, but when issue has been joined the interrogatories must point to proving something affecting the issue, and if the object be for the purpose of framing an additional defence to that already made, such a case should be made to appear, and that should be the nature of the application. On the present motion the summons must be discharged, but not with costs, as this is the first case of the kind under the Act.

COTTON v. MCKENZIE.

Proceedings having been carried on in a Deputy Clerk's Office, an order of reference on the application of one party can only be to the County Court Judge of the County in which such Deputy Clerk's Office is.

[Oct. 6, 1856.]

This was a case which was altogether a matter of account; and a summons to refer under the 84th section had been obtained by *J. Reid* for the defendant. The order of reference asked was to an arbitrator, or to the Judge of the County Court at Lambton, where the defendant and his witnesses resided—the venue was laid at Leeds.

BURNS, J., (on the summons being moved absolute) held that without the consent of both parties he could not, taking the 84th and 143rd sections together, refer the case to any other person than the Judge of the County Court of the place where the venue had been laid—the proceedings having been carried on in the Deputy Clerk's office of that County.

HANLEY v. HELDERSHOT.

In this case, which was an action of ejectment, service of the writ had been effected on defendant's wife. No appearance was entered, and, under the 34th section, an application was made to enable the plaintiff to proceed as if personal service had been effected, and to sign judgment by default.

BURNS, J., held that 34th section did not apply to actions of ejectment. The 223rd section enacted that service in ejectment should be as heretofore. Service on the defendant's wife was accordingly good, and the plaintiff could proceed to judgment at once, without any order of the Judge.

COUNTY COURTS, U. C.

(In the County Court of the County of Simcoe—J. R. GOWAN, Judge.)

COULTER v. WILLOUGHBY.

[September 27, 1856.]

The Clerk of this Court has been urged to tax the costs in this case according to the tariff settled by the Judges of the Superior Courts under the Common Law Procedure Act, but he has declined doing so without the order of the Judge, and an opinion is asked by which the officer may be guided in the taxation of costs.

It is urged that the tariff under 8th Vic. cap. 13 is superseded by the 18th section of the County Courts Procedure Act—the Judges of the Superior Courts having, by order of Court made in pursuance of the C. L. P. Act, established a tariff of fees; and that this tariff is the only one in existence in the County Courts, and must now govern the taxation of costs in causes therein—that the Judges have no power to make *special* order respecting County Court costs, and that the order contemplated by the 18th section of the County Court Procedure Act, being a *general* one applicable to the Superior Courts, and being the *only* one the Judges could make under the C. L. P. Act, must of necessity apply to County Courts—the Judges, in terms of the Statute, having "otherwise ordered."

The 8th Vic., cap. 13, sec. 75, makes provision for costs in the County Courts, and the Schedule to that Act shews the fees that may be demanded and received. The section referred to has not been repealed, and until the passing of the late Rules the provisions of the 8th Vic. were universally received as the basis and guide in allowance and taxation of costs.

Have the Superior Courts power under the Co. C. Procedure Act to establish a tariff of fees in the County Courts? Have they in the new Rules made order respecting them?—in other words, are the tables of fees established by Rule 170 applicable to the County Courts under the 18th sec. of the Co. C. P. Act? So far as it bears upon the point to be considered, the 18th sec. may be read thus: "Until otherwise ordered by "Rule of Court made in pursuance of the C. L. P. Act," the costs of all proceedings under the Co. C. P. Act "shall be and "remain as nearly as the nature thereof will allow the same as "heretofore, but in no case greater than those already estab-"lished," &c.

In the language used there is a want of pointed expression, which would almost lead one to surmise the madvertent omission of two or three words necessary to confer in direct terms the power of ordering. But from an examination of the context, it is plain to my mind that the authority exists, although this is not expressed with precision. The words "until otherwise ordered," imply the power of ordering otherwise; "until otherwise or-"dered by Rule of Court made in pursuance of the C. L. P. "Act," plainly implies not only that the power of ordering otherwise is vested somewhere, but also that the power must be exercised according to the terms of that Act: to suppose a want of power to make alterations in the present tariff is to render these words meaningless and absurd. The terms "until otherwise ordered" abound in the Statute Book, and in every case carry with them the idea of authority to order otherwise. A person is said to hold office "during Her Majesty's pleasure"; this means, "until Her Majesty be pleased to remove him," and certainly this latter phrase implies the power of removal.

