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VOL. IV. TORONTO, DECEMBER, 1858. No. 12.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

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

PRINTED AND PUBLISHED BY MACLEAR & CO., 17 & 19 KING STREET EAST, TORONTO.

FOUR DOLLARS A YEAR, IN ADVANCE. FIVE DOLLARS OTHERWISE.

Business Card of Non-subscribers, not exceeding four lines, $4 a year; Business Card and Subscription for one year only, $6.

LAW SOCIETY OF UPPER CANADA,

(OSGOODE HALL.)

Trinity Term, 22nd Victoria, 1858.

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

George Palmer, Esquire.
Robert John Wilson, Esquire.
John McBride, Esquire.
Nicol Kingsmill "
Thomas Wardlaw Taylor, Esq.

On Tuesday, the 31st day of August in this Term, the following Gentlemen were admitted into the Society as members thereof, and entered in the following order as Students of the Laws, their examinations having been classed as follows:—

University Class:

Mr. Clarkson Jones.

Junior Class:

Mr. Thomas Ferguson.
" Martin O'Gara.
" Alexander Robertson.
" Robert Smith.
" Daniel Davis Hobson.
" Frederick Charles Ridley.
" James Macgregor Stevenson.
" George Taylor Denison, Junior.
" William James Scott, Junior.
" Richard Knill Martin.
" William Fuller Alves Boys.
Mr. Hugh McMahon.
" Thomas O'Brien.
" Alexander Rocke Robertson, Jun.
" Robert Fraser.
" George Edwin Duggan.
" George Willits Lount.
" Charles Edward Pegley.
" Michael Sullivan.
" Arthur Henry Sydere.
" Simon Bolivar Newcomb.
" James Fairfield.
Charles Patrick Higgins.

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

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

For the Optime Class:

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

For the University Class:

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

For the Senior Class:

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

For the Junior Class:

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

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

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

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

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

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

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

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

ORDERED.—That the Subjects of the Lectures, for Michaelmas Term, be as follows: Specific Performance—S. H. Strong, Esquire; Agency—J. T. Anderson, Esquire.

ROBERT BALDWIN,
Treasurer.

Trinity Term, 22nd Victoria, 1858.

STANDING RULES.

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

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

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

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

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

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

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

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

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

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

10-tf.

Legislative Council,
Toronto, 4th September, 1857.

EXTRACT from the Standing Orders of the Legislative Council.

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

J. F. TAYLOR,
10-tf. Clerk Legislative Council.

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IS published monthly in the City of Toronto, at $4 per annum if paid before 1st March in each year; $5 if paid afterthat period.

It claims the support of Judges, Lawyers, Officers of Courts, Municipal Officers, Coroners, Magistrates, and all concerned in the adminstration of the Law, on the following grounds:—

1st. It is the only Legal Periodical published in Upper Canada.

2nd. Each number contains Reports of cases—many of which are not to be found in any other publication.

3rd. Chamber Decisions are reported expressly for the Journal.

4th. Each number contains original articles on subjects of professional interest.

5th. Each number contains articles in plain language for the guidance and information of Division Courts, Clerks, Bailiffs and Suitors, and Reports of cases of interest to all whose support is claimed.

6th. Each number contains a Repertory of English decided cases on Points of Practice.

7th. It is the only recognized organ of intercommunication between Lawyers, Officers of Courts, and others concerned in the administration of law.

8th. It is the only recognized medium of advertising on subjects of legal interest.

9th. It circulates largely in *every* City, Town, Village and Township in Upper Canada.

10th. It exchanges with more than fifty cotemporary periodicals published in England, the United States, Upper and Lower Canada.

11th. It has now reached the fourth year of its existence, and is steadily increasing the sphere of its usefulness.

12th. It has advocated, and will continue to advocate sound and practical improvements in the law and its administration.

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MACLEAR & CO., *Publishers*, Toronto.

MUNICIPAL MANUAL,

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

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

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

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REMITTANCES.

November, 1858.—A. I., Hamilton, $8; R. T., Smithville, $5; R. M., Milton, $10; T. B., Wellington Square, $4; W. W. D., Belleville, 4; A. B. M., Moriston, $3; W. S., Stratford, $15.

DIARY FOR DECEMBER.

8. Wednesday Last day for Notice of Trial, County Court.
9. Thursday.. Sittings Court of Error and Appeal.
12. SUNDAY... *3rd Sunday in Advent.*
14. Tuesday.... Quarter Sessions and County Court.
19. SUNDAY... *4th Sunday in Advent.*
21. Tuesday.... St. Thomas.
25. Saturday.... CHRISTMAS DAY.
26. SUNDAY .. *1st Sunday after Christmas.*
27. Monday..... St. John Evangelist.
28. Tuesday.... Innocents' Day.

"TO CORRESPONDENTS."—*See Last Page.*

IMPORTANT BUSINESS NOTICE.

Persons indebted to the Proprietors of this Journal are requested to remember that all our past due accounts have been placed in the hands of Messrs. Patton & Ardagh, Attorneys, Barrie, for collection; and that only a prompt remittance to them will save costs.

It is with great reluctance that the Proprietors have adopted this course; but they have been compelled to do so in order to enable them to meet their current expenses, which are very heavy.

Now that the usefulness of the Journal is so generally admitted, it would not be unreasonable to expect that the Profession and Officers of the Courts would accord it a liberal support, instead of allowing themselves to be sued for their subscriptions.

The Upper Canada Law Journal.

DECEMBER, 1858.

TO OUR READERS.

With this number we finish the fourth year of our existence. If at this time last year we had cause to be satisfied, on the present occasion we have still greater cause. Our circulation has steadily increased; our influence has gradually expanded; our position as the organ of the legal profession has been much strengthened; our support beyond the profession, from Municipalities and others interested in the administration of the law, has also been considerably augmented. On the whole, we are in a position to state that the *Law Journal* is not only placed among the permanent publications of the country, but, making allowance for the scarcity of money and the difficulty of obtaining it, is in a thriving condition.

The testimony which has been borne to our usefulness by the leading legal periodicals of the mother country and of the United States, has not we are sure been less pleasing to our readers than to ourselves. The hearty and united support which we have received from our brethren of the lay press has also been to us a cause of much self-congratulation. The manner in which articles from the columns of this journal have been noticed, both in Great Britain, the United States and Canada, has secured for us a very wide, and, we may add in no boastful spirit, a very favorable reputation. It will be our endeavor, now that we have made for ourselves so desirable a position, and have acquired for ourselves so enviable a reputation, to maintain the one and if possible still further improve the other. We shall never, we hope, give cause to those who have by word and deed encouraged us when encouragement was much needed, to repent of their kind confidence or to think that it has been misplaced.

When commencing the present volume we promised to our readers an augmentation of size and a corresponding increase of original matter. Both we have done in letter and in spirit And we have reason to believe that in the department of original matter the conduct of the *Law Journal* has met the approval of the highest authorities.

We must ask our subscribers to assist us by the punctual payment of their subscription money. However well we conduct the *Journal*, if the sinews of war be not forthcoming the consequence may be neither satisfactory to our subscribers nor agreeable to ourselves. There is a feeling in Canada that it is unnecessary to pay newspaper subscriptions. Men who would not under any circumstances fall in arrear with their tailor or their grocer, without compunction run in debt to the printer. This is a grand mistake. The publisher of a newspaper or other periodical has as much right as any tradesman to expect the payment of debts due to him. In fact he has not merely the right but he is as much as the tradesman under the necessity of enforcing that right. The evil is one which has grown up day by day, and is one for which the sufferers have themselves chiefly to blame. Were subscribers to newspapers given to understand that at certain periods accounts would be rendered, and collected if necessary by process of law, a very different state of things would be found to exist. This is the policy which we have adopted and intend to follow. We had rather much have one thousand good paying, than four thousand indifferent or defaulting subscribers.

On the first page of this and the two last numbers of the *Journal* will be found a notice to subscribers who are in arrear, and to which we must beg again to call their attention.

Finding, some months since, that our outlay for publishing the *Journal* continued to exceed the receipts, and that little or no notice was taken of accounts rendered and repeated requests for payment, the proprietors very reluctantly and after due notice of their intention, placed their claims in the hands of solicitors for collection, with instructions to write to every defaulter before suing. Even this course has produced very little result, and we are now making a last appeal on their behalf to those indebted, as much with a view of giving them an opportunity of saving the costs of a suit, as to avoid, if possible, the unpleasant necessity of putting them into Court.

Those to whom we are addressing ourselves may not, perhaps, be aware, that the accounts will have to be sued in Barrie, and that the costs in consequence of having to send the process a long distance for service will, in most cases, exceed the claim. This ought surely to be sufficient

to induce parties to pay up before being compelled to pay double.

With this number the accounts will be again sent out and we would ask those who allege payment in part or in full, to write, at once, to the publishers on receiving the account, and state *when, where, and to whom payment was made.* By attending to this request much trouble and loss may be saved both to the proprietors and to subscribers

With regard to our future, we must point to the past. We know of nothing in which we can materially improve, and shall therefore endeavor to do as we have done. While constantly guarding the interests of the profession, we shall equally guard the rights of Municipal, Division Court, and other officers. And while making ourselves useful to every member of the profession, we shall never lose sight of those who, though not in the profession, have, in reference to the administration of justice, important and responsible duties to perform. Our knowledge of Municipal law, too, will enable us to be of the greatest possible service to Municipalities, and from them we hope to receive a support commensurate to our willingness to serve.

TRADE PROTECTION SOCIETIES.

In the business of life there are many objects which can be more satisfactorily and more effectually accomplished by an association of men than by men acting independently of each other. The business of banking, and many others, will occur to the reader as illustrations of this remark. In Canada we are familiar with joint stock companies as applied to almost every trade and calling useful or necessary to the wants and requirements of society.

So well is the principle of association understood, and so widely is it appreciated, that to enlarge upon its benefits would not only be out of place in this journal but wearisome to the patience of the reader. Let us, however, state that it is now being applied among us in a new form, viz., for the protection of trade.

The business of a trader, whether wholesale or retail, is fraught with risks. He is expected to give credit in endless sums and to an endless variety of persons; his doing so is a manifestation of confidence in every individual whom he credits. Before placing confidence in the ability of the buyer to pay upon the delivery of the commodity sold or other expiration of the credit, it is only natural for the seller to make inquiries as to the position, character, and circumstances of the proposed purchaser. This he does either by consulting those acquainted with the person and likely to vouch for him, or by searching the records of the country wherein the shortcomings of men in monetary matters are duly recorded. It may be that the trader makes use of both these means. Of the two, the former is necessarily uncertain; and the latter, reliable. The one consists of bare surmises and the other of recorded facts. It is, however, the interest of every trader to avail himself of these and all other accessible means of information. And more, it is the *duty* of managers of banks and others occupying positions of trust to do so.

Then comes the question, can one individual in such matters do for others, whether few or many, what he may lawfully do for himself? Can a number of merchants associate themselves together and employ a common agent to give them information without which no prudent man can succeed in business? The maxim of law "*Qui per alium facit per seipsum facere videtur,*" in this case certainly applies. Whatever a man may himself do he may do by his agent. So the maxim applies whether the agent has one or one thousand principals.

Any one is entitled to search the public records of the Province. They are called public records because every one of the public has a right to inspect them. No officer is permitted to inquire the motives or interest of the applicant. It is the duty of the officer having the custody of the records, upon request and upon payment of lawful fees where fees are allowable, to permit the records to be examined. A bank may send a clerk to the office of a county court clerk to inquire not only as to bills of sale, &c., from a particular individual, but as to any number of individuals in whom the bank may be interested. The manager who receives the information from his clerk may communicate it to whom he pleases, because the information is open to all and accessible to all—it is recorded truth made public for the public good. So it is apprehended a number of banks instead of each sending a clerk may send a common clerk or agent; and the principle is not restricted to banks but extends to mercantile houses, and in fact to all persons sufficiently concerned to make the inquiries.

This is one great step in the course of our investigation. The next is, to decide how far the "common agent" is permitted by law, instead of communicating the results of his inquiries by word of mouth, to do so by written or printed matter—how far, in fact, he is justified in publishing the information of which he is possessed? Here a conflict arises between the feelings of the individual and the good of society, or in other words an aggregation of individuals. The law not only respects the character but to some extent the feelings of an individual. There is assuredly no pleasurable feeling excited in the breast of a man who finds that the fact of his having given a confession of judgment or chattel mortgage is by publication made known to a large circle of persons, if not to all the world. Will the law so far respect his feelings as to check the publication? That is the question.

The publication of every circumstance in the private history of an individual, whether trader or not, however acquired or however injurious to his feelings, is not a proceeding which the law will countenance merely because it is true. This we admit and this we desire Trade Protection Societies to understand and to observe. But, notwithstanding, it may be advanced as an axiom that it is in general lawful to publish any true statement where the publication infers no malice either actual or constructive, and particularly if done from laudable motives. Certainly, the publication of a statement disclosed on a public register is not a violation of the rights of privacy or the disclosure of anything that ought to be concealed. It might be convenient for a person embarrassed, by concealing the fact of recorded judgments against him and of bills of sale given by him, to obtain more goods on trust. Such an one, without doubt, would pout and fume if his real commercial status were to be made known by publication or otherwise to the persons with whom he proposes to deal, and others with whom he might otherwise deal. This to him would be very annoying and excessively inconvenient; but would it not be, in a public point of view, more annoying and more inconvenient, by the *suppression of facts*, to enable an undeserving person to obtain credit? Surely, reason and justice are on the side of publication.

It may be said that publication would have a bad effect on the good as well as a good effect on the bad. It may be said that a person who in a moment of financial pressure gives a confession of judgment might be ruined if it were made public—and if ruined, it may be asked, would he not have a good right of action against the publisher? To this we would reply, no! 1. Because confessions are required, for the protection of creditors, within a certain time to be filed of record, and so *pro tanto* made public. 2. Because the publication of the fact without malice is what the law terms *damnum absque injuria*. 3. Because the publisher is not in such a case answerable for the inferences drawn from his publication of a fact; for different men may draw different inferences from the same fact. 4. Because the argument *ab inconvenienti* is entirely in favor of publication, as it is better that one man should be ruined by the publication of admitted truth, than that hundreds should be ruined by the concealment of it.

The principle of publication is sanctioned by making the records public. It is only a legitimate extension of that principle to make public the information which the records afford. The publicity may be effected either by the press or otherwise, if not done from malicious motives. In every case of the kind the question is *quo animo?* If done intentionally to injure the individual named an action might lie, but if done for the safety and security of men whose existence depends on knowing the truth, there is no ground for an action. Such is the germ of the decision of *Fleming et al* v. *Newton*, 1 H. L. C. 363.

In Upper Canada at the present moment there are two companies organized, or being organized, for the purpose of giving information to mercantile men in quest of it. The leading objects of the one are to take advantage (as in Britain) of the public and legal records of the country for obtaining information of the registration of instruments through the execution of which the standing of parties may be materially affected and the interests of those dealing with them compromised, condensing such information when acquired and conveying it periodically to members of the Society. The leading objects of the other are, confidentially to convey to members information as to the standing, &c., of parties about whom inquiry is made—the information having been gathered in all manner of ways, such as espionage, eaves-dropping, and other questionable and certainly unreliable means of information.

Of the legality of the former Society we have little doubt. Of the legality of the latter, we are not free from doubt. And of this we are certain, that while the former would, at the hands of a British court and jury, receive considerable favor, the latter would receive none. The great principles of the common law all point in one direction—and that is, the safety, the security of society; in other words, the public good. No principle of law exists whereby dishonor is countenanced or disreputable practices encouraged; and if one thing could be more hateful to the law of England than another, we are convinced it would be an organized system of espionage.

LEGISLATIVE COUNCIL ELECTIONS.

In 1857 the Legislature passed an Act "to improve the mode of obtaining evidence in cases of Controverted Elections." (20 Vic., c. 23.)

It makes provision for certain preliminary proceedings, such as notice of objections to the election of the person declared elected and his answer, and then enacts that "whenever any of the parties shall be desirous of taking the evidence respecting the facts and circumstances alleged in such notice or answer, it shall be lawful for him to make application in writing to *the* Judge of the County Court in Upper Canada, residing or having jurisdiction in the Electoral Division or in the District in which such controverted election was held, requiring him to take the evidence, &c." (s. 4.)

The evidence taken by any such Judge is to be transmitted in the manner prescribed by the Election Petitions Act of 1851, to the Clerk of *the Legislative Assembly*, to be

by him laid before the select committee for trying the election in question, when such committee is appointed with whom it is to avail for the like purpose as if the Judge had been appointed by the committee commissioner for taking the evidence. (s. 7.)

Reading these two clauses by themselves it may be said, first, that the Legislature contemplated only elections of the Legislative Assembly; and, secondly, cases in which for each Electoral Division of the Assembly there is only one County Judge.

This is the more remarkable as in the previous year the Act making the Legislative Council elective became law.

It is entitled "An Act to change the constitution of the Legislative Council by rendering the same elective," was reserved for the assent of the Queen on 16th May, 1856, and assented to by the Queen on 24th June following. The proclamation announcing the assent was issued on 14th July following (19 & 20 Vic. c. 140).

By s. 1 it is provided that the Legislative Council shall be composed of the then members and of forty-eight new members to be elected, and to this end the Province is divided into forty-eight Electoral Divisions, twenty-four in Upper Canada and twenty-four in Lower Canada.

Of those in Upper Canada the Division of Tecumseth is made to consist of the Counties of Huron and Perth.

Then it is in general terms provided that the laws relating to the election of members of the Legislative Assembly as regards the qualification of voters, &c., controverted elections, and to all matters connected with or incidental to elections, shall, except where such laws are inconsistent with the Act, apply in analogous cases to elections of Legislative Councillors (s. 13.)

The most strange part of the whole is that the Legislature having in 1856 made the Legislative Council elective, and having enacted a clause such as that last mentioned when in 1857 passing the 20 Vic., c. 23, as to taking of evidence, seems to have neglected to carry out the principle as to each branch of Parliament, and to have legislated only for the Legislative Assembly.

The confusion of such legislation has at length developed itself. The seat of the recently elected member for the Tecumseth Division is about to be contested. That Division has within it at least two County Judges, each having jurisdiction in separate and independent parts of the Division. The one is the Judge of Huron and Bruce, of which Huron is in the Electoral Division of Tecumseth. The other is the Judge of Perth, which County is wholly within the same Division. Application has been made to each of the Judges to take evidence, and each has consented to do so. Hence we have two Judges in the same Division acting independently of each other taking evidence in the same case and examining the same witnesses. To make the farce complete it is necessary that the witnesses should be in two places at the same time.

We have read with much attention the opinions of each of the learned Judges, published in other columns. Each has satisfied himself that he is entitled to act: but we must say that both have failed to satisfy us that either has a right to act. This we say with all due respect. We entertain grave doubts under all the circumstances of the applicability of 20 Vic., c. 23, to such a case.

It is difficult to say that the Legislature in 1857, by 20 Vic., c. 23, which provided that evidence taken before a County Court Judge should be transmitted to the Clerk of the Legislative Assembly, intended to authorize County Court Judges to act in a case where the seat of a member of the Legislative Council is in dispute. If the Legislature so intended, why did it not so express itself? The Legislative Council was made elective during the year previous, and if the Act of 1857 were to apply to that body it would have been an easy matter to use language capable of expressing the intention. The omission to do so is ominous. Had the Act for the taking of evidence been passed before, instead of after the Legislative Council Act, the general clause in the latter would have left no room for doubt. To say that the Act of 1857 *ought* to apply to the Legislative Council as well as the Legislative Assembly is to make law not to interpret it. The language of the Act does not, we think, bear the construction.

HARRISON'S C. L. P. ACTS.

In this number we take the opportunity for a short space of recurring to the subject of this title.

It has been our duty once or twice to draw attention to the fact that some subscribers had not, for some reason or other best known to themselves, paid the price at which the work was published. At the time it was said the number of such persons was few. It is now our duty to state that the number has been reduced to thirty. And it is both a pleasure and a duty to state that some subscribers have generously come forward and spontaneously offered double the sum at which the price of the book was fixed.

We subjoin, as a specimen, the letter of one such, and although Mr. Harrison has not felt at liberty to accept the sum enclosed, we are sure he is not the less sensible of the good intentions of the writer, who has evinced a spirit worthy of a leading member of a liberal and an honorable profession.

As a per contra, there is also subjoined a letter representing the other or less liberal class of Mr. Harrison's subscribers, a list of whose names we may yet have the

opportunity, as promised, of making public for the guidance of intending authors.

[No. 1.]

Hamilton, 20th November, 1858.

My Dear Harrison,—I am sorry to observe by the newspapers that the subscribers to your Common Law Procedure Act have not been uniform in paying their subscriptions, and that you have been inconvenienced thereby.

I trust that you will accept the enclosed sum of Ten Dollars, from me, as I consider my copy quite worth that amount *in addition to the regular price.*

Believe me to remain,

Yours very truly,

* * *

R. A. Harrison, Esq.

[No. 2.]

Messrs. Maclean & Co.:

Gentlemen,—I paid for two copies of Mr. Harrison's book, $11, and I do not intend to pay any more.

* * *

Whitby.

LEGAL PRETENDERS.

In other columns will be found a letter from a correspondent who sends us the advertisement of "a mock lawyer." We think the time is come when attention should be directed to such persons, and we are convinced if properly directed that the reign of the Pretenders will be short.

On the present occasion we insert the advertisement of "Mr. ————, Notary Public, Commissioner for taking Affidavits, Conveyancer, &c.," gratuitously. We do so without being informed what other occupations are embraced under the enigmatical "&c." It may be that the gentleman in question is a duly admitted barrister or attorney, and if so he should state it.

We can, however, without much stretch of imagination, fancy the "&c." to cover a multitude of indescribable employments. We can fancy, in the present age of loose conveyancing, a man under "&c." being at the same time an innkeeper, a blacksmith, and a parish clerk. We do not slight these or any other modes of gaining a livelihood, but we very much question whether the man who follows them is of all the world the man best fitted to draw "a will" or "other conveyancing." Without doubt it would be "done" upon "liberal terms," but when "done," might be worth less than nothing.

If the people of Upper Canada are mad enough to employ such persons to dispose of real estate, while pitying their insanity we most certainly think they deserve to suffer whatever losses may be the consequence. "A knowledge of general conveyancing" is not to be acquired without "a knowledge of law," and the man who without the latter professes to do the former is an impostor. "Neatness" we question not. "Despatch" we question not. But more than either "neatness" or "despatch" is requisite to make a reliable conveyancer.

Mr. —— is not singular. Our remarks are not directed to him alone, but to a class of whom so far as we can judge he is one. We know him not; and, for all that we do know, he is a very estimable man. While admitting his claim to our respect as a man, we must take the liberty of saying that he shows no claim to the title of "Conveyancer, &c." It is sincerely to be hoped that the Conveyancing bill which has more than once been before the Legislature will at an early day become law, and so cut short the career of a class of well-meaning but misguided men, whose existence is an evidence of legislative apathy, and whose non-existence would be a gain to society—we mean "sham conveyancers."

THE CANADA DIRECTORY.

Mr. Lovell, than whom there is no more enterprizing man in Canada, announces a new edition of the Canada Directory, provided he obtain by 1st January next such a number of subscribers as will justify him in proceeding with the undertaking.

The value of the Directory to every man of business—and who in Canada is not a man of business?—is known everywhere; but it is a work which to be reliable, owing to the rapid changes of men and things, particularly in a colony, must be put through frequent editions. It is not to be expected that Mr. Lovell is to do this at a great pecuniary loss to himself. The first edition of the work has been to him a heavy loss. This was owing in part to the low price of publication, but chiefly to the monetary pressure consequent on the late crisis.

The price of the book of course the publisher can himself regulate; but the scarcity of money is an evil which he no more than any other individual of the community can remedy. For this reason the price fixed for the new edition is $8 per copy, and Mr. Lovell issues his prospectus in the hope that times are so far improved that he will receive a *moderate* support.

No one, except a person experienced in such undertakings, can form any idea of the immense cost of producing a work of the nature and of the size of the Canada Directory. The cost of printing and publication must of itself be heavy; but to this must be added the great and almost unlimited expense of the collection of information at once reliable and ample.

It is to be hoped that the public spirited publisher will be seconded by the people for whose good he is willing to

embark so much capital in a manner that will save him from heavy pecuniary losses. Having by the first edition been a considerable loser, we are glad for his own sake to see that, before risking a second, he has taken measures to ascertain the extent of support which he may expect to receive

The Canada Directory for 1859–60 will (if published) consist of about 700 pages, containing complete Directories of Montreal, Toronto, Quebec, Kingston, Hamilton, London, Ottawa, &c., and the names of the business and professional people in over 1300 different localities. In the Miscellaneous Contents will be found,—

A Complete Post Office Directory, corrected to the latest moment.
A Table of Railway and Steamboat Routes throughout Canada.
A Tabular view of the Periodical Literature of the Province.
A Directory of the Provincial Banks.
Tariffs of Customs of the Five Provinces—of Great Britain—and of the United States.
Population, Finances, Trade, &c.
Educational Departments, with Statistics.
Sketch of the Geology of Canada.
The Militia, Active and Sedentary.
Government and other Public Officers.
Crown Lands—Crown Land and Timber Agents.
Abstract of certain Acts affecting the Public generally.
Patents of Invention.
Lists of the Clergy of all Denominations.
Law Courts, Terms, and Legal Officers.
Members of the Legislature, with Electoral Divisions.
Standing Rules of the Provincial Legislature on the subject of Private and Local Bills.
Collectors of Customs, Out Ports, Ports of Entry, &c.
Statistics of Emigration.
Agricultural Societies.
Incorporated Companies.
Incorporated Cities, Towns, and Villages.
Registrars, &c., &c.

All orders to be addressed to John Lovell, Publisher Canada Directory, St. Nicholas Street, Montreal.

DELIVERY OF JUDGMENTS—MICHAELMAS TERM.

The following are the days appointed for the delivery of the Judgments of this Term :—

Queen's Bench.—Tuesday, 14th December, 12 o'clock; Saturday, 18th December, 1 o'clock.

Practice Court.—Same days.

Common Pleas.—Monday, 13th December, 12 o'clock; Saturday, 18th December, 12 o'clock.

The case of *Ross v. Strathy*, in other columns, will be read with interest by members of the Profession.

HISTORICAL SKETCH OF THE CONSTITUTION, LAWS AND LEGAL TRIBUNALS OF CANADA.

(*Continued from p.* 225.)

Passing once more to the jurisdiction and powers of the Intendant, we find them about this time still further extended.

The successor of M. Hocquart was M. Begot, whose appointment was made in 1748; his jurisdiction was extended to Louisiana and all the lands and islands in North America dependent on New France. His powers were: to take cognizance on complaint of the Military and others; to redress all practices against the Royal service; to take cognizance of crimes; to preside in the Sovereign Council; to support inferior Courts from the encroachments of the Sovereign Council—in all such proceedings to follow the edicts and customs of Paris; to regulate, jointly with the Council, Police Fairs, Sales and Purchases, &c.

In addition to all these responsible and important duties, he had the distribution of public money for army service, and sovereign jurisdiction in all civil and criminal cases affecting the Revenue. He was, in fact, the Court of Exchequer of the country, and in this respect possessed powers more extensive and more important than now possessed by the Barons of the English Court of Exchequer. The Sovereign Council and all others were enjoined to aid him in the performance of his duties, and if necessary to use force and arms. He had the power to summon what in England would be called the Posse Comitatus, or power of the county. From this enumeration it may be learned how gigantic were his powers and how supreme his position. He was, in truth, with the exception of the Governor, the first man in the Colony. Nay, in many things he was superior even to the Governor.

The Governor at this period was the Count de la Galissoniere. He was a man of much quickness of apprehension and undoubted energy of character. He made exploration of the country to the westward of Quebec, and urged the Imperial Government to organize settlements between Quebec and Detroit. His advice was neglected, and not only so, but he was himself soon superseded by La Jonquiere, who held a previous commission and who when on his way to the Colony had been captured by the English.

La Jonquiere was a grasping and unusually sordid person. Instead of consulting mainly the good of the colony, his sole aim seemed to be the aggrandisement of himself, his friends and relations. Indeed, money was his object, and he was not over scrupulous in the means of acquiring it. Hence, more than once the public revenue was made to suffer in order to supply his rapacity. The result was his recal; but before his successor arrived he himself died at Quebec on 17th May, 1752. It was found at his death that

he had accumulated more than a million of livres. It may, however, be mentioned that his penuriousness was equal to his avarice. An anecdote told of him shows the man. During his last illness he ordered the wax tapers that were burning in his room to be exchanged for tallow candles, saying that the latter were less expensive and would answer quite as well as the former.

The Baron de Longeuil (Charles le Moine), upon the death of de la Jonquiere, assumed the government of the colony until the arrival of a successor. The successor was a gentleman of great hauteur. He was the Marquis du Quesne de Menneville. His commission was dated 1st of March, 1752. He was appointed Governor of Canada, Louisiana, Cape Breton, St. John's, and their dependencies. His conduct was as austere as his manner was imperious. He did much to offend the English, who on their part did not fail to apprize Great Britain of the trouble to which they were put by the French. A secret rivalry existed between the two great powers for the mastery of the continent. It developed itself in many ways. English and French were constantly quarrelling for the Indian trade; and according as the Indians favored the pretensions of the one or other did the party for the time succeed.

At length, in 1755, Great Britain determined effectually to drive the French from the several posts which they occupied on the real or supposed boundaries of the French and English dominions. Orders were issued to all Governors of English Colonies to repel force by force. To make the orders more emphatic several regiments of soldiers were sent from Ireland to the Colonies. France in this foresaw a struggle, and without delay buckled on the armor of warfare. A census was, in January, 1759, taken in the three districts of the Colony. It was found that in the District of Quebec there were 7,511 men capable of bearing arms. In that of Montreal the number was 6,405, and in that of Three Rivers, 1,313.

The Commander of the Forces was the Marquis de Montcalm, and at this time the Governor General was the Marquis de Vaudreuil. The Commander of the British Forces was General Wolfe. Many were the encounters between the English and the French. Acts of heroism and bravery unparalleled in the history of warfare were performed by the contending parties. At length the struggle reached its height; at length it culminated; at length the rival commanders, Montcalm and Wolfe, lay weltering in their gore. Both died as brave men have died before, fighting the battles of their country. The sequel is well known. On 18th September, 1759, Quebec surrendered to the British, and in May following Montreal and the whole of *Nouvelle France* became a British possession. For the present the curtain drops.

DIVISION COURTS.

OFFICERS AND SUITORS.

ANSWERS TO CORRESPONDENTS.

To the Editors of the Law Journal.

Preston, 13th November, 1858.

GENTLEMEN,—Allow me to tender you my sincere thanks for the valuable answers which you have been pleased to give to the questions contained in my correspondence of last month, as also for your highly complimentary remarks respecting my communications. I fully concur in your remarks, that difficulties which Officers meet with must first be known and receive as full discussion as possible before they can be properly remedied, and since the most speedy way to arrive at a uniform practice appears to be to continue to make public the different methods now existing, to point out their merits and demerits, I now beg to submit to you another difference which exists in the practice of the Division Court Clerks where a party sues on a promissory note of hand.

Some Clerks only annex a copy of the promissory note of hand to the summons, but never allow the original note itself to leave their office with the summons attached thereto, while I have observed that a number of the Clerks annex to the summons the promissory note itself and then hand it to the Bailiff or transmit it to another Division for service.

This latter method has always surprised me, in particular when I find it practised by the Clerk of a "First Division Court," and I have in vain endeavoured to find either reason or precedent for such a practice.

The 9th rule states: That the Clerk shall annex to every summons (whether original, alias, or pluries) the copy of account, demand or claim entered with him according to the fourteenth rule, and to each copy of summons to be served, shall be likewise annexed a copy of such account, demand or claim, and the Clerk shall, without delay, issue the same for service.