"Rule of Court made in pursuance of the C. L. P. Act": by the 313th sec. of that Act, a Body is constituted with power to make Rules giving effect to the Act, &c., and by the language quoted, that Body is regarded as invested with authority in respect to Costs in the County Courts;—Rules of Court made *in pursuance* of the C.L.P. Act must emanate from that Body.

There was good reason too for conferring such an authority. The Co. C. P. Act so completely altered the procedure that a new table of costs, to suit the altered practice, became a matter of justice and necessity. The Legislature appears to have contemplated that an alteration would be made at a fitting period by the Body referred to, providing in the meantime for services not specified in the Schedule to 8th Vic., by referring to that tariff as affording principles to direct in cases not specially considered.

This provision we may presume, was intended to serve only a temporary purpose, for in the application of general principles

by independent Tribunals, there would inevitably arise a conflict of decision, and uniformity could only be secured by an order obligatory on all the County Courts.

It appears to me that the Judges of the Superior Courts have authority to fix the Costs to be allowed in County Courts; that is, in matters *not* provided for in 8 Vic., to determine what fees may be taken on proceedings under the Co. C. P. Act; and with regard to the items which *are* set forth in the 8 Vic. to *reduce* the fees if so minded; but that the fees so allowed must not be greater in proportion to the nature of the service than those already established—in a word, they can allow County Court costs to stand as left by the Co. C. P. Act (section 18) or may make other order respecting them by Rule specially enacted for the County Courts.

Have the Judges made any such Rule? They speak for themselves and leave no room for question; the Preamble to the Rules is sufficiently distinct, and the 170th Rule speaks of "Tables of Costs in Civil Actions in the Courts of Queen's Bench and Common Pleas." Even had the language been less pointed, it is obvious that the Judges could not have intended the tables to apply to County Courts, for so to apply them would be to disregard the restrictions imposed by the Act that the costs "should in no case be greater than those already established," and would make costs in Inferior Tribunals equal to the costs in the Superior Courts a violation of several statutory provisions, and indeed of the C. L. P. Act itself.

But it is absurdly enough urged that the passing of a Rule under the C. L. P. Act making new provisions for the Superior Courts, leaves the County Courts without a tariff, and this is said in the face of the unrepealed provision of the 8 Vic.

The recent rules apply certainly as a whole to the County Courts in matters within their jurisdiction for the 2nd section of the Co. C. P. Act enacts that the provisions of such Rules as relate to the sections of the C. L. P. Act, which are applied to County Courts, shall apply also to County Courts, and actions and proceedings therein. The 3rd sec. makes County Court Clerks subject to the Rules in like manner as Deputy Clerks of the Crown, and the 19th sec. enacts, that the practice in the Inferior Courts, in matters not expressly provided for, shall conform to the practice of the Superior Courts. But the 313 sec. of the C. L. P. Act has not been applied to County Courts, and the establisment of a Tariff of Costs, cannot be regarded as a regulation of "*practice*" in the sense used in the 19th section.

No Rule of the Superior Courts as to fees, which applies to County Courts, being in existence, and no Rule fixing the costs in "Inferior Jurisdiction" cases having been made under the general authority to make Rules, the schedule to the 8th Vic., together with the 18th section of the Co. C. Procedure Act must guide in taxation.

I think the Clerk should govern himself in taxation by the following consideration. The items in a bill range under two heads: *First*—For services which are specified in schedule to 8 Vic., with fees attached: under this head the Clerk will find no difficulty; he will allow the fees specially provided, and those only. *Second*—For Proceedings, &c., under Co. C. P. Act:—Services arising out of the altered Procedure, not contemplated of course in framing the Tariff to 8 Vic., and for which no fees are expressly provided,—with respect to charges for these, the 18th sec. says, such costs "shall be and remain as nearly as the case will allow the same as heretofore, but in no case greater than those already established. The effect of this may be thus stated: The costs for services not enumerated in the Tariff of 8 Vic. shall *not be greater* than is allowed in that Tariff for services *the most nearly analogous* to those for which it is desired to tax fees; Cases not specially provided for must be regulated by general principles;—Services *not* mentioned in the Tariff must be taxed according to the general principles of allowance established *by* the Tariff;—Services of different kinds are in that Tariff allowed for differently: it would be absurd to tax services of one kind according to the principles laid down for the payment of services of another kind;—unenumerated services must therefore be allowed for in taxation according to the principles of remuneration established in the Tariff for such services, as are the most nearly similar or analogous in their nature.

TO READERS AND CORRESPONDENTS.

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Barrie, U. C.

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Matters for publication should be in the Editors' hands three weeks prior to the publication of the number for which they are intended.

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THE LAW JOURNAL.

NOVEMBER, 1856.

CANADIAN CIRCUMLOCUTION.

This is a fast country, and these are the days of progression! We may perhaps ignore the existence of any member of the "*Barnacle*" family in Upper Canada, but can we deny that in some of the official regulations, a slight dash of "circumlocution" may not be discovered?

The Lord High Chancellor of England and Chas. Dickens, *par nobile fratrum*, no doubt carefully peruse the *Canada Gazette;* it is published by "Royal Authority," and the plentitude of interesting particulars usually found in such documents, must commend them to the consideration of the learned.

We assume then that both the learned gentlemen named have regular files of the *Canada Gazette.*

Therein may be occasionally found some things hard to be understood: for instance, the careful reader will have noticed not long since, that "His Excellency the Governor General had been pleased

to appoint" Mr. A. B., Judge of the County Court of the County of X. in the room of Mr. C. D. *resigned:* shortly after that, "His Excellency the Governor General has been pleased to appoint" Mr. C. D., Judge of the County Court of the County of X. in the room of Mr. A. B. *resigned;* and again, "His Excellency the Governor General has been pleased to appoint Mr. A. B., Judge of the County Court of the County of X., in the room of C. D. *resigned*"; and again, "His Excellency the Governor General has been pleased to appoint Mr. C. D. Judge of the County Court for the County of X. in the room of Mr. A.B. *resigned*"; the self-same A. B. and the self-same C. D., My Lord and Mr. Dickens have perhaps supposed that the rapid change of Judges was owing to the fast spirit of Young Canada, or imagined that our Judges took the office on trial for a quarter, and were as changing a class as our domestic servants. We would beg to assure these great men and others whom it may concern, that such supposings and imaginings are erroneous—that these announcements are only little blossoms of the "Circumlocution Tree."

Let us explain. In the local administration of Justice in Upper Canada, a Judge is appointed for each County, and presides in all the local Courts. The circumstances of the country have not yet rendered it necessary to appoint more than one Judge to a county, and the consequence is that in case of the illness or unavoidable absence of the sole Judge, some one must take the duties, or the business of the Courts will be at a stand. One would have supposed that might easily be obviated, but on circumlocution principles it is not accomplished with such facility as one might think.

Let us suppose:-a Judge meets with an accident on his circuit, is thrown from his horse and breaks his leg, or that the carrying away of a bridge lets him into the stream (such things have happened in this rough country) and he escapes with "the bare life"; he, the sole Judge, is incapacitated for the time from attending to his duties, and the County Court sittings are at hand; or that the Judge obtains two or three months necessary leave of absence—some one must take his place. It is managed in this way: the Judge, if he be able, writes to the Provincial Secretary, stating the circumstances, and naming some Barrister (if he can prevail upon one to act) who will be willing to take his place during the temporary disability or absence. The Judge then *resigns* his office. His Excellency the Governor General is pleased to accept his resignation, and to the office thus rendered vacant is again pleased to appoint the Barrister who is willing to act. Thereupon a commission is prepared, sealed with the great Seal of the Province, and duly signed by His Excellency the Governor General.