It is here as distinctly and plainly laid down as English language can give it that *a copy of the claim* shall be annexed to the summons, but not the original document or writing on which such claim is founded, shall be annexed to the summons. It is not more necessary to annex to the summons the promissory note on which the action is brought, than to annex to it a Mortgage, or Bond, or an Agreement, upon an instalment of which a suit is entered, or to annex to the summons the books of a merchant who sues on a book account.

The promissory note is the original by which the Plaintiff establishes his claim in Court, a statement of which claim is made out according to form 3 with a copy of the note of hand and is annexed to the summons. A Mortgage, a Bond or an Agreement are also originals and from these the statement of claim, referring to the original is made out and annexed to the summons. A book account handed to the Clerk for suit is only a copy of the demand and may therefore with propriety be annexed to the summons, since the originals of such book account are the different entries in the Plaintiff's books, which he may produce in Court as evidence, in a similar manner as a claim is proved by the production of a promissory note of hand, a mortgage, a bond, or an agreement, and in any such case witnesses may be required in addition to such proofs.

But apart from its being a deviation from one of the Rules, which form part of the Division Court Acts, there are two other reasons which strongly speak against the practice of annexing to a summons a promissory note of hand or any other document or writing by which alone the claim can be established, and thereupon handing it to the Bailiff or transmitting it to another Division for service. The one reason is, that the Defendant, who has the privilege of paying to the Clerk at any

time during office hours before the sitting of the Court the amount claimed, with costs, and thereupon demand and receive the promissory note on which the suit is brought—may call at the Clerk's office, tender the amount of claim and costs, and demand his note. If however the Clerk, who has parted with the note, in manner above stated, cannot give up the same to the Defendant, such Defendant may refuse to leave the money with the Clerk unless the note is delivered, and thereby place the Clerk in a very strange position. Should the Clerk carry that suit to Judgment, by which additional costs are unnecessarily caused, and the facts of the case be presented to the Judge, there is no doubt the Clerk would be censured, and probably the additional costs be disallowed. And if afterwards the Defendant should not at all pay the claim, and an execution be returned "Nulla Bona," the Plaintiff might bring an action for damages against the Clerk.

The other reason is, that the practice is connected with danger whereby the Clerk's responsibility is unnecessarily increased. The Clerk into whose custody the several promissory notes or other papers have been given for suit and for safe keeping, voluntarily and without authority parts with them by annexing them to the summons for service. By this method a promissory note may pass through several Post Offices before it reaches the Bailiff who is to serve the summons, the note is exposed to the danger of being lost, and this at the risk of the Clerk, who received it from the Plaintiff; or if the Bailiff who has often to travel through backwoods and remote settlements, where he can hardly find a bed to sleep in over night, should happen to lose any of such notes, or have his pocket book with the summonses stolen from him, it might become a question whether a Bailiff can be made responsible for the loss of a promissory note which was annexed to a summons, or only for such papers which he is *required* to receive if handed to him. A Bailiff is obliged to receive the summons *with a copy* of the account, demand or claim annexed, and likewise the copy summons to be served, with a like copy of account, demand or claim annexed and to make his return thereto in due time. If he effects a service, returns the summons, makes affidavit of service in due time, he has performed his duty so far as the Division Court Acts and Rules require him to do; even if it should happen that the promissory note which the Clerk had annexed to the statement of claim be missing.

And in a case where a Bailiff becomes a defaulter, neglects his business, makes no return at all, but withholds all papers handed to him, it is more than probable that if legal proceedings were instituted against such Bailiff and his sureties for the recovery of the value of certain promissory notes which the Clerk has annexed to the summonses that were handed to such Bailiff for service, that the sureties would defend the suit on the plea that they are not responsible for any other acts of the Bailiff than those which he is required to perform by virtue of his office as such Bailiff, and that the safe keeping of promissory notes is not his duty, except under the 64th, 89th and 90th sections of the Division Courts Acts of 1850, but which do not apply to this case.

But even supposing a Bailiff could be made responsible for such promissory notes so handed to him,—would it be prudent to subject him to such unnecessary responsibility, when in general he has no other plan for their safe keeping than his pocket, and where he so frequently is exposed in his travels?

It may not here be out of place to state two instances which occurred in this Division about ten years ago.

The two Bailiffs who at that time were appointed for this Division became of unsteady habits and in consequence thereof were dismissed; since which time I have only had one, but a model Bailiff. The one of the two Bailiffs, while out in the country serving summonses had to stay over night in a tavern, where he got drunk and was robbed of his pocket book with the summonses and executions in it; the other Bailiff got so careless that he made no return at all, and had either mislaid or lost the greater portion of the summonses and executions. Upon a consultation which I had with the Judge on these subject it was deemed advisable to issue new summonses and executions, and hand them to the new Bailiff with instructions not to levy where he found proof that the former Bailiff had received payment. I found no difficulty in issuing new summonses, since I had all the original notes in my possession, of the book accounts I obtained new copies from the Plaintiffs, and in a short time the matters were arranged. The pocket book of the first mentioned Bailiff was however found some days afterwards, minus the money which had been in it, and the papers were handed to me; the thieves probably on finding that there was no value in the papers, had thrown them away, in consequence whereof they were subsequently found; but if the promissory notes had been attached to the summonses I very much doubt whether I ever should have seen them again.

If, gentlemen, these remarks should operate as a caution to those Clerks who are in the habit of annexing promissory notes to summonses before they hand them to the Bailiff or transmit them for service, the object of the writer will be accomplished, who begs to remain,

Respectfully yours,

OTTO KLOTZ.

[Our correspondent, Mr. Klotz, usually gives a fair statement of the arguments which bear *pro. and con.* on the question about which he happens to write but in the present instance he has not done so, and probably because the matter does not admit of discussion. There can be no doubt as to the correctness of his view of the subject, and we can hardly imagine on what grounds any Clerk could justify to himself such a practice as that of parting with the evidences of debt left in his custody. It might possibly be urged that defendants sometimes pay the claim against them to the Bailiff on his serving the summons, and that in case of its being on a note, the party would have a right to require to have it handed over to him, but our answer to this, in which we go rather further than Mr. Klotz, is that we consider a Clerk is not justified in parting with a note left with him for collection, to any one without an order from the Judge. When a note is paid by the maker, its possession cannot be any object to him, and it should, in our opinion, properly remain in Court with the papers, in the cause where it would always be found should any one wish to inspect it, or should any question respecting it afterwards arise. If paid by an endorser he has a right to get it as the prior endorser (if any) or the maker is liable to him but a judge's order should in every instance be required before the Clerk parts with it, as it is no part of his duty to investigate the right of a party applying, which in fact would be assuming the office of the Judge. And it would be highly necessary for the prevention of fraud, that a clear right to the possession of any record of the Court or any document in the possesion of the Clerk, should first be shewn before it is parted with.—EDS. L. J.]

To the Editors of the Law Journal.

Milton, 13th Nov., 1853.

GENTLEMEN:—In looking over, from time to time, your own remarks and instructions, with answers to questions of intelligent correspondents, on the subject of Division Court practice, I must acknowledge that I am indebted for some valuable information, and I hope to acquire further light from your columns, on matters which still seem to be, to some extent, open questions.

Encouraged by the kind manner in which you receive remarks, and the willingness you evince to afford information, I am induced to trouble you with the following remarks and questions—arising from the practice of a small Division during four years.

The want of a uniform practice in Division Courts, which is to be regretted, gives ground for an impression that, too much discretionary power is left with officials, and that more laxity is evinced in carrying out the intention of the Act, than perhaps is consistent with a right interpretation thereof, or the interests of parties concerned; hence, I think the great importance of uniformity of practice, which desirable result your excellent journal aims at, and affords the opportunity of bringing about, by means, not only of your own recommendation, but also by inviting discussion, and the expression of practical opinions on the subject.

In your September number appear some comprehensive remarks supplied by Mr. Otto Klotz on the subject of issuing executions; and specifying fictitious sums as costs on summonses for foreign or local service, on which I certainly think his learning and your expressed opinion are in accordance with the intention of the Act, as well as just towards defendants.

It appears to me, unreasonable, as in one case quoted, by Mr. K. that the Judge's order should supersede the plain reading of the 53rd section, rendering it imperative on the Clerk to issue executions without consulting plaintiffs, who of course should be the best judges of the extent of lenity or severity to be exercised towards parties against whom they may have judgments. It is easy for a plaintiff when entering suits, to instruct the Clerk as to the promptness of action required in any particular suits, as doubtless, entering a number of cases, a discrimination of treatment would be observed towards the respective defendants, on the principle that circumstances alter cases.

With respect to specifying costs on summons, I would remark, that in my opinion, if the blank which we find in the Form of Summons be filled with any other than the correct amount of costs actually made up to the issuing, (and "return fee,") of said summons, in the case of its being for foreign service the Clerk is misled, he has to overcharge the defendant; should the claim be settled before the summons is returned to the issuing clerk, or, in the case af a home service, if the defendant should pay the claim to the bailiff at the time of service. In these cases, excessive costs would be exacted, and a grievous wrong committed which would be prevented by uniformly and invariably specifying the true amount of costs at each respective stage of a suit.) If it be argued—as I have heard it, that the insertion of costs is an empty formality, why insert any amount? But, the intention of the Act is evidently to guide the bailiff, or foreign Clerk, in making up his bill of costs when defendant settles before Court day.

In your September number appears also a communication signed "Sigma," asking information concerning the recording of a Division Court judgment, in the County Court; and while on the subject I would ask you,—Suppose a Division Court judgment to be recorded in the County Court, and that the defendant's property is encumbered to its full value for more than twelve months after said record is made, is the validity of the judgment damaged, or may it be enforced at any period subsequent, if the defendant have lands whereon to enforce it, whether it may be on the land previously encumbered, and since then relieved, or on lands acquired since the judgment was registered?

In your October number I find Mr. Klotz commenting on the want of authority for the sale of account books belonging to absconding debtors, seized under attachment. I think with Mr. K., that "it would be judicious to extend the 90th clause of the Division Court Acts of 1850, so as to include books of account." Yet, as he quotes the instance of one County Judge directing a Clerk in reference to issuing executions without consulting plaintiffs, would it be a great stretch of authority to have the debtors of an absconder summoned before him, to show cause why said debts should not be paid to the Division Court clerk, and that his Honor make an order, authorizing the clerk to grant receipts, which of course would be valid.

I am disposed to think Gentlemen, that if the power to garnishee were included in the Division Court Acts, it would tend to increase the facility of "making" amounts which are not now collectable, and of course making the Acts more effective in their working, at once doing away with the irregularity supposed above. Am I right in supposing that the introducing of garnishment in Division Court practice, would meet the difficulty Mr. Klotz speaks of?

I would now ask you,—Suppose an unsatisfied judgment in favor of a party who is defendant in another suit, it may be in the same Court, or in another Division,—is it competent for the bailiff to attach, by virtue of execution, said judgment (on behalf of the plaintiff) in the hands of the clerk, and will the clerk be exonerated from blame or liability, by paying said judgment when collected to the attaching bailiff? I know of one case in point, where the bailiff of a foreign Division, attached a judgment as described, which in due course was paid to him, the Bailiff on this occasion seeing the indecision of the Clerk in the matter, quoted the authority of an eminent Ex. County Judge who had construed the judgment to be a "security for money" therefore seizable. In this case the defendant whose property the judgment was, acquiesced in the matter, but, in the event of opposition being manifested would the bailiff and clerk be justified?

I have noted your opinion contained in the last (November) number of the journal, on questions mooted by Mr. Klotz in reference to the division of proceeds of sale on executions, where several issue against one defendant. And I infer from the tenor of your remarks, that in cases where any doubt exists as to the application of any particular section of the Division Court Acts, we are where a parallel exists to be guided by the practice of the Superior Courts.

Most respectfully yours,

J. H.

[We are much pleased to see that the example of our valued correspondent, Mr. Klotz, is not altogether lost. The above communication is one of the same description as those he constantly sends us, and such as our columns are always open to receive. Having ever taken a deep interest in all matters relating to Division Courts and their improvement, we always hail with pleasure any evidence of a corresponding feeling given by any of their officers; for there is no system, however perfect, which may not be abused by the indifference or ignorance of those appointed to carry out its details; and on the other hand, an efficient officer and one who wishes to perform his duties properly, will always be able to make the best of those defects, or seeming defects, which can never in any system be wholly overcome or avoided.

Such letters as the above show a strong evidence of ability, intelligence and desire for the improvement of the law, and the practice of the Courts, of which the writers are officers, in our opinion highly commendable and worthy of imitation.

We shall now proceed to notice the questions asked or discussed by our correspondent, J. H.

With respect to the question of County Court Judgments by transcript, &c., it is one of general law which does not come within the limits to which we are obliged to confine ourselves in giving opinions, but we may say that the judgment has the same effect as if it had originally been obtained in the County Court, so far at least as regards the defendants lands, and that the lapse of a year will not affect its validity.

We are inclined to consider that giving garnishee powers to Division Courts would be an improvement. There is no reason why a judgment creditor in the Division Courts should not have the same means of enforcing payment of his debt as in the Superior Courts, and it is more than probable that had the Common Law Procedure Act been in force when the Division

Courts Act was framed, garnishee clauses would have been incorporated in it. The judgment summons clause, in fact, gave at the time to the judgment creditor in Division Courts a power he did not possess in Division Courts, and perhaps of greater effect than what is given by the garnishee clauses in the C. L. P. Act. The Superior Courts, however, are still in advance of the Division Courts, for an act of last session gives judgment creditors therein powers similar to those conferred by the 91st clause of the D. C. Act.

As to the right to attach a judgment or seize money in the hands of a D. C. Clerk we must be guided by the decision of Chief Justice Robinson in *Calverly v. Smith* reported in the third volume of the *Law Journal*, page 67, where it is held that money in the hands of an officer of the Court cannot be taken in execution.

Lastly, as to "cases where any doubts exist" we are of opinion that the practice of the Superior Courts, "where a parallel exists" should be followed, first, because the law so directs; secondly, because the practice in these Courts has been so matured and settled that there must be much greater safety in following, than in departing from it; and lastly, because it tends to what we so much desire to see in D. C. practice—uniformity.—EDS. L. J.]

THE MAGISTRATES' MANUAL.

BY A BARRISTER-AT-LAW—(COPYRIGHT RESERVED.)

Continued from page 253, VOL. IV.

VI.—BAILING OR COMMITTING FOR TRIAL.

Defendant entitled to copy of depositions.—For the information of the accused he is entitled, at any time after all the examinations are completed, and before the first day of the Sessions, or other first sittings o. the Court in which the trial is to take place to obtain f·om the person having the custody of the same, copies of the depositions, on which he, the accused, is committed or bailed; but for them he is required to pay a reasonable sum not exceeding the rate of three-pence for each folio of one hundred words.*

Conveying prisoner to gaol.—Where the accused is not bailed, the warrant of commitment having been made out the constable or any of the const·bles or other persons to whom the warrant is directed, conveys the prisoner to the gaol or other prison mentioned in the warran t and there delivers him to the gaoler, keeper, or governor of the gaol, &c. It is the duty of the latter thereupon to give to the constable or other person who delivered the prisoner to him a receipt for the prisoner.†

Form of Gaoler's receipt.—The state and condition in which the prisoner was at the time of the delivery should be stated in the receipt. It may be in the following form :—‡

I hereby certify that I have received from W. T., Constable, of the (*County, &c.,*) of ——, the body of A. B., together with a Warrant under the Hand and Seal of J. S., Esquire, one of Her Majesty's Justices of the Peace for the said (*County* or *United Counties, or as the case may be*) of ——, and that the said A. B., was (sober, *or as the case may be*) at the time he was delivered into my custody. P. K.

Apprehension in one County on offence committed in another.—It often happens that a person is charged before a magistrate with an offence alleged to have been committed in another territorial division than that in which the accused is apprehended, or in which the magistrate has jurisdiction. In this case the magistrate is required to examine witnesses and receive such evidence in proof of the charge as may be produced before him within his jurisdiction. And if in his opinion the testimony and evidence is sufficient proof of the charge, it is the duty of the magistrate thereupon either to commit the accused to the common gaol for the County where the offence is alleged to have been committed, or to admit him to bail in the manner hereinafter mentioned. It is also the magistrate's duty to bind over the prosecutor (if he have appeared before him) and the witnesses by recognizance in the form already described. But if on the contrary the testimony and evidence is not in the opinion of the magistrate sufficient to put the accused on his trial for the offence with which he is charged, it is the duty of the magistrate to bind over the witness or witnesses by recognizance in the manner already noticed.

Transfer of Prisoner, &c.—It is next the duty of the magistrate by warrant under his hand and seal to order the accused to be taken before some magistrate in the territorial jurisdiction where the offence is alleged to have been committed, and at the same time to deliver up the information and complaint, and also the depositions and recognizances, to the constable having the execution of the warrant to be by him delivered to the magistrate before whom he is to take the accused, which depositions and recognizances are to be deemed to all intents and purposes as taken by or before the last mentioned magistrate.*

Form of Warrant.—The warrant, like any other, must be not only under the hand and seal of the magistrate, but directed to all or any of the constables or other Peace Officers in the County for which the magistrate issuing it has jurisdiction. It may be in this form :—

Province of Canada, (*County* or *United Counties, or as the case may be*) of ——.

To all or any of the Constables, or other Peace Officers, in the said (*County* or *United Counties, or as the case may be*) of ——.

Whereas A. B., of —— (*laborer*), hath this day been charged before the undersigned (*one*) of Her Majesty's of the Peace in and for the (*Coonty* or *United Counties or as the case may be*) of ——, for that (*&c., as in the Warrant to apprehend*); And whereas (*I*) have taken the deposition of C. D., a witness examined by (*me*) in this behalf, but inasmuch as (*I*) am informed that the principal witnesses to prove the said offence against the said A. B. reside in the (*County* or *United Counties, or as the case may be*) of ——, where the said offence is alleged to have been committed; These are therefore to command you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said (*County* or *United Counties, or as the case may be*) of ——, and there carry him before some Justice or Justices of the Peace in and for that (*County* or *United Counties, or as the case may be*) and near unto the (*Township of* ——) where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and (*I*) hereby further command you to deliver to the said Justice or Justices the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this Precept.

Given under my Hand and Seal, this —— day of ——, in the year of our Lord ——, at ——, in the (*County, &c.,*) of —— aforesaid. J. S. [L. S.]

* 16 Vic., cap. 179, sec. 13.

† 16 Vic., cap. 179, sec. 18.

‡ *Ib.*, Sch. T. (2).

* Ib. sec. 14.

Transmission of depositions, &c.—The depositions and recognizances are to be so far deemed as taken by the magistrate of the County in which the offence was committed, that it is made his duty to transmit them to the proper officer of the Court where the accused is to be tried in the event of the accused being either committed for trial upon the charge or committed to bail.

Constables' costs.—The constable who lawfully conveys a prisoner from one County to another is of course entitled to his costs and expenses upon producing the accused before the magistrate of the County in which the offence was committed, and delivering him into the custody of such person as such magistrate directs or names in that behalf, and upon delivering to the magistrate the warrant, information (if any), depositions, and recognizances, and proving by oath the handwriting of the magistrate who subscribed the same; the magistrate before whom the accused is produced is required to furnish the constable with a receipt or certificate of the facts.

Form of receipt or certificate.—The receipt which need not be under the seal of the magistrate may be in this form.*

Province of Canada, (*County* or *United Counties, or as the case may be*) of ——

I, J. P., one of Her Majesty's Justices of the Peace, in and for the (*County, &c.*) of ——, hereby certify that W. T., Constable or Peace Officer, of the (*County* or *United Counties, or as the case may be*) of ——, has on this —— day of ——, one thousand eight hundred and ——, by virtue of and in obedience to a Warrant of J. S., Esquire, one of Her Majesty's Justices of the Peace in and for the (*County* or *United Counties, or as the case may be*) of —— produced before me, one A. B. charged before the said J. S. with having (*&c., stating shortly the offence,*) and delivered him into the custody of —— by my direction, to answer to the said charge, and further to be dealt with according to law, and has also delivered unto me the said Warrant, together with the information (*if any*) in that behalf, and the deposition (s) of C. D. (*and of* ——) in the said Warrant mentioned, and that he has also proved to me upon oath the handwriting of the said J. S. subscribed to the same.

Dated the day and year first above mentioned, at ——, in the said (*County, &c.*) of ——. J. P.

Payment of costs and expenses.—The constable on producing the receipt or certificate to the Sheriff or High Bailiff, if employed by such officer, or if not to the Treasurer of the County in which the accused was apprehended, is entitled to be paid all his reasonable charges, costs, and expenses of conveying the accused to such other County or territorial division, and returning from the same.†

* Ib. Sch. R. (2). † Ib. sec. 14.

U. C. REPORTS.

QUEEN'S BENCH.

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

TRINITY TERM, 1858.

ROSS v. STRATHY.

Attorney—Investigation of Title—Arrears of taxes—Negligence.

Plaintiff in 1854 emp' ! defendant, an attorney to examine the title to certain lands, and took a c. Afterwards it was discovered that in 1851 a portion had been sold for taxes, but when the plaintiff purchased he had still a year to redeem. In 1857 the sheriff made a deed to the purchaser, and the plaintiff then brought this action against defendant for negligence.

Held, that defendant was not liable

This was an action against the defendant, an attorney, for negligence in the investigation of a title. The declaration stated in substance that the plaintiff had agreed to purchase certain land from one Perry, and retained the defendant to ascertain the title of said Perry, and to procure an estate in fee simple to be duly conveyed by said Perry to the plaintiff: that the defendant accepted such retainer, but disregarded his duty, and by his neglect procured the plaintiff to pay the purchase money of the said land to the said Perry, without obtaining a good title thereto.

Defendant pleaded: 1. Not guilty. 2. A denial of the retainer.

At the trial at Barrie before *Hagarty*, J., it was proved that the plaintiff employed the defendant, an attorney, to see that Perry had a good title to the land referred to in the declaration, and to prepare a conveyance from Perry to him. The defendant did accordingly make search into the title, and prepared a deed, which was executed by Perry on the 19th of December, 1854.

It was discovered afterwards, that on the 31st December, 1851, the land was in arrear for one year's taxes, and being returned to the sheriff with the usual warrant, three acres of five, which the plaintiff purchased from Perry, were sold for the taxes, in December, 1852, redeemable in three years. The land not being redeemed, it was conveyed by the sheriff to the purchaser at the sale by deed made on the 18th of June, 1857. The three acres were sold for 11s. 11d., and of the three years allowed for redemption the plaintiff had a year remaining after he took his deed, and might within that time have redeemed by paying a few shillings. The land was proved to be worth £20 an acre.

It was objected that the breach assigned in the declaration was not proved, for that a good title passed to the plaintiff in December, 1854, when he took his deed from Perry, subject to be lost, as respected the three acres, if the plaintiff omitted to redeem, before January, 1856.

It was objected also, that no negligence was proved, for that it was not customary for conveyancers to search respecting arrears of taxes, or to inquire whether there had not been a sale of the land for taxes, not yet perfected by a sheriff's deed, on account of the period for redemption not having expired.

It was proved by the treasurer that it was not unsual for conveyancers and attorneys to enquire at his office whether the taxes are in arrear on lands that are about to be purchased, but that such enquiry would only in general lead to such information respecting any taxes that were at the time charged against the lot, and would not elicit information respecting any previous sale that had been made of the land for taxes, unless the enquiry was understood to be made with that view.

It was proved, by several respectable solicitors examined upon the trial, that it had never been usual in their practice nor thought necessary to search the treasurer's office for arrears of taxes, nor to enquire whether the land, or a part of it, had been sold for taxes, though yet redeemable. Of course where the land so sold had been conveyed by the sheriff, the County register would in general show that.

The plaintiff asked for leave to amend his declaration, and the defendant's counsel thereupon withdrew his objection, that the breach as laid was not proved. And it was agreed that the jury should give a verdict for the damage which they considered had been sustained by the plaintiff losing the three acres, and it should be reserved for the Court to determine whether, under the facts proved, the defendant was liable. The jury assessed the damage at £90.

D'Arcy Boulton for the plaintiff, cited *Hunter* v. *Caldwell*, 10 Q. B. 69; *Hayne* v. *Rhodes*, 8 Q. B. 342; *Cooper* v. *Stephenson*, 21 L. J. (Q. B.) 292.

McMichael, contra.

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

If we are at liberty, as we infer we are, to draw such inferences from the evidence as we think the jury should have drawn, then our opinion is in favor of the defendant. We do not think it can properly be called negligence in the attorney that he did not acquire information of the fact that a portion of the land had been sold for taxes, though not conveyed. The registrar's office would have given no information, and we do not think it can fairly be considered a part of a solicitor's duty to enquire whether there are not taxes in arrear, for that is a known charge to which all occupants are liable, and against which they are in the habit of protecting themselves by enquiries made from time to time. No legal skill is

required to judge of that incumbrance, and when a vendee, after taking possession, is obliged to pay an old arrear of taxes, he knows he has his remedy against the previous owner, who ought to have paid the charge.

In very many cases a professional search after that kind of incumbrance would cost more than the amount of the tax due; and it was proved that if the defendant had gone to enquire about the arrear of taxes, he would not have been likely to have been told of the sale that had gone by, since that wiped off the arrear, and it no longer stood against the land.

The plaintiff was himself wanting in diligence in allowing a year to elapse within which he might have redeemed and by that omission brought the injury upon himself. The concurring testimony of the respectable witnesses examined is important, we think, on the question of negligence, and should turn the scale in favour of the defendant.

The plaintiff did obtain a good title to the land, but has lost it by neglecting to redeem. There was no title outstanding when he took his conveyance, but a mere sale, which might or might not affect the title, according as the plaintiff made use or not of his privilege of redeeming, for which he had ample time.

Judgment for defendant.

FERRIS v. THE GRAND TRUNK RAILWAY COMPANY.

Railway company—Horse getting on track from highway—20 Vic., ch. 12, sec. 16

In an action against a railway company for not erecting fences and cattle guards, whereby the plaintiff's horse got on the track and was killed, there was evidence to show that the horse escaped from the plaintiff's field into the street within half a mile of the railway, and thence upon the track.

Held, that if so the plaintiff was precluded from recovering by the 20 Vic., ch. 12, sec. 16, though the horse was not killed at the very point of intersection.

This was an action against the defendants for neglecting to put up fences and make cattle guards, in consequence of which the plaintiff's horse got upon the railway, and was killed.

Plea.—Not guilty, by statute.

At the trial, at Kingston, before *Draper*, C. J., it was proved that the plaintiff's lot of land, No. 36 in the fifth concession of Pittsburg, had a public road along its west side, which crossed the railway. There were cattle guards at the crossing.

On the 29th of October last the plaintiff's horse got out of his field from defect in his fences, in the night, and got into the road, and off that, as the jury found, upon the railway. There is no certain proof of the manner in which he got upon the railway, or at what point on the railway he was struck; but it appeared to a person who saw him lying dead by the side of the railway next morning, that the horse had been on the west side of the cross road, and that he was carried by the locomotive eastward, over both the cattle guards, and killed. The fences of the field in which the horse had been left were found to be low, some of the rails being down at a point on the cross road half a mile distant from the intersection with the railway.

It was left to the jury to say whether the horse escaped from the plaintiff's field by defect of his fences; whether he had got across the cattle guards, and was on the railway track on either side of the cross road; or whether he was on the railway track between the cattle guards when he was struck; and to assess the value of the horse.

The jury could not find how the horse got out of the pasture, but that he had crossed one of the cattle guards, and was on the railway beyond it when he was struck by the train; and they found the value of the horse to be £22 10s. Leave was reserved to the defendant to move for a nonsuit, on the ground that by the late act 20 Vic., ch. 12, sec. 16, or as the law stood before that act, the plaintiff was disabled from recovering.

The case was in fact undefended at the trial, being called in its order on the second day of the assizes, before the defendants' counsel and witnesses were in attendance.

Bell obtained a rule *nisi* to enter a nonsuit, pursuant to leave reserved, or for a new trial on the law and evidence.

Read showed cause.

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

It is objected that the declaration was not supported by any evidence as respects the alleged want of fences to the railway track, or want of cattle guards, and there seems indeed to be an absence of proof of those material allegations.

1st. There was no proof that the fences of the railway company were defective, or that there was not proper cattle gaurds, so that the plaintiff has not established that the loss he has suffered arose from the neglect he complained of; and that certainly was necessary to be shewn, in order to sustain his action, for no negligence or improper conduct is complained of in driving the train.

2ndly. If we are to take it that the horse came along the cross road upon the railway, then what is the effect in this case of 20 Vic., ch. 12, sec. 16? I think the effect of it is to disable the owner of cattle, &c., to recover for any animal that has got on the railway track from a cross road, contrary to the act, even though it may not have been killed at the very point of intersection, for such animal has got on the track by being allowed to be at large on the highway contrary to the act of parliament, and was therefore unlawfully on the track; the consequence of which is, that the compay would not be liable for what happened to him, unless it arose from wilful misconduct or negligence in the conduct of their trains. We think a nonsuit should be entered.

Rule absolute.

THE MUNICIPALITY OF THE TOWNSHIP OF LONDON v. THE GREAT WESTERN RAILWAY COMPANY.

Great Western Railway—Action against for taxes—Pleading—Want of Notice 16 Vic., ch. 182, secs. 8, 21.

The declaration stated that a tax, amounting to £128, was duly assessed against defendants, for the year 1856, of which they had due notice, yet defendants, although said sum had been duly demanded of them, refused to pay the same.

Defendants, as to £6 15s. 5d., pleaded payment into court, and except as to that sum, that the assessors for the year did not deliver, or transmit to any by post to any station or office of defendants, a notice of the total amount at which they had assessed defendants' real property in the municipality, distinguishing the value of the land occupied by the road and the value of all defendants' other real property.

Held, a good defence.

The declaration alleged that a tax, amounting to £128 12s. 11d., was duly assessed against the defendants, in and for the township of London, for the year 1856, of which the defendants had due notice, yet the defendants, although the said sum of £128 12s. 11d. had been duly demanded of them, had refused or neglected to pay the same, whereby an action has accrued to the plaintiffs to recover the said sum so assessed against the defendants as aforesaid, with interest thereon, as a debt due to the said township of London, which the municipal council of the said township of London, being the plaintiffs in this cause, were entitled to recover, with interest; and the plaintiffs claimed the said sum of £128 12s. 11d., with interest thereon, amounting to £8, making the aggregate sum of £136 12s. 11d. which the plaintiffs claimed.

Pleas.—1. Except as the sum of £6 15s. 5d., parcel, &c., that the defendants never were indebted as alleged.

2. Except as to the sum of £6 15s. 5d., parcel, &c., that the assessor or assessors for the said municipality of the plaintiffs, for the year 1856, did not deliver, or transmit by post to any station or office of the defendants, a notice of the total amount at which they had assessed the real property of the defendants in the said municipality, distinguishing the value of the land occupied by the road, and the value of all other real property of the Company.

3. As to the sum of £6 15s. 5d., payment into court.

The plaintiffs demurred to the second plea, assigning as grounds, that it is not stated that the defendants duly transmitted, for the year 1856, a statement to the clerk of the plaintiffs, describing the value of all the real property of the plaintiffs, other than the roadway, and also the actual value of the land occupied by the road in the said municipality of the township of London, according to the average value of land in the locality; and also that the defendants do not deny that they, the defendants, were notified by the assessor or assessors of the assessment in the declaration mentioned; they only deny having been notified by the said assessor or assessors in a particular manner, and accordingly the defendants should have applied for a revision of their assessment, and are not entitled now to set up the defence in the said plea set forth. And also because the said defendants, by the payment of the sum of £6 15s. 5d. into court, admit their liability to pay the plaintiffs

some amount, and such being the case, that amount, it is submitted, can only be determined by the assessor's roll of the said municipality for the year 1856, as finally passed. And that the said plea, if it is a good plea at all, is a plea in bar of the plaintiffs' action, whereas the defendants, by payment into court as aforesaid, admit a *prima facie* cause of action on behalf of the plaintiffs, and seek to reduce the amount of their claim only. And also that the plaintiffs in their declaration aver due notice to the defendants of the said assessment for the year 1856, which the defendants do not deny in the said plea, their said plea being a plea neither in bar nor in confession and avoidance.