By and bye the ex-Judge is able to resume his duties, and wishes to get his place back again. The obliging Barrister of course transmits his resignation as Judge, which His Excellency is pleased to accept, and in due time the ex-Judge is named to his old office, his commission is signed and sealed, and in "due course" transmitted to him, and "Richa. l is himself again," and so it goes on. We have not referred to certain unpleasant contingencies which might arise, but have given a plain account of one little piece of circumlocution which an Act of Parliament has rendered necessary, which Legislators and not officials must father. "An Act of Parliament can do anything," it is said; if it could confer eternal vigour and immunity from accident, Private Bills would be as "plenty as blackberries." Unfortunately, however, the supposition, on which the law relating to County Judges is based, is not altogether correct: these men will occasionally be sick, and like other people do not grow stronger as they grow older; and a substitute *will* at times be needed, until there be more than one acting Judge in a County. Circumlocution has hitherto come in aid in the way stated. But simple minded people may say, why not allow the Judge to appoint the said Barrister as his Deputy for the time being, or enable the Governor to appoint some qualified person as a standing Deputy, whose services might be had, if occasion required, at a moment's notice? Why not, say we? Better to make a provision for doing a necessary act by direct means, than to compel a resort to circumlocution—*Tite, Barnacle & Co.* "to the contrary thereof in anywise, notwithstanding."

Having, we trust, given a satisfactory gloss to those at a distance respecting official appointment, and shown how simple minded people suppose that the "Red Tape" knot might be unloosed without

derangement in "the public service," we will add the hope that the Legislative Assembly may invoke the aid of their excellent Law Clerk to prepare a clause in amendment of the Law, and in this particular he will not require to "*make* a precedent," as he will find many in British Legislature directly in point.

THE CANADA COMPANY.

An Act of the Imperial Parliament, granting additional powers and authorities to the Canada Company, was passed in June last. We have not seen any notice of it in the public Journals. One of its provisions declare, "that it shall extend to and be in force in the said Provinces of Upper and Lower Canada," and "shall be judicially taken notice of as such by all Judges, &c., in the said Provinces."

We would remark that the Union of the Provinces of Upper Canada and Lower Canada seems to be a fact apparently not known or not remembered in the English Senate; and it certainly strikes one as strange, that after so many years of union, Upper and Lower Canada should now be referred to as distinct *Provinces*. There are no such Provinces in existence. Upper and Lower Canada are parts only of the Province of Canada. The Act was introduced a "private Act," and one would certainly have supposed that the Company's legal adviser might be better informed respecting a Country in which his clients have such large interests. We often see similar evidence of the gross ignorance that prevails at home respecting this country. How far the error in question may affect the law in its application to the Province of Canada, we shall not at present pause to consider, but will at this time only note a portion of the contents of the Act which may not be uninteresting to our readers.

It appears that the capital of the Company is limited to one million pounds sterling, in shares of one hundred pounds: that thirty-two pounds ten shillings has been paid up on each share, and that the paid up capital now consists of two hundred and eighty-nine thousand, seven hundred and thirty-seven pounds ten shillings, sterling, divided into eight thousand nine hundred and fifteen shares; and that lands in Upper Canada to the extent of two million four hundred and eighty-four thousand, four hundred and thirteen acres, were purchased by the Company, who expended large sums in improvement, and that a considerable portion of such lands have been sold at prices considerably exceeding the monies expended in purchasing and improving the same; but the value of the unsold portion of such lands very far exceeds the amount of the unpaid up capital of the Company, and of all their liabilities, and that the Company hold Mortgages and other Securities for land sold or contracted to be sold, and for other monies owing to them and other securities for money; that doubts had arisen whether the Company could divide as profits the whole of the money arising from the sale of lands in which the monies of the Company were invested; and in order to remove doubts, it not being contemplated by the Company to purchase additional lands, the design of the Act is to enable the Company to carry these purposes into effect, which they could not do without the authority of Parliament.

The several clauses, to speak in general terms, make provision for ascertaining what shall be deemed to be the capital—for ascertaining what shall be deemed profits—that no further part of the capital shall be called up—giving power to wind up and dissolve the Company—the powers of the Company to continue until same is wound up—the Directors to render final balance sheet of liquidation, &c.

We will probably have occasion hereafter to notice some of these provisions more in detail.