Elliot for the demurrer. *Irving* contra.

The clauses of the statute cited are referred to in the judgment.

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

In order to entitle a municipality to sue for a tax imposed in the ordinary manner upon resident rate-payers (and by the 8th clause of the assessment Law, 16 Vic., ch. 182, Railway Companies are always to be assessed for their real estate as if they were resident) they must, we think, be able to shew that they have done what would be necessary to entitle them to distrain by warrant for the same tax, if the party had goods that might be seized, except perhaps that there would be no occasion for making the previous demand mentioned in the 42nd clause.

And neither by distress, nor by the action under the 45th clause, can a ratepayer, we think, be compelled to pay a tax of which such notice has not been given to him as the law has provided, in order to give him the opportunity to appeal under the 26th and subsequent clauses. We do not mean to say that the plaintiffs in such an action are bound to set forth in their declaration that they have given such notice as the law requires before the assessment roll was finally completed—that may perhaps be assumed till the contrary is shewn—but it must be open to the defendant to deny that such notice was given, and to put the plaintiffs to the proof of it.

The plaintiffs have averred in their declaration that a tax of £128 12s. 11d. was *duly assessed* against the defendants for the year 1856, of *which the defendants had notice*. That does not necessarily mean more than some time before the action was brought, and for all that appears after the assessment roll had been completed, and the time for appeal had passed, the defendants had due notice that such a tax was assessed against them. But whatever it may have meant, the defendants have in their plea denied that the assessors for 1856 did that which the twenty-first clause of the act makes it their duty to do in case of all railway companies, *i. e.*, "deliver at, or transmit by post to any station or office of the company, a notice of the total amount at which they have assessed the real property of the Company in their municipality or ward, distinguishing the value of the land occupied by the road, and the value of all other real property of the Company."

If the plaintiffs have not done so, they are not in a position to sue for the tax. And the 21st clause makes it clear, by its reference to the 23rd clause, that the notice which is to be thus given must be given before the completion of the roll. It would otherwise be of little use to the party.

Unless the due notice mentioned in the declaration must be taken to mean such a notice, it would be an averment of no consequence. If it does mean that, then the defendants of course are at liberty to traverse it, as they have done in their plea.

The plaintiffs object that the defendants should have shewn in their plea that they did what the same 21st clause makes it incumbent on them to do—namely, that they had some time in the year transmitted to the clerk of the municipality such a statement of their real property in the municipality, and *its value*, as that clause of the act requires.

We suppose that information is called for in order to facilitate the business of the assessors, though it can hardly be meant to be binding upon them either as to quantity or value; and no doubt it ought to have been sent, and perhaps may have been; but admitting that we should infer that it was not sent, since the defendants have not stated it, still that could not authorize the assessors or the municipality to impose any amount they chose, and enforce it without having given notice of the amount required by law in time to allow of an appeal.

We do not think, therefore, that the plea is bad for not containing the averment suggested.

The plaintiffs have further objected to the plea, that by submitting to a sum of £6 15s. 5d. as due for the year 1856, the defendants have admitted a rate legally made, and so cannot set up a want of notice; but upon consideration it is plain there is no force in that objection, because if the Company had received a notice of £6 15s. 5d. as being the rate, and afterwards found that £128 was demanded of them, they could only plead, as they have done, that the plaintiffs had not transmitted to them a notice of the total amount to which they had assessed their property.

In our opinion the plea is sufficient, but the plaintiffs may apply for leave to take issue upon it, or reply to it specially.

Judgment for defendants on demurrer.

MCLEAN v. THE TOWN COUNCIL OF THE TOWN OF BRANTFORD.

Corporation—Liability for work—Authority of Committee—Countermand—Corporate Seal—Appeal.

The Municipal Council for 1856 passed a resolution that certain work should be done, for which a verbal tender was made by the plaintiff, to the street and side-walk Committee, and accepted in writing by a majority of the Committee, after the last meeting of the Council in 1856, and without the tender having been submitted to the Council, or any written contract executed. In April, 1857, some time after the plaintiff had commenced the work, the Council passed a resolution notifying him not to proceed, but he went on notwithstanding, and completed it, and in this action brought for the price, a verdict was taken for the plaintiff, with leave reserved to enter a verdict for defendants, unless the whole amount claimed could be recovered.

Held, affirming the judgment of the court below, that the plaintiff could not recover.

Held, also, that an appeal would lie from the decision of the judge below on a verdict so taken.

Appeal from the county court of the county of Brant.

The facts of the case are so fully stated in the judgment of the learned judge, given in the court below, that it is unnecessary to give the evidence taken there at length.

JONES, Co. J.—The declaration in this cause was on the common counts for work, labour, and materials, goods sold, money counts, and account stated. Plea, never indebted.

The plaintiff claimed £76 15s. 7d., for the materials and work in the construction of 68¼ rods of side-walk, on Colborne-street, in the town of Brantford, at $4½ per rod.

It appeared by the evidence, that the Council for the year 1856, shortly before their time of office expired, passed a resolution that the side-walk in question should be built, not specifying, however, whether the work should be done by tender, nor directing who was to give out the contract, nor how it was to be paid for. On the 17th December, a verbal tender was made to the street and side-walk Committee, by the plaintiff, to do the work and furnish the materials for $4½ per rod. A written acceptance was put in at the same date, signed by a majority of the Committee, and accepting the plaintiff's tender as the lowest.

It was proved that the tender was not submitted to the Council, and that the acceptance in fact was signed by the Committee after the Council rose on the evening of the 17th of December, which was their last meeting before going out of office. No written contract was executed between the parties, and no order under defendants' corporate seal.

The plaintiff did nothing towards making the side-walk that year, but on the 10th of April, 1857, he ordered the necessary lumber for the work, two loads of which were delivered before the 17th of April. On the 17th of April, the matter having been brought before the new Council, they passed a resolution notifying the plaintiff not to proceed with the work. The plaintiff, not regarding this event, went on and completed the side-walk. Evidence was given to shew that it had been the usual practice, when the Council ordered a work like this to be done, for the street and side-walk Committee to give out the contract without reference to the Council, and when the work was completed the Council, accepted and paid for the same, although the defendants gave some evidence to shew that this practice was not uniform, but that sometimes the Council themselves gave out the work.

The defendants objected that this Committee had no power to act on such a resolution, but that the tender should have been submitted to the Council, and the work given out by them; and, secondly, that waiving the first objection, the Council were not liable, as they had notified the plaintiff not to proceed with the work, and to hold them liable would be to enforce the performance

of an executory contract against them when they were not bound by their corporate seal. It was consented at the trial that a verdict should be entered for the plaintiff for £76 15s. 7d., the amount claimed, subject to be moved against by the defendants, the plaintiff agreeing that in case his verdict could not stand for the whole amount, the court should have power to set it aside, and enter a verdict for the defendants. The defendants have therefore moved a rule to set aside this verdict, and enter a verdict for them.

I am of opinion that this rule must be made absolute. As regards the first objection—that the Committee had no power to give out the contract, but that the tender should have been submitted to the Council, and the work given out by them—I think it very questionable if this Committee did not exceed their power in acting as they did, independent of the question whether they should not have laid the tender before the Council, and awaited their directions. I think the circumstances under which they accepted the tender, are such as to throw great suspicion on the transaction, if not to avoid it altogether. This acceptance, it was shewn, was signed by the Committee on the eve of the Council going out of office, for a work which would devolve on their successors to carry out, and was in fact signed after the last meeting of the Council for that year, when in fact the body from whom the Committee derived their power had ceased to act. It would, I think, be going a great length to say that the future Council would be compelled to carry out such a transaction.

But it is upon the second objection that I think the plaintiff's case clearly fails; that is, that the defendants are not bound, there being no contract under their corporate seal. There are a great many cases to shew that where work is done for a corporation within the legitimate scope of their powers, which work they have accepted and adopted, they cannot, when sued for the price, object that no order was given under their corporate seal. See *Beverly* v. *The Lincoln Gas Company* (6 A. & E. 829), *Fishmonger's Company* v. *Robertson* (6 Scott's N. R. 56). In the latter case the law on this point is very fully considered.

This principle of law has been considered well settled, and seems to be founded on justice, that when a corporation accepts and adopts a work, receiving thereby all the benefit from it, they should be estopped from alleging that they did not order it to be done in such a manner as to make them legally liable. There are, however, some late cases where the courts have held that even in executed contracts, under certain circumstances, corporations are not liable, except when bound by their corporate seal. See *Regina* v. *Mayor of Stamford* (6 Q. B. 433). *Cope* v. *Thames Haven Dock and Railway Company* (18 L. J. 345 Exch.), *Lamprel* v. *Bellericay Union* (3 Ex. 283), *Diggle* v. *London and Blackwall Railway Company* (5 Ex. 442), *Homersham* v. *Wolverhampton Water Works* (6 Ex. 139), *Williams* v. *Chester and Holyhead Railway Company*, (15 Jur. 838). I do not think, however, that these cases overrule the principle of law above laid down, but are rather exceptions to the general rule.

It then remains to be considered: does the present case fall within these that are considered as executed contracts? I think clearly not. The plaintiff, at the very inception of the work, is notified by the defendants not to proceed with it. Upon what principle, then, can the defendants be bound to pay for work which the plaintiff goes on and does despite their order? To hold them liable in such a case would be to declare that a legal binding contract existed, a contract on which the plaintiff would be entitled to recover damages if prevented from performing it by the defendants.

The case of *Bartlett* v. *The Municipality of Amhertsburg* (14 U. C. R. 152), seems to me to be quite in point. There the plaintiff, after having, by the order of the Council, undertaken to build a side-walk, and having done work on it to the amount of £26 15s., was ordered by the new council to desist from the work. He did so, and brought his action to recover for the amount he had done, and also for damages for not being allowed to complete the job. The court held that although entitled to recover the former, he could not claim damages for not being allowed to complete it, as the contract was not under defendants' corporate seal, and that the plaintiff acted correctly in desisting from the work on being so notified. In the present case, no evidence was given to shew the value of any of the work the plaintiff performed before being notified not to proceed, and the plaintiff's counsel at the trial abandoned any such claim, and consented that if the court should be of opinion that the verdict could not stand for the whole amount, that then a verdict should be entered against him. The rule will therefore be made absolute to set aside the verdict, and enter a verdict for the defendants.

From this judgment the plaintiff appealed.

Burns, for the appeal.

M. C. Cameron, contra, objected that no appeal would lie, for the verdict was taken subject to the opinion of the judge, and the statute 8 Vic., ch. 13, sec 57, allows an appeal only in case either party shall be dissatisfied with the decision of the judge "upon any point of law arising upon the pleadings, or with the charge to the jury, or the decision upon any motion for a nonsuit, or for a new trial, or in arrest of judgment." The court, however, over-ruled this objection, and the case was then argued upon the merits.

The authorities cited are referred to in the judgments.

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

The learned judge of the County Court of Brant, who tried this cause, has stated the points in issue and the ground of his judgment very carefully. The view which he took of the case is quite in accordance with the case of *Bartlett* v. *the Municipality of Amherstburg* decided in this court (14 U. C. R. 152), and is not at all at variance with any thing determined in the other case of *Fetterly* v. *The Municipality of Russell and Cambridge*, referred to and reported in the same volume, 433.

The plaintiff in this case is seeking to recover from the corporation upon an implied assumpsit the value of work done not merely without their request, either formal or otherwise, but directly contrary to their order. That the people passing through the streets will walk upon the plank which the plaintiff chose to place there contrary to the wish of the corporation, rather than walk in the road, is very natural, but there was nothing in the evidence which it would have been reasonable to put to the jury as an adoption of the work by the corporation.

The corporation having told him after the work was done that they would not pay for it, would not of itself signify any thing, if they had either set him to do it, or had allowed him to apply his labor and material without forbidding or remonstrating; but the evidence shews this to be a case of a very different kind. The plaintiff seems to have been bent upon depriving the corporation of the privilege of conducting their own affairs.

Appeal dismissed, with costs.

COMMON PLEAS.

Reported by E. C. JONES, Esq., *Barrister-at-Law.*

EASTER TERM, 1858.

ARNOLD v. MURGATROYD ET AL.

Held, that the 25th section of the Common Law Procedure Act, 1857, applies to County Courts as well as to the Superior Courts.

Declaration avers the delivery of a *ca. sa.* at plaintiff's suit from the county court of Wentworth, to the sheriff of Lincoln, against the two first defendants; their arrest and execution of bond by all the defendants at Kingsmill, sheriff of Lincoln, conditioned for the original defendants remaining on the limits, and for their getting that bond, or any bond substituted therefor, to be allowed within 30 days by the judge of the county court, and such allowance endorsed thereon. Breach, that they did not within 30 days get bond, or substituted bond, allowed, &c., according to the Common Law Procedure Act, 1857, and assigned under statute to plaintiff by statute.

A demurrer to this declaration presents the objection that the County Court Amendment Act, of 1857, does not give the power to a county court judge to allow bail; nor were defendants bound to procure such allowance; and that the power of allowance extended only to superior court judges.

In Easter Term the case was argued by *Lawder* for demurrer.

Martin, contra.

DRAPER, C. J.—The several clauses of the Common Law Procedure Act of 1856, relative to the payment of a weekly allowance

to insolvent debtors, and to gaol limits, and to the discharge of such debtors, are in my opinion in force as enactments not for the mere purpose of giving certain powers to, and regulating the proceedings in such cases in the superior courts, but to provide specially for a class of debtors, their relief or discharge from custody by all courts under whose process they are in custody. The language used in sec, 295: "it shall be lawful for the court from which the process against such debtor issued, or any judge having authority to dispose of matters arising in such court, to make a rule or order, &c." Similar general language respecting the court or a judge in secs. 296-7, 300, 302, 303, and other sections, I think amply warrant the conclusion that the legislature contemplated the applications of these provisions to *all* debtors coming within the definition, without intending to confine them to debtors against whom process from the superior courts should be issued. It is true, these provisions are expressly extended to the county courts by the County Courts Procedure Act, 1856. This act, however, extended to the courts a great many provisions of the Common Law Procedure Act, 1856, which otherwise confessedly would not extend to them; and it also includes in such extension the particular sections under discussion. I do not think this is to be construed as shewing that without such extension they would not have applied to the county courts, but rather as proceeding *ex majore cautela*, and to avoid doubt.

But there seems to me even less reason to doubt, in regard to the Common Law Procedure Act, 1857. The 25th section enacts that in all cases in which the sheriff of any county shall take from any debtor confined in the gaol a bond under the provisions of the Common Law Procedure Act, 1856, &c. The language used in this section, cannot, I think, be confined to the superior courts without a forced construction narrowing its generality, and if this be the correct view, it further furnishes a key to the meaning of the legislature, in the provisions of the former act, and strengthens the conclusion of its general application to all courts issuing the particular process there referred to.

I feel do doubt but that the 25th section of the Common Law Procedure Act, 1857, does extend to suits in the county court, and therefore that our judgment should be for the plaintiff on this demurrer.

The Trustees of the Toronto Hospital v. Heward.

Common Law Procedure Act, 1856—Equitable Pleas

Upon an action brought for use and occupation, a plea on equitable grounds that the defendant entered upon an agreement (not in writing) for a lease for 42 years, under which no rent was to be paid until certain conditions were performed by plaintiffs, which have never been performed.

Held, upon demurrer to be a good legal defence.

Declaration for use and occupation. Equitable plea: that plaintiffs put defendant in possession on an agreement to give him a lease for 42 years, at £89 2s. rent, that he should build a two-story brick house, and that no rent should be payable except one half year, when agreement made, until a building called the General Hospital was removed by plaintiffs from lands of theirs close to the part demised to defendant; that defendant entered on such agreement, paid the half year's rent, and built the house as agreed, but that plaintiffs have never granted the lease, or removed the hospital building. This plea is demurred to on the ground: 1st. That defendant cannot get the relief he desires at law; and 2ndly, that there is no writing or sufficient contract, or consideration for contract available to defendant at law or equity.

In Easter Term *A. Wilson*, Q. C., supported the declaration, arguing that the plea only alleged a ground for interlocutory relief; that any injunction obtainable must be perpetual; and if defendant filed a bill he must bring money into court, citing *Flight* v. *Grey*, 4 Jur. N. S. 13.

J. H. Cameron, Q. C., contra, argued that the plea was a good equitable defence; that this would be a perpetual injunction against claiming rent in this shape, citing *Mines Royal Society* v. *Magnay*, 10 Ex. 489. That at all events it was a good plea at law. *Howard* v. *Shaw*, 8 M. & W. 118; *Smith* v. *Eldridge*, 15 C. B. 236; *Flood* v. *O'Gorman*, 4 Irish L. R., 578.

Wilson, in reply, objected that at law it would be bad, as amounting to the general issue.

Draper, C. J.—My first impression was that on this demurrer plaintiffs should have judgment, and that defendant might apply to amend, because I entertained a stronger opinion against the plea as an equitable defence than my learned brothers appear to do. I distrust my own views, however, on a purely equitable question, though I at present think that the Court of Chancery could not grant an absolute unconditional injunction inasmuch as, as soon as the building is removed the rent would become payable, and therefore the duration of the injunction would depend upon a contingency.

I concur in thinking the plea a good legal defence, and I am not satisfied that where a good defence appears on the whole record we ought to give it the go by.

Richards, J.—I am of opinion that this plea discloses a good legal defence; that it would be open on the special demurrer to the objection that it amounts to the general issue need not on this record, or under the Common Law Procedure Act, be considered. The action for use and occupation is given by the Statute 11 Geo. 1, c. 19, the landlord receives "not the rent, but an equivalent for the rent, a reasonable satisfaction for the use and occupation of the premises," (*Nash* v *Tatlock*, 2 H. Bl. 320,) and as laid down Comyn's Landlord and Tenant, 437, it now appears to be settled that whereas one party occupies by permission of the other in the absence of any contract between the parties, the fact of this one having occupied by the sufferance of the other is sufficient to raise an implied assumpsit by the occupier to pay for his occupation.

The action is based on the occupation, and compensation is payable either in an express or implied contract. Where the express contract is alleged that no rent shall be payable, notwithstanding the occupation, until the performance by the plaintiff of an act agreed to be done by them, and not yet done, and the plaintiffs admit such to be the contract, I do not see how the action can be maintained. No implication of law can arise to pay rent for an occupation expressly agreed to be without paying rent. The case is very distinguishable from *Smith* v. *Eldrige*, (15 C. B. 236), which was a decision on certain facts proved, and not an admitted agreement, as here. *Howard* v. *Shaw* 8 M. & W. 118, supports the view here taken, though it was on an occupation originally taken under contract of sale, but continued after the contract was at an end. *Parke*, B. says: "While the agreement subsisted the defendant was not bound to pay a compensation for the occupation of the land, because the contract shews he was to occupy without compensation, and so long as it subsisted he was entitled so to occupy, but still he was tenant at will." *Alderson*, B.: "While defendant was in possession under the contract for sale, he was tenant at will, under a distinct stipulation that he should be rent free, therefore for that time no action for use and occupation can be brought against him; but when that contract is at an end, he is tenant at will, simply therefore from that time he is to pay for the occupation." *Rumball* v. *Wright* 1 C. & P. 589, *Best*, C. J., says: "This defendant is similar to a purchaser, he is not put in as a tenant, but he is put in to occupy till a lease shall be granted, and when the lease is granted then he is liable for rent, and not before."

It appears to me, that in the absence of any express contract to pay, the implied promise to pay a reasonable compensation for the occupation is met by proof that the owner agreed to let defendant occupy rent free. The case cited by Mr. Cameron, *Flood* v. *O'Gorman*, 4 Irish Law Reports, (2 Q. B. 578), very strongly supports this view, which to me seems in accordance with the plainest common sense. In Woodfall's treatise, 627, it is said: "this action is founded on a contract, and unless there were a contract express or implied, the action cannot be sustained."

It would be a strange conclusion to declare the defendant liable for rent in a case in which the contract admitted on all sides was, that he was not to pay any.

I feel considerable doubts as to the goodness of the plea on equitable grounds, as I do not find any express decisions that a case in which a court of equity might grant an injunction against an action until one of the parties had done a particular act, would form a good defence at law on equitable grounds. The last case cited of *Flight* v. *Grey*, (4 Jurist, N. S. 13, C. B.), does not, though in one point of view possibly in favour of defendant, lead clearly to such a result.

But as I consider the plea discloses a good legal bar, it is unnecessary to discuss this latter point (*Vorley* v. *Barrett*, 1 C. B. N. S., 225). I do not think the plea open to the objection that a binding contract is not shewn against plaintiffs.

Judgment for defendant.

FORBES v. THE SCHOOL TRUSTEES OF SECTION 8, PLYMPTON.

Contract—Pleading.

Held, that a contract entered into by two trustees under the school acts, with the corporate seal attached is sufficient, and a plea that it was signed by the two subscribing trustees without the consent or approbation of the third *held* bad.

The declaration stated that defendants under their corporate seal accepted a tender, and agreed to pay $380 to the plaintiff for building a school-house.

To which defendants pleaded thirdly, that the tender was accepted and the contract made by two of the trustees without the consent or knowledge of third, and he had no opportunity of agreeing or dissenting thereto.

The plaintiff demurred on the grounds: 1st. That the same is no answer in law to the said declaration, as the plaintiff declared against the school trustees as a corporation, and not in their individual capacity. 2nd. That it was not the duty of the plaintiff to ascertain whether two of the three trustees acted alone or with the third, or whether they notified him, a majority of the trustees having signed the contract and affixed the corporate seal thereto as required by statute. 3rd. That the defendants cannot, as against a contractor, the plaintiff, take any advantage of their neglect or omission to perform any duty imposed on them by the act, of which neglect or omission the plaintiff had no notice. 4th. That it is no answer to the declaration to affirm the want of acquiescence or confirmation by one of said trustees of the acts of the other two. "The Upper Canada School Act of 1850," not requiring such acquiescence or confirmation, and that the said plea is in other respects uncertain, informal, and insufficient.

A. Prince supported the demurrer.

McMichael contra, cited *McGregor* v. *Pratt*, 6 U. C. C. P. 173.

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

I do not find any ground upon which the third plea can be sustained. The trustees of each school section are made a corporation by the statute 13 & 14 Vic., sec. 10, and I do not find anything in the act which makes it necessary to the validity of a contract made by such corporation that it should be signed by the trustees as well as have the corporate seal affixed to it.

Nor is there anything in the statute which makes it necessary that the three members of the trustee corporation should be unanimous in affixing the corporate seal. The statute contemplates there being a necessity in consequence of the death, removal, &c., of any member of the trustee corporation, for a special election to supply his place, but it contains nothing to lead to the inference that until such election the power of the corporation to contract, &c., under seal, are suspended.

With regard to the site of a school-house, sec. 11, of 13 & 14 Vic., ch. 480, recognises the authority of a majority of the trustees. Section 12, 2ndly, authorises the issue of a warrant signed by a majority of the trustees, which apparently requires no seal.

Independently of these considerations, I think that the trustee corporation cannot set up as a defence to an action founded on an instrument under their corporate seal, that one of the there trustees had no notice of the proceeding, nor any opportunity of agreeing to or dissenting from the making and sealing such instrument. There is no charge of fraud or collusion on the part of the two trustees who, being a majority, it is admitted did affix the seal, nor is there any averment that the plaintiff had notice or was a party to any of the acts of the majority of the trustees in reference to the third trustee.

The cases cited for the defendants do not touch the question.

I think the plaintiff is entitled to judgment on demurrer.

Vide *Prince of Wales Insurance Company* v. *Athenæum Assurance Company*, 3 Law Times, p. 149; per Lord Campbell, C. J.

Judgment for the plaintiff.

CHAMBERS.

(*Reported by* A. MCNAB, *Esq.*)

MANSON v. GURNETT.

Replevin—Stay of Proceedings.

The action of Replevin is not one contemplated as coming within Statute 16 Vic. cap 180.

This was an action of Replevin, commenced in the County Court for the County of Wentworth, against the defendant, who is the Police Magistrate of the City of Toronto, to recover back a gold watch which it was alleged had been lodged with him, having been taken upon a search warrant from a person who absconded. The plaintiff claimed title by assignment from the person who caused the search warrant to be issued. The defendant removed the suit from the County Court into the Court of Queen's Bench, and now after declaration has applied to stay all proceedings in the action, on the grounds that he was acting as a Magistrate in the matter; that the declaration does not state that he acted maliciously and without reasonable and probable cause; that he had no notice of action, and that in fact when the writ of Replevin was served upon him the watch was not in his custody or keeping but in that of the Deputy Chief of Police. The Defendant claimed that he is protected by the Statute 16 Vic., cap. 180, and that under the 6th section he is entitled to have all proceedings stayed.

BURNS, J.—It does not appear to me that I can help the defendant upon a motion of this kind, and I must therefore discharge the summons. The whole scope of the Act 16 Vic., cap. 180 convinces me that the action of Replevin is not one contemplated as coming within the meaning of it. The 8th section compels the plaintiff to give a month's notice of action, and one of the grounds of complaint made by the defendant here is that he has not had that notice. We have already determined that the action of Replevin is not one coming within the meaning of 14 & 15 Vic., cap. 54, requiring notice of action to be given to Bailiffs; vide *Folger* v. *Menton*, 10 U. C. Q. B., 422, (the English cases will be found stated there). The fact that the defendant never had the custody of the watch and did not detain, forms a ground of defence upon the merits. and cannot be inquired into on an application of this nature; (Vide *Gilchrist* v. *Conger* (sheriff) 11 U. C. Q. B., 197). The 18 Vic., cap. 118, does not apply to a case of this description. If it be true as the defendant says that he did not detain the watch, he must succeed upon that at the trial. No doubt he does not wish the trouble and vexation of defending a suit, which probably there would have been no necessity for bringing in the name of any one if the plaintiff had acted courteously to the defendant by representing how and in what manner he claimed title; but inasmuch as he would have been subject to an action of trover in case of demand and refusal if he had possession of the article: he is subject in the same manner to the Replevin action if it can be sustained upon the same ground.

Summons discharged, costs to be in the cause.

ARKLAND v. HALL.

Injunction after Verdict.

Plaintiff is not entitled to an injunction to restrain defendant from committing the wrong complained of, even although plaintiff has recovered a verdict and damages against defendant, unless the writ of summons in the action is endorsed that the plaintiff claims a writ of Injunction and damages.

Application by summons for writ of Injunction under section 286 of the C.L P. Act under the following circumstances: On the 4th March, 1857, the plaintiff commenced an action on the case against the defendant for overflowing his land, the south half of lot 14 in the 4th concession of Whitby. The writ of summons and the declaration theron were in the ordinary form; and the defendant pleaded, 1st., Not Guilty, and 2nd., that the plaintiff was not the owner of the land. The case was tried at Whitby, in October, 1857, and resulted in a verdict for the plaintiff of 5s. After the trial the plaintiff served the defendant with a written demand that he should cease to flood the plaintiff's land, and the defendant, as appears by the plaintiff's affidavit, refused to comply, but still continues to flood his land to his great injury. The verdict was not moved against but still remains in force though the plaintiff has not as yet entered up judgment.

The defendant objected that under these circumstances, no writ of injunction could be claimed in this action.

BURNS, J.—It appears to me the defendant's objection is well founded, and that the plaintiff has misconceived the force and effect of the 286th section. The 283, 284 and 285th sections very clearly shew that the writ of summons in an action like the present must be indorsed that the plaintiff claims a writ of injunction and the declaration must be framed accordingly, so that judgment may be pronounced ultimately whether a writ of injunction shall or shall not issue; and this may be in addition to any claim for damages which may be tried and adjudged upon. The plaintiff construes the 286th section as if it had no reference whatever to the other sections, and may be applied to a case like the present though no writ of injunction is claimed in the declaration. I do not take that to have been the meaning of the Legislature. I think the meaning of this section is that the plaintiff may have a temporary injunction at any time after the commencement of *the* action, that is an action commenced for the object mentioned in the 283rd section, and upon which the judgment will be, whether an injunction shall or shall not be granted. If the 286th section can be applied, as the plaintiff contends for, I can see no reason for the provisions contained in the previous sections unless they be confined to cases in which the claim for the writ of injunction is all that is sought to be claimed. It is clear that they are not so confined, but apply to cases where damages are sought as compensation for the injury as well as other cases: and without the aid of the 286th section an injunction could only be claimed at the termination of the suit, but with the aid of an interim injunction may be obtained when the action is for that purpose.

The plaintiff's summons must therefore be discharged,—and being the first case—without cost.

ELECTION CASES.

(Before His Honor JUDGE COOPER, Judge of the United Counties of Huron & Bruce.)

IN THE MATTER OF THE CONTESTED ELECTION OF THE ELECTORAL DIVISION OF TECUMSETH.

Legislative Council—20 *Vic. c.* 23.

A Judge of a County Court in a Legislative Council Electoral Division, has authority where the election for the Division is contested, to take evidence under 20 Vic. c. 23.

[November 8, 1858.]

Macdermott, upon behalf of Mr. Jones, the contestant candidate, applied for an appointment to take the evidence; and he filed the notice, answer, petition, and other papers.—The answer raised the question of the Judge's right or power to entertain the application. The following is the judgment:—

COOPER, Co. J.—An application has been made to me under the Controverted Elections Act, requiring me as a County Court Judge, residing *in* and having jurisdiction *in* the Tecumseth Division, to take evidence under the said Act and the "Election Petitions Act of 1851."

The notice, to Donald McDonald, Esq., (the member elected), states the grounds of contest to be in substance:

First. That the successful candidate personally, and by his agents, employed means of corruption by giving and offering sums of money with intent to corrupt and bribe certain of the electors of the said Tecumseth Division to vote for him, and particularly (here follow the names of parties alleged to be bribed or to have been attempted to be bribed.)

Second. That the successful candidate by himself and agents, opened and supported and caused to be opened and supported at his costs and charges houses of public entertainment for the accommodation of the electors, and particularly (here follow the names of the houses alleged to have been kept open.)

The answer, denying the contestant's allegations, protests, that the elected member is not bound to answer "*for that, no Judge of the County Court has authority or jurisdiction to take evidence in the Tecumseth Division*," and, that the Act of 20th Victoria "*does not extend to elections for the Legislative Council.*"

It becomes necessary, in view of this demurrer to the jurisdiction, if it may be so called, to decide whether the two grounds taken, or either of them, can be sustained. No day can be appointed for the hearing of the evidence if the Judge cannot become the Commissioner of the House; and on the other hand, should he give weight to the objections, and the House be afterwards of opinion that they were not tenable, it would follow that the House would be either deprived of the power to do justice in the premises, or compelled to adopt some special means of obtaining the evidence; for the 20th Vic. either does not apply at all, or is imperative in its directions. If it *does* apply, a Judge incurs a very serious responsibility if he refuses to act under it.

The state of the law on the subject being peculiar to the Province, we are without guide from English decisions expressly to the point; and, this being the first election for the Upper House which called for a judicial decision, we are equally without Canadian precedent. It remains then, only to endeavor to reconcile certain enactments which, becoming law at different times, had perhaps not been fully collated when the new laws were, by few words, incorporated with the old, and which, therefore, present now some apparent discrepancies.

The second ground taken by the elected member will be first disposed of.

He states that the Act, 20th Victoria c. 23, does not apply to an election for the Upper House.

The application to me to take the evidence, being made necessarily *ex parte*, I am without the assistance to explain the grounds of the objection, and I may possibly have overlooked some statute bearing on the question; for one can hardly conceive, reading all the acts together, how any reliance can be really placed upon a ground of objection so expressly opposed to a positive law of the land, and under which law the member has just been elected.

Yet, for all I can at present see, the 13th sec. of the 19th and 20th Vic. cap. 140 is quite positive on the subject. It says, that "*The laws relating * * * * to controverted elections,—and to all matters connected with or incidental to elections—shall, except where such laws may be inconsistent with this Act, apply in analogous cases to elections of Legislative Councillors.*'

It may possibly be intended to convey the idea that the 20th Victoria is "inconsistent with" the 19th and 20th, or that it is not among "the laws" mentioned in the last name Act, being passed subsequently to it. The Legislative Counsel Act however does not say "all laws now in force," but, "*The laws* relating to," &c.; and the Act of 1851 could not now be used without the Act of 20th Victoria, for the latter incorporates the two and makes them one; and clearly the Act of 1851 is embraced in the words—"the laws relating to," &c., and hence the 20th Victoria also. But the provision in the Election Act as to the application to the County Judge, may be perhaps said to be inconsistent with the 19th and 20th Victoria, because the Election Act requires an application to "the" County Judge, and in the division there are two, and neither is "the" Judge of the whole district. If the objection now under consideration rests on this ground, it was not necessary to make it; for the first objection, yet to be considered, raises the point.

It is true that the law would have been more explicit and satisfactory if the first section of the 20th Victoria had named elections for the Upper House instead of using simply the words "Legislative Assembly;" but the whole Act must be read together, and we cannot reasonably conclude that the Upper House elections were not intended by the Legislature and are not within the purview of the Act, when the last section makes the Act "part of" the statute of 1851, which is positively made by 19th and 20th Victoria, applicable to the Upper House.

The first and more difficult question raised, is as to the power of the Judge to act as Commissioner. The application is to be made to *the* "Judge of the County Court" "residing *in*, or having jurisdiction *within*" the electoral Division. There is nothing about jurisdiction "over" the division; the words appear to be used merely to describe the party, not to require him to be an officer having a jurisdiction as a Judge, to co-extensive with the electoral division. If that is meant, then to carry out the law is impossible;

yet this Act is "part of" of the Act of 1851, under which the contestant has no choice but to attempt to proceed. In construing statutes it is a well known and universally observed rule, to interpret them, if possible in furtherance of the end contemplated by the Legislature. The end here in view has been to make one "controverted election" law, consisting of the Act of 1851 with the 20th Victoria as part of it; and the intention of the 19th and 20th Vic., has evidently been to assimilate the procedure in the cases arising in both branches of the Legislature—to give each House the same means, (more easy and cheap than the former practice), of vindicating its own rights and guarding its own privileges. On this point the language of the best text writer on the subject is very strong. It is said (*Dwarris on Stat.* 616 *et seq.*) "a remedial statute shall be construed by equity to extend to other things besides those expressly named." "A statute made *pro bono publico*, shall be construed in such manner that it may, as far as possible, attain the end proposed." "All statutes made to redress fraud, and to give a speedier remedy for right, being in advancement of justice, and beneficial to the public, shall for that reason be extended by equity. *Again, a remedial statute shall be extended* by equity to other *places* than those mentioned within a statute." And many like dicta are found in the books, illustrating this branch of legal science, and showing strongly that such Acts as those now before us are not to be restricted or narrowed in their interpretation, but are to be construed liberally in favor of the public object had in view in framing the Acts. I shall refer but to one or two more of these maxims as in point here. It is said that "statutes have been made to extend by construction to a time not mentioned, or to another time than what is mentioned in the statute" and many instances of this are given; and it is added that there are numerous cases where a remedial "statute is extended to later provisions by subseqnent statutes."

The intention here I take to be reasonably plain. It is, to entrust *any* resident County Court Judge, upon valid application made, with the office of *Commissioner*. The extent of his local jurisdiction, as *Judge*, has nothing to do with the matter. In this instance the Electoral Division extends beyond the County where the Judge resides—in some cases the division is much smaller than the county. *Having taken the proper oath, the judge becomes in* relation to the matter, a commissioner (not a judge) and an officer of of the House in respect of the election throughout the division; subject to the directions of the House and liable to its censures or punishments, as any other officer appointed by it, and in a manner in which a judge, as such, is in no way answerable to any branch of the Legislature.

As to the Locality of the transactions sought to be put in evidence, no difficulty is presented; for the warrant of the commissioner can be enforced against a party resident in Toronto or Kingston as well as against any one within two miles of Goderich.

In deference to the judgment of the elected member I have given these reasons for deciding against the strong view taken by him in his answer; and I feel convinced, that I may safely adopt the language used by a brother judge (Mr. Chewit) when construing these statutes on another point, namely, that "I am adopting a proceeding most consonant to the provisions, *spirit* and *intent* of these Acts."* And I shall, of course, take the same steps in the matter as he did, "I shall report" the objections, and this is his judgment, "with the other proceedings to the House for its information, leaving it to the House or committee to decide if this course be inconsistent with these statutes, or with some or any other existing provisions of law bearing on the question involved." In doing this I am clearly acting according to the 160th section of the Act of 1851, under which indeed it is probable that I should do right in taking the evidence even if I thought the objections sustainable; but, as I am of the other opinion, it is not necessary to say how far the 160th section applies to cases where the judge thinks he has no power to entertain the application. It seems to me, however, that as there are issues of fact raised, I must take the evidence upon them. The House and not the Judge is the proper tribunal to dispose finally of the demurrers or objection.

* 4 U. C. L. J., 161.

SAME CASE.

(BEFORE HIS HONOR JUDGE BURRITT OF THE COUNTY OF PERTH.)

BURRITT, Co. J.—The acts relating to contested elections, &c., are as follows:—14 & 15 Vic., 1851, chap. 1; 19 & 20 Vic., 1856, chap. 130, sec. 13; and 20 Vic., 1857, chap. 23.

"The contestant objects to the sufficiency of the recognizance; and protests that 20 Vic. gives no authority to the County Judge to take evidence in contested elections for Legislative Councillors.

As to the recognizance. The form given by the act of 1851 refers to the petitioner, or sitting member, and the recognizance before me refers to the elected member. Under that act the elected member would, of course, have taken his seat before a petition could have been presented, and consequently would have been the sitting member. The 20th Vic., chap. 23, sec. 5, declares that the word "commissioner" shall be understood to include and apply to the judge to whom application is made, as well as to any commissioner appointed under the act of 1851. This recognizance is varied to suit the facts, and instead of using the words "sitting member," the words "elected member" were substituted. I think these words may be so varied to meet the facts and not invalidate the recognizance. To style contestant the sitting member according to the form given would not be true. He is an elected member, and has never taken his seat.

With respect to the power of the county judge to take evidence in this matter, we must refer to 20 Vic., chap. 23:—Section 4 refers to the judge residing or having jurisdiction within the electoral division, &c., in which such controverted election was held. The electoral-division of Tecumseth embraces two electoral divisions for the Legislative Assembly, and two judicial divisions, and one electoral division for the Legislative Council, comprising the counties of Huron and Perth. The Judge of the County of Perth is applied to to take evidence, and has jurisdiction (judicial) within the County of Perth. Whether the Legislature intended that jurisdiction to be co-extensive with the electoral division admits of some doubt. I apprehend he has power, sitting as a Commissioner, to compel the attendance of witnesses from any part of the Province, and that the Legislature intended to give jurisdiction to any county judge having judicial authority within any electoral division in Upper Canada.

The objection is urged still further, and contestant insists that the 20th Vic., c. 23, does not in any way apply to the Legislative Council, and that no mention is made of that body in the act.

It is true that body is not expressly named, unless the words *controverted election* in the preamble refer to it.

The 10th section declares thus:—"This act shall be construed as a part of the elections petitions act of 1851, and the said act shall be construed as if the provisions of this act were contained therein." This being the case, does it not apply to the Legislative Council with the provisions of the act 20th Vic., chap. 23? I think it does. The 19th & 20th Vic., chap. 140, sec. 18, enacts that the laws relating to the elections of members of the Legislative Assembly, qualifications of electors, &c., to *controverted* elections, and to all matters connected with or incidental to elections (except where such laws may be inconsistent with said act), apply in analogous cases to elections of Legislative Councilors. Looking at the preamble of the 20th Vic., chap. 23, and the intention there expressed, I cannot say the Legislature did not intend to apply it to the Legislative Council, particularly when the words 'controverted election' are used in the 13th sec. of the Legislative Council Act, and the more so when section 13 applies to other laws, such as the laws relating to the election of members of the Legislative Assembly, qualification of voters, &c.

It can, therefore, hardly be said that it was ever intended to exclude the Legislative Council, a body elective like the other branch, from the operation of the act. It cannot be denied but that as the Elections Petitions Act of 1851 stood when the Legislative Act was prepared, it did apply to that body, and if the subsequent Act 20th Vic. engrafted on it must be separated from it in its applicability, the Commissioner would derive his authority from a Committee, and not from the last mentioned act, and the Judge should decline to act without such authority.

Upon the best consideration of the matter, I shall make the rule absolute for proceeding to take the evidence, as required by petitioner, and appoint the 24th day of November instant, at the Court House in Stratford for that purpose.

COUNTY COURTS. U. C.

J. H. v. G. B.

Before the Judge of the County Court of the County of Lincoln, E. C. CAMPBELL, Esq.
C. L. P. A. 1856, sec. 292.

The object of sec 292 of C. L. P. A. 1856, is to aid a bill-holder and to prevent the loss of such, being set up as a defence where the holder is prepared to give ample security; but where plaintiff declares on the original consideration and not on the bill the case is not within the enactment.

(*County Court Chambers, Nov. 27, 1858.*)

Miller, plaintiff's counsel, applied on the 23rd of September, 1858, for a summons calling on the defendant to shew cause why his second plea should not be struck out and the defendant restricted from pleading by way of defence the loss of the note mentioned in the second plea on plaintiff giving an indemnity as provided by the 292nd section of the C. L. P. Act, 1856. And why the defendant's first or third plea should not be struck out and the defendant restricted to the pleading of one plea.

This application was founded upon a copy of the pleadings and the affidavit of the plaintiff. The papers disclosed that the plaintiff set out his cause of action for money lent, &c., to which the defendant pleaded, first, never indebted; second, that defendant made his note to E. H., wife of plaintiff, for £100, who accepted, &c., and at commencement of suit and still is the note lost, and being negotiable defendant is liable; third, that, &c., plaintiff or his agent transferred, &c., note to persons unknown who hold, and defendant is liable to pay.

It was further shewn by plaintiff's affidavit that E. H. was wife of the plaintiff—the marriage—death—loan of money by her before her death—and that defendant gave the note to her or bearer, and believes that she a few days before her death gave up the note to defendant, without his consent, &c., and believed it was in defendant's possession; that the action was to recover the consideration that he, plaintiff, is a freeholder, owning lands in fee worth $5000, &c. &c. &c.

In much doubt as to the applicability of the section to a declaration and action in the common money Courts, His Honor gave a summons.

Lawder, on the return of the summons, raised the objection, and offered to show that defendant had not now or ever had possession of the note, &c.

CAMPBELL, Co. J.—The non-possession of the note by defendant is not a material point. It is alleged to be lost and the affidavit of defendant strengthens the supposition. The more I reflect upon the expression in the section quoted, the more I doubt that in this action for money loaned, &c., I have authority to make the order asked for, if the meaning is to be literally expounded. The count in form is not founded on the negotiable instrument, but on the original transaction for money anterior, and hence the doubt as to the action being "*founded*" on the negotiable instrument. In an action on the original consideration I consider it open to the plaintiff to support it by producing a note to himself past due, as evidence—or if lost, &c., and not negotiable, giving evidence of its contents. The bare fact of the debtor giving a note does not constitute a perfect defence. See 3 Chitty, Pl. Mr. Chitty, in his Treatise on Bills and Notes, states that it is not usual when there is a bill or note to rely on the common counts, but the plaintiff may recover on them if adopted to such consideration, and if note, &c., be defective. 7 T. R. 241, 1 East. 58, 4 Esp. N. P. C. 7, 1 Esp. N. P. C. 245. In the latter case Lord Kenyon observed, the note is not like a bond which "*merges*" the demand. See also as to declaring on common counts in such cases, Buller N. P. 137, 2 Stra. 719, 2 Vesey, 303, 1 Bun. 373. The statute of Anne (3 & 4, ch. 9) which enables the plaintiff to declare on the note is only a concurrent remedy.

The rules in force prior to those adopted under the C. L. P. Act sanctioned a count upon a note, and upon the consideration as founded on distinct subjects matter. Rule 32. See also Mr. Chitty's remarks preceding his Forms of Declaration on Bills, &c.

The new rule under the C. L. P. Act prohibits several counts on the same cause of action, but as to bills, &c., the right seems the same as before. See Harrison, 669, note *k*, 6, Rule 1, Trinity T., 1856, U. C.

The counts are said to be founded on distinct contracts. If this declaration can be viewed as founded on the note, then it would seem to follow as a consequence that another count setting out the note should not be allowed under the rule, but the practice and decisions have been otherwise. The defendant pleading discloses a negotiable note given, which plaintiff cannot and does not deny, and if that note do not extinguish or merge the original contract the plaintiff may recover under certain circumstances on the common count. And, therefore, should it be held that this action is founded on the negotiable instrument?

The law, as it stood prior to 1856, was hard upon parties who had lost or mislaid negotiable paper, and who were able to give indubitable security in case of its appearing, and it may be argued that the Legislature intended to give relief in whatever shape a plaintiff might legally advance his remedy, and that the section should not be construed in so narrow a sense, but more comprehensively to extend to such a case as the present.

I have not heard from the plaintiff's counsel why he did not declare on the note as well as upon the consideration.

As I have no decision or dicta of our Courts to guide me, and know of none upon the corresponding section of the English Act, and do not foresee any injustice to the defendant if he be properly secured against the note, I prefer leaning to the more enlarged and equitable case of the plaintiff at present, until, &c.

Feeling convinced that the object of the Legislature was in all cases to aid a bill-holder, and to prevent the loss of such being set up as a defence where the holder is prepared to give ample security, and being satisfied as between these parties that the common count may be supported without declaring specially upon the note, I make the order asked for, &c., and also that the third plea (pleading without leave) be struck out.

IN THE MATTER OF THE ARBITRATION AND AWARD, T. D. v. A. H.

[Before the Judge of the County Court of the County of Lincoln, E. C. CAMPBELL, Esq.]

Award—Imprisonment for Contempt—Bail.

A sheriff may, under s. 302 of C. L. P. Act, 1856, take a bond from a prisoner in close custody, under an attachment for contempt in non payment of money, pursuant an award, and a judge of a county court may, if such bond be taken allow it pursuant to ss. 25 and 26 of C. L. P. Act, 1857.

In this case defendant had been in close custody under an attachment for contempt, for non-payment of money on an award. The sheriff of the county of Lincoln had taken a bond to the limits, and the counsel for the defendant gave to the plaintiff's attorney notice of application for allowance, under the Act 20 Vic., chap. 57, ss. 25 and 26.

Roaf & Davis, by their clerk, objected that the judge could not allow a bond, taken by the sheriff without authority of law, and contended that the 302nd sec. of the C. L. P. Act, 1856, which gives authority to a sheriff to take a bond from a debtor confined in gaol "in execution, or upon mesne process" does not extend to a case like the present, which is a process for contempt. That this section is the only guide or provision now, inasmuch as the Acts 10 and 11 Vic., chap. 15, and 16 Vic., chap. 176, which were more distinct in their terms, are repealed.

The judges of the Queen's Bench, it was contended, alone could bail in such a case.

Lawder referred to the Acts supposed to be repealed, and the 318 sec. of the C. L. P. Act, but on reading the latter more carefully, admitted the repeal of the two referred to, as to the provisions relating to bail, and all varying or inconsistent Acts or provisions.