THE RIGHTS OF WOMAN.

A respected correspondent is anxious that we should examine this very difficult question. At present we are not prepared to enter upon it, for we have not sufficiently considered the subject to speak with any hope of informing others. The *natural* rights of man and woman are, it must be admitted, equal; entering the married state, the woman surrenders most of them; in the possession of civil rights before, they merge in her husband; in the eye of the law she may be said to cease to exist.

Equal before marriage, she becomes legally an inferior. The man surrenders no legal rights—the woman loses nearly all. The idea of marriage being a mere civil contract may perhaps lie at the root of certain anomalies in the law regarding husband and wife. But the violent remedies proposed in the present day would be worse than the alleged disease: we are quite prepared to admit that some improvements might be drawn from the civil law, which would tend to remove such evils as may be found in the principles of the Common Law. We certainly should not object open our columns to a reasonable extent to "well-informed parties," who would be disposed to reason fairly, without resorting to the "clap-trap" of the "Bloomer School."

J. LEACH TALBOT, ESQUIRE.

We regret to have to record the untimely death of this gentleman, whose name appeared in our last number as Reporter for the *Law Journal*.

He was accidentally drowned by the upsetting of a skiff on the Humber Bay, near Toronto, on the 11th of October last.

Mr. Talbot was a member of the Irish Bar. He came to Canada in June last, with the intention of practising his profession. The notices of his death in the City Journals of the day testify to the esteem in which he was held here by all who knew him; and he had already laid the ground for believing that the bar of his adopted country had in him gained one whose talent and industry would in time have made him one of the brightest ornaments of his profession.

A QUAKER IN COURT.

A transaction occurred in Liverpool at the last Assizes for South Lancashire, which is thus recorded in the *Law Times*:—

"Immediately before the business commenced in the Crown Court, Mr. Justice Willes observed a member of the Society of Friends seated in the grand jury box, with his hat on. Addressing him, his Lordship said,—"Sir, I see you with your hat on in court. I must request you to take it off. I do not assume it to be done with any intentional disrespect on your part, as I know members of your persuasion have an objection to take off your hats in any assembly. But wearing the hat has nothing to do with religion; the hat is a mere covering for the head, which every one in court has taken off but yourself. I don't wear my hat; and I hope that your own good sense will point out to you the propriety of taking your's off; and you will oblige me by doing so." The Quaker gentleman, who had stood up on being addressed by the judge, here rubbed his hands nervously over the handle of his umbrella, and without the slightest indication of any intention to remove his hat, said to his Lordship—"I don't think good sense has anything to do with it. I am a member of a persuasion that for 200 years has objected to remove the hat in any presence, and I object therefore to remove mine. I was very roughly handled in court this morning for refusing to take it off." His Lordship: "I am sorry to hear that. I have near relatives of my own who are of your persuasion, but I never knew any one of them object to remove his hat when reasonably requested to do so. Your persisting to wear your hat is a mark of disrespect, and if you choose to persist in wearing it, I must request you to retire from the court." The Quaker gentleman here, amid a somewhat general titter, turned round and walked out of the grand jury box and the court with his hat well on his head, and with the stiff-necked bolt upright gait of a man who has successfully performed a disagreeable but great moral duty."

We manage matters rather better in Upper Canada. When a Quaker appears in Court with his hat on, the Sheriff, or some other officer of the Court instructed by him, quietly and respectfully removes it, and the "*friend*," as becomes his profession, offers no resistance. It will be evident that he is not a Quaker *indeed* if he violently and actively opposes himself to authority; unless, perhaps, he should be like friend "Mead," (a co-defendant of Penn's in his celebrated Trial.) Mead was an old Cromwellian soldier. He was once set upon by robbers in a lonesome place, but thoroughly discomfited them. He was questioned for this at a monthly meeting, and though a strict partizan of the doctrine of non-resistance, his reply was, "The Spirit of the Lord was upon me, and I could have beaten seven of them."

CHAMBER CASES.

Our Chamber Reports are again so numerous that we can only, as before, give notes of many of them, which want of space will not allow us to publish in full in this number. Prompt arrangements were made to supply the place of Mr. Talbot, whose death we have mentioned elsewhere;—and the cases of which we give notes below, are furnished by our new Reporter, whose fitness for the task we have every reason to be assured of.

McLEOD v. BUCHANAN.

A prisoner applying to be discharged from custody under the 300th section of the C. L. P. Act 1856, should show in addition to the other requirements of that section that he has been in close custody for three successive calendar months.—Per Burns J., Oct. 8th.

LANARK & DRUMMOND PLANK ROAD CO. v. BOTHWELL.

Where it was shown that before signing judgment under the 62nd sec. of the C. L. P. Act 1856, the plaintiff's attorney had seen the entry of the appearance in the proper book, and the appearance paper itself: *Held*, that the notice of appearance was sufficient.—*Ib.*, Oct. 11th.

LECLAIRE ET AL. v. PRUDHOMME.

A plea of want of consideration for a promissory note cannot be pleaded in conjunction with a plea of *non fecit* without leave.—*Ib.*, Oct. 13th.

SHAE v O'NEIL.

After a cause has been entered for trial it is no longer within the provisions of the 84th sec. of the C. L. P. Act 1856.—*Ib.*, Oct. 14th.

WILKES v. THE BUFFALO, BRANTFORD AND GODERICH RAILWAY COMPANY.

A special endorsement on the writ of summons that the plaintiff claims a stated sum as the amount of an account rendered, is not sufficient particulars of demand.—*Ib.*

THOM v. HUDDY.

A plea that the person whom defendant debauched was not plaintiff's wife will not be allowed with a plea of "Not guilty."—*Ib.*

JAMES S. ROBINS v. CANELLA PORTER.

A writ of injunction will be granted in the first instance upon an *ex parte* application, under the 286th section of the C. L. P. Act 1856, in an action of ejectment to restrain the defendant from cutting and carrying away timber and hay from off the land which is the subject of the action.—*Ib.*, Oct. 15th.

BULLEN v. LINGHAM ET AL.

An affidavit on which to ground an application for an order to attach debts under the 194th sec. of the C. L. P. Act, should show that a judgment has been recovered, and to what amount it is still unsatisfied;—that a person is indebted to defendant and is within the jurisdiction of the Court, and that the action is not against defendant as an absconding debtor.—*Ib.*, Oct. 16th.

CLARK v. MCINTOSH, an absconding debtor.

Upon affidavits that endeavors have been made in vain to effect personal service of a writ of attachment against an absconding debtor; that after diligent enquiry no information can be obtained as to the place defendant had fled to, and that special bail has not been put in for him, the plaintiff will be allowed to proceed as if defendant had appeared, and to serve papers by leaving them at defendant's last known residence in this Province.—*Ib.*, Oct. 17th.

O'KEEFE v. O'BRIEN ET AL.

The time for plaintiff to bring the issue joined on to trial will be extended under the 151st sec. of the C. L. P. Act 1856, upon an affidavit that plaintiff cannot procure the attendance of a witness without whose testimony he cannot safely proceed to trial.—*Ib.*, Oct. 20th.

UHLBORN v. CHAPMAN.

A writ of summons will not be set aside on account of the misstatement of the place and county of the residence of the defendant as required by 16th sec. of the C.L.P. Act, provided plaintiff had reasonable grounds for supposing such place and county to be the residence of defendant.—*Ib.*, Oct. 21st.

WILKINS v. BLACKLOCK.

A general plea of "not guilty" cannot be pleaded with separate pleas traversing the different allegations of the same count of the declaration without leave; and if such pleas be pleaded plaintiff may sign judgment under 135th sec. of the C. L. P. Act 1856.—*Ib.*, Oct. 22nd.

CONNOR v. MCBRIDE.

An *ex parte* order to attach debts due to judgment debtor will be granted in first instance upon affidavit that judgment has been recovered, and is still wholly unsatisfied; that defendant has not sufficient goods to satisfy same; that third parties are indebted to defendant, and are within the jurisdiction.—*Ib.*

TODD v. CAIN ET AL.