CAMPBELL, Co. J.—To give the 302 sec. of the C. L. P. Act, 1856 the construction urged by the plaintiff's counsel would render the case of this defendant non-bailable by any authority. Had the terms of the section been on execution, or under or upon execution, &c., I might have been more in doubt, but I view the words of the Act as sufficiently comprehensive, and embracing every kind of process (mesne or final) to hold a debtor, and that the defendant comes under one or the other. I call the process final—and consider the defendant was confined in gaol "*in execution*" when the bond was given, and therefore that the sheriff had authority to take it. A point of practice being not strongly pressed, and no exceptions taken otherwise to the bond or sureties, I will order allowance.

The decisions of the Queen's Bench previous to the Act 10 and 11 Vic., chap. 15, are important, and refer to English and Canadian cases; amongst which see *Lane* v. *Kingsmill*, 6 U. C., Q. B., 579, wherein was discussed, whether an attachment for contempt in not paying money was mesne or final process, and the point raised or hinted at, that a sheriff on an attachment may take bail to the limits after the return day has passed.

See also *Rea* v. *Kidd*, 4 U. C., Q. B., 181, and Hil. 6 Wm. IV., R. & H. Dig., Limits. Other cases in *Lane* v. *Kingsmill*, page 584, printed 484.

Upon the clause of the statute and the authorities referred to, I have now no doubt of the propriety and legality of the sheriff's act in taking the bond under the 302 sec. C. L. P. Act, 856.

Were the matter doubtful to me I would still take the same course and order the allowance, leaving the question of legality to be raised by the plaintiff in an action for escape,

My allowance will not make good, a void bond, nor prejudice the plaintiff. The more I read and reflect the less doubt I have.

My allowance will therefore be indorsed on the bond according to the statute.

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

ETOBICOKE, November 15, 1858.

GENTLEMEN,—I request your attention to the following:—

Are Naval or Military Pensioners liable to perform Statute labor or to commute for the same in consequence of occupying or owning real estate; that is, are they liable for the labor chargeable against the real estate which they may hold?

It appears plain from the eighth clause of the sixth section of the Assessment Act that the personal property of such persons is exempt from taxation of any kind, but it is not clear that they are not liable in respect of real estate which they may hold.

I wish further to know what would legally be considered actual present service then? Would pensioners who may be called upon to drill for a few days or weeks in a year in a time of peace or otherwise be considered in active or present service? An answer in your next number will oblige.

I remain, &c.,

W. A. W.,
Deputy Reeve, Etobicoke.

[It may be taken as a rule that all property, real and personal, not exempted from taxation by 16 Vic., cap. 182, is liable under that Act to be taxed.

The language of s. 2 is "that *all* land and personal property in Upper Canada shall be liable to taxation, *subject* to the exemptions hereinafter specified."

The eighth class of exemptions thereinafter mentioned are, first, the *full* or *half* pay of any one in any of Her Majesty's Naval or Military services; second, or any pension, salary, or other gratuity or stipend derived by any person from Her Majesty's Imperial Treasury or elsewhere out of this Province; third, and the personal property of any *such* person in such Naval or Military service on *full* pay or otherwise in actual then present service, nor shall *such* person be liable to perform statute labor or to commute for the same." "Such person"—what person? The answer is, first, any person "in Naval or Military service on *full* pay;" secondly, "or otherwise in *actual* then *present* service."

As applied to soldiers or men in actual service the law is clear: but a *pensioner* may be deemed for some purposes "in actual present service." This causes us to fall back upon 14 & 15 Vic., cap. 77, intituled "An Act to authorize the employment of pensioners and others as a Local Police Force." It is enacted by s. 1, that "any of the Naval or Military Pensioners who, under the Acts of the Parliament of the United Kingdom in force in that behalf shall be *enrolled* as a local force for the preservation of the peace in any part of this Province, &c., and by s. 4, "that the pensioners and other members enrolled *as members of such Police force* shall, while *so enrolled*, be exempt * * * from statute labor or any capitation tax in lieu thereof, and that any *such* pensioners while so enrolled shall be exempt from taxes on any property of which the occupation may be allowed them by the Imperial or Military authorities, and of which the title shall remain in the Crown."

The answer to our correspondent then is as follows:—No Military or Naval Pensioner is in time of peace exempt from the performance of statute labor or the payment of commutation money in lieu thereof, unless enrolled as a member of a Police Force for the preservation of the peace in some part of this Province.—EDS. L. J.]

To the Editors of the Law Journal.

GENTLEMEN,—I beg to enquire through the *Law Journal*,—

1. Can the holder of any ministerial office appoint a deputy to act for him?

2. Is the office of Registrar of the Surrogate Court a Ministerial office? And, if it is,

3. Is it one of those to which the holder can appoint a deputy?

By answering the above you will much oblige.

Yours truly,

A SUBSCRIBER.

November 19, 1858.

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1. The rule is that a judicial officer cannot make a deputy unless he has a clause in his patent to enable him to do so, because his judgment is relied on in matters touching his office. This rule does not extend in general to ministerial officers; but notwithstanding a ministerial officer is not allowed to appoint a deputy, if the office is one, intended to be performed by him in person. The appointment of deputies is not to be encouraged. When intended, as in the case of Sheriffs or Registrars, the Legislature makes mention of deputies; and when no such mention is made the presumption is against the right to depute.

2. The office of Registrar of the Surrogate Court is a Ministerial office.

3. But for the reasons mentioned in the latter part of division 1, we doubt the power of the officer to appoint a deputy *qua* such.—EDS. L. J.]

The Editors of the Law Journal.

OTTAWA, Nov. 22nd, 1858.

GENTLEMEN,—Having read in the *Law Journal* several good articles on the necessity of discouraging those hosts of *would-be Lawyers* who act as Conveyancers, and who undertake for a small consideration to draw the most difficult will, or a conveyance of property worth thousands, not knowing at the same time a tittle of law governing such cases, I think the editors of the *Law Journal* deserve much credit for strennously opposing the pretensions of those quack conveyancers.

I enclose you an extract from a paper published in this section of the country.

The only qualification Mr. ——— can claim for a Conveyancer is—that he is a Notary Public and Commissioner in B. R. Thus clothed with a shadow of legal authority, Mr. ——— offers his services to the world as a Conveyancer, and his charges defy competition.

Yours, &c.,

J. J.

MONTHLY REPERTORY.

COMMON LAW.

Q. B. CURLEWIS v. EARL OF MORNINGTON. *June* 13.

Statute of Limitations, 21 Jac. I. cap. 16, ss. 3, 4—Equity of the Statute—Death of Defendant—Action against administrator—Reasonable time.

Action for debt not barred by the Statute of Limitations abates by death of defendant intestate, and more than three years after his death, no administration having been taken out, plaintiff cites next of kin in the Ecclesiastical Court, who thereupon takes out administration. Within a year of administration granted but more than six years after accrual of debt plaintiff sues administrator.

Held, affirming the judgment of the Queen's Bench that the action is not barred by the Statute, the case being within the equity assigned to the 4th section.

Q. B. DALYELL v. TYLER ET AL. *June* 15.

Negligence—Hirer and owner of vessel—Action against owner by contractor with hirer.

The owners of a vessel navigated by their servants are liable for an injury to a passenger, caused by the negligent management of the vessel, although the passenger has contracted for his passage with the hirer of the vessel, and there be no contract between the passenger and the owners.

EX. C. HODSOLL v. BAXTER. *June* 14.

Practice—Common Law Procedure Act, 1852—Special endorsement of Writ of Summons—Judgment debt.

Where plaintiff claims the amount of a judgment debt, he may specially endorse the same on his Writ of Summons under Common Law Procedure Act, 1852. Such a claim is within the spirit of the Act, and is also a "liquidated demand in money" within the words of the section.

C. P. BROWN v. PRICE. *June* 25.

Policy of Insurance—Covenant to keep on foot—Damages.

P., upon borrowing money from the N. Insurance Company mortgaged certain premises to the trustees of the Company, and the latter insured P.'s life in their own Company. In the mortgage deed P. covenanted to pay the premium of this policy; and that in default of his doing so, the trustees might pay them, and add the amount to the mortgage debt.

Held, in an action against P. for non-payment of the premium, that they were only entitled to nominal damages.

EX. COOMBS v. THE BRISTOL AND EXETER RAILWAY CO.

Carriers—Loss of goods—Action by assignee—Statute of Frauds.

A. agreed with B. by a verbal contract for the purchase of goods exceeding the value of £10, to be sent to A. by the B. & E. Railway. The goods were sent by the B. & E. Railway by B. addressed to A., and were lost during their conveyance.

Held, that A. could not sue the Railway Company, because the contract being verbal there had been nothing to satisfy the 17th section of the Statute of Frauds, the delivery to the Railway Company being no delivery to the purchaser; that the property therefore had not passed, and B. not A. was the party to sue.

EX. ADAMS v. LLOYD. *June* 11.

Practice—Discovery—Title deeds—Relevancy.

It is a sufficient answer to an application for a discovery of title deeds in the possession of a party in a suit relating to the title to land, that such title deeds relate only to the title of the party himself and do not relate to the party seeking the discovery.

Where a party is not entitled to a discovery of title deeds he is not entitled to have a description of the names of the parties and the dates set forth in a schedule.

C. P. HARNIER v. CORNELIUS. *July* 3.

Master and Servant—Incompetency of Servant.

If a skilled person undertake a service which requires the exercise of his skill, there is an implied warranty on his part that he possesses the skill requisite to perform the task; and if he do not possess it, the employer may dismiss him before the expiration of the period for which he was engaged without incurring any liability.

C. P. HUTCHINSON ET AL v. GUION ET AL.

Dangerous goods delivered in bulk—Stowage—Leave and License.

The declaration after setting out an ordinary bill of lading, alleged that in consequence of want of due and proper care on the part of the defendants, and the negligent stowage by them of the goods they were delivered in a damaged state. The defendants pleaded that the goods were delivered in bulk, and that they were

so stowed with the knowledge and by the direction and license of the plaintiffs.

Held, that this was a bad plea, as it does not show a leave and license to stow negligently. The defendants pleaded also that the goods were dangerous to the knowledge of the plaintiffs, and that defendants did not know that they were so; and that the plaintiffs did not warn them of that fact as they ought to have done. The plaintiffs replied to this that the goods were salt cake, an article well known in commerce.

Held, that the plea was good, and the replication was no answer.

EX. C. LAING v. WHALEY ET AL. *June* 19.

Water—Right of party having permission to use water—Pollution by a stranger—Declaration—Allegation of right.

Declaration stated that defendants were possessed of coal mines and steam engines and boilers for working the same, and enjoyed the benefit of the waters of a certain canal near the said engines, &c., to supply water for working the same, &c.; and which said waters then ought to have flowed, and been without the fouling therein mentioned, yet that the defendant fouled the same, &c. The facts showed only that the plaintiffs by permission of a canal company, made a communication from the canal to their own premises by which water got to those premises, and with which water they fed the boilers; and the defendants fouled the waters of the canal, and by the use of it plaintiffs' boilers were injured, defendants having no right or permission to do this from the canal owners.

Held, reversing the judgment of the Exchequer, (*dissentientibus* WILLES and CROWDER, J.J., who supported the judgment of the Court below.)

Per CROMPTON and ERLE, J.J., That the effect of the allegation in the declaration, that the waters "ought to have flowed," is that the plaintiffs assert a right for the supply of the water which must be distinctly made out; which right however the facts did not establish, and therefore that a verdict would be for the defendant on the issue raised on the allegation.

Per WILLIAMS and WIGHTMAN, J.J., That the declaration contained no allegation of title, but that it showed no cause of action and consequently the judgment should be arrested.

EX. C. ROBERTS v. EBERHARDT. *June* 18.

Arbitration—Right of arbitrator when also appointed receiver to retain his fees out of the fund in his possession—Arbitrator not entitled to fix conclusively his own fees—Final and certain award.

Two partnerships having existed between the plaintiff and another, and disputes having arisen out of them by a special submission the disputes in each case were referred to an arbitrator who was also appointed receiver of one of the partnerships, and was authorized to make a single award. The costs of the reference and award were left to the discretion of the arbitrator; and by his award he certified that he had deducted the costs of the award out of the monies which he had received as receiver; but he neither stated the amount, nor by whom the amount deducted was to be paid, nor in what proportion.

Held, by the majority of the Court that the award was valid; that it was not open to objection upon the ground of misconduct in the arbitrator in retaining his own fees, or of its being uncertain and not final.

EX. C. DALE AND OTHERS v. HUMPHERY. *July* 5.

Contract of sale—Liability of brokers for undisclosed principal—Custom of trade—Statute of Frauds.

Plaintiff employs T. & M., brokers, to sell, and S. employs defendants, brokers also, to buy goods. The dealing is between the brokers. Defendants hand T. & M. a sold note signed by them in these terms, "sold for T. & M. to our principals, &c.;" T & M. hand to plaintiff a note signed by them in these terms, "sold to D. & M., (defendants) for account of H. (plaintiff) &c.," and made a corresponding entry in their books. Defendants did not disclose the name of their principal. In an action by plaintiffs against defendants for not accepting, it was proved that according to the usages of the trade, a broker purchasing without disclosing the name of his principal was held to be looked upon as a purchaser.

Held, affirming the judgment of the Queen's Bench, (*dissentientibus*, WILLES, J., and MARTIN, B.) 1st. That there was evidence of a contract of sale as between plaintiffs and the undisclosed principal of defendants, and, 2nd. That evidence of the usage of trade was admissible to show that under the circumstances defendants were personally liable.

EX. C. THOMPSON ET AL v. HOPPER. *July* 5.

Marine insurance—Warranty of sea worthiness—Proximate cause of loss.

Where to an action on a marine policy of insurance the misconduct of the assured is set up as a defence, it is necessary for the protection of the insurer that the misconduct should be the proximate cause of loss. And, therefore in case of a time policy where the alleged misconduct was the wrongful sending of the ship to sea in an unseaworthy state, and keeping her for a long time in a dangerous position near the sea shore, and thereby causing her loss; and in answer to the judge the jury found that the unseaworthiness was not directly or indirectly the cause of the loss.

Held, (*dissentientibus*, CROWDER, J.,) that the judge was right in so putting the question, and that the judgment of the Queen's Bench should be reversed, the same deciding that the jury should have been asked whether or not the misconduct of the assured occasioned the loss, though it might not have been the immediate cause of it.

CHANCERY.

L.C. & L.L.J. BIGG v. STRONG. *May* 1.

Specific performance—Constructive acquiescence—Notice.

J. S., and J. T. S. his son, were trustees and mortgagees in possession of leasehold with power of sale. B. entered into a negotiation with J. T. S. for the purchase of part of the said property; and a written agreement for sale expressed to be made between J. S. and J. T. S. of the one part, and B. of the other part, was executed by J. T. S. Subsequently to such execution J. S. and J. T. S. conveyed the property therein comprised to Z., with a notice of above mentioned negotiation. Upon bill by B. for specific performance

Held, that whether J. T. S had authority to bind J. S. or not, the latter had by his conduct subsequently so ratified the contract as to entitle the plaintiff to a decree.

M. R. RE DALY'S SETTLEMENT. *May* 7.

Husband and wife—Domicil—Foreign will—Execution of power.

Under a power to appoint by writing under hand or by will a married woman who for thirty years has resided in Paris apart from her husband, a domiciled Englishman, disposed of the fund by testementary papers signed and good by the law of France, but not attested.

Held, that this was not a valid execution.

V. C. S. ODDIE v. BROWN. *May* 3.

Will—Void gift—Remoteness—Perpetuity.

A testator directed his trustees to accumulate his residuary personal estate until the same should amount to £3000 or thereabouts, and then to apply the same in the manner and for the benefit of the persons in his will mentioned.

Held, that since the sum of £3000 might not come into existence within the extreme period allowed by law, the gift was too remote and failed accordingly.

V. C. W. WHARTON v. BARKER. *April* 30.

Will—Construction—Period of distribution.

Testator after after giving his property in moieties in trust for his two daughters M. and S. and their children with cross rem.in-

ders, directed his trustees in case his daughters should both happen