Defendant will be allowed in the notice required by 224th sec. of C. L. P. Act 1856 to set up a paper title, and also, title by possession upon affidavit that he can establish both titles; that he wishes to establish his paper title; but lest he should fail in doing so, being unable to procure the necessary witnesses, he desires also to set up title by possession. Leave will be granted *ex parte* in first instance.—*Ib.*, Oct. 23rd.

CORRESPONDENCE.

To the Editors of the U. C. Law Journal.

GENTLEMEN,—

The rule of practice stated in the important paper in the *Journal* for July, by D. J. H. in answer to the question I proposed respecting unsatisfied judgments against parties residing in other counties, is in exact accordance with the directions given by the Judge of our County, in regard to such cases. It is gratifying to find his views are sound and correct. These papers are of great importance, enabling Clerks to adopt a uniformity of practice, and avoiding confusion. I now submit another case. The Clerk of First Division Court of this County sent a summons to the Clerk of——— Division Court, County of———, who charged 1s. for receiving. He then forwarded the summons to the Clerk of another Division in the same County, who charged 1s. for receiving and 3d. postage, and forwarded the summons to this Court, where it is again charged 1s. for receiving and 3d. postage and 1d. for registration from this office to the office whence it came, (all Court papers leaving this Office are strictly registered.) Thus it went back without service, the charges amounting to 3s. 7d. for taking the rounds. The Clerk who sent it here wrote, "Perhaps Defendant resides in your Division"—it thus appeared the summons has been upon a hunting tour. There are no reasons assigned by either Clerk, why the summons is so sent forward. Now, as my practice is different with summonses received

from other Counties or Divisions, I submit the case to you for an opinion, for I cannot presume to assert "I am right."

When I receive a summons from another County or Division (within this County) I enter all the particulars relating to it in the "Foreign summons Book," and deliver it forthwith to the Bailiff. If it be served, the service is proved and summons returned; if not served, a statement is written on the copy embodying the reason why service is not made, and any information the Bailiff has obtained regarding the defendant, such as "gone to the States," "absconded," "left the Township," "removed to the Township of ———," "temporarily absent," "had not time to serve," &c., &c., which statement is signed by the Bailiff, and summons sent back to the Clerk who issued it. It is then at the option of the plaintiff to have it sent out again on a risk, or wait till he knows where defendant can be found.

Since writing the foregoing, I have received, among others, returns upon three summonses, sent from here to Clerks in three different counties; one summons is returned served and service proven, 25 miles travelled—a memorandum on corner of summon "Costs, 15s. 6d."; the next one is returned, not served, "Costs 2s." which must be 1s. for receiving and 1s. for sending back. The third is returned served, and memorandum of Costs thus: Clerk—Receiving 1s., Affidavit 1s., Return 3d.; Bailiff—24 miles 10s., Service 1s., Attendance 1s.—Total, 14s. 3d. You will perceive neither two of these Clerks agreee in their practice in taxing costs; the first charges, 15s. 6d. for costs, being 1s. 3d. more than the third one, while there is only one mile more to charge for, and the third one has 3d. charged for entering return.

The last clause in the amended Tariff of Fees, passed 1855, reads, "Receiving papers from another County or Division for service, entering same in a book, handing the same to the Bailiff, *and receiving his return*, &c., &c., 1s., which shows that the fee of 3d. for "entering Bailiff's return to summons to defendant," is intended only for the Clerk who issued the summons.

The next preceding clause in the Tariff reads, "Transmitting papers *for service* to another County or Division, &c. &c., 1s." It is clear therefore, therefore, the Clerk cannot legally charge 1s. for transmitting papers which were sent him for service.

[The intelligent writer of the foregoing seems not merely desirous of being informed respecting his duties, but exhibits a laudable desire to give the benefit of his experience to others. If well-informed officers would generally do as he does, all would derive a larger benefit from the *Law J urnal.*

The importance of a uniform practice cannot be overrated.

We certainly agree in the views of the writer; in our judgment he is correct in every particular; and having made enquiries, we may add that the practice of the Clerks in the County of Simcoe, sanctioned by the Judge, is similar to his own. The practice of sending summonses on a "hunting tour," as described, is very objectionable, and the cost attending the "tour" would not be taxable against the defendant.—ED. L. J.]

APPOINTMENTS TO OFFICE, &c.

COUNTY JUDGES.

GEORGE S. JARVIS, of Osgoode Hall, Esquire, Barrister-at-Law, to be Judge of the County Court of the United Counties of Stormont, Dundas, and Glengary, in the room of William Ross, Esquire, resigned.—[Gazetted 8th Nov., 1856.]

ROBERT COOPER, of Osgoode Hall, Esquire, Barrister-at-Law, to be Judge of the County and Surrogate Courts of the United Counties of Huron & Bruce, in the room of John Strachan, Esquire, deceased.—[Gazetted November 8th, 1856.]

ASSOCIATE CORONER.

THEOPHILUS MACK, of St. Catherines, Esquire, M.D., to be an Associate Coroner for the County of Lincoln.—[Gazetted 8th November, 1856.]

NOTARY PUBLIC.

WILLIAM A. CAMPBELL, of Toronto, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.—[Gazetted 8th November, 1856.]

THE DIVISION COURT DIRECTORY.

Intended to show the number, limits and extent, of the several Division Courts of Upper Canada, with the names and addresses of the Officers—Clerk and Bailiff,—of each Division Court.†

UNITED COUNTIES OF LANARK AND RENFREW.

Judge of the County and Division Courts, J. G. MALLOCH, Esq.—Perth P.O.

First Division Court.—Clerk, C. H. Sache—Perth P.O.; *Bailiffs*, William Gill, Thomas Brook and Charles G. Sache—Perth P.O.; *Limits*—The townships of Drummond, Bathurst, Sherbrooke, Burgess, and all that part of the township of Elmsly north of the Rideau River within the county of Lanark, and west of Lot No. 12 in each concession.

Second Division Court.—Clerk, William Robertson,—Lanark P. O.; *Bailiffs*, Andrew Grimwell and John McEwen,—Lanark P. O.; *Limits*—The townships of Lanark, Dalhousie, Darling, Levant and North Sherbrooke.

Third Division Court.—Clerk, James Poole—Carlton Place P.O.; *Bailiff*, Geo. McPherson—Carlton Place P. O.; *Limits*—All that part lying between the 4th and 12th concessions (both inclusive) of the township of Beckwith and the township of Ramsay.

Fourth Division Court.—Clerk, Robinson Harper—Smith's Falls P.O.; *Bailiff*, John Richey—Smith's Falls P. O.; *Limits*—The township of Elmsley north of the Rideau River, from lot No. 1 to No. 12 in each concession, both inclusive; the 1st, 2nd and 3rd concessions of the township of Beckwith, and the township of Montague.

Fifth Division Court.—Clerk, William Taylor—Packenham P. O.; *Bailiff*, Jas. Otterson—Packenham P.O.; *Limits*—The township of Packenham, and those parts of the townships of McNab, Bagot and Blythefield south of the River Madawaska.

Sixth Division Court.—Clerk, Geo. Ross—Renfrew P. O.; *Bailiffs*, John Smith and A. R. McDonald—Renfrew P.O.; *Limits*—The townships of Horton, Ross, the first three concessions of the township of Admanton, so much of the township of McNab as lies north of the River Madawaska, and those parts of the first five concessions of the township of Bagot north of the Madawaska River.

Seventh Division Court.—Clerk, George Brown—Douglas P.O.; *Bailiff*, Timothy McMahon—Douglas P. O.; *Limits*—Those parts of the 6th to the 12th (both inclusive) concessions of the township of Bagot north of the Madawaska River, that part of the township of Blythefield north of said River Madawaska; the township of Admaston, except the three first concessions; the townships of Bromley, Brougham, Grattan, and part of Wilberforce.

Eighth Division Court.—Clerk, Andrew Irving—Pembroke P.O.; *Bailiff*, Michael McNeil—Pembroke P. O.; *Limits*—Townships of Westmeath, Stafford, Pembroke, Fraser, Allan, and part of Wilberforce.

† *Vide* observations *ante* page 196, Vol. I., on the utility and necessity of this Directory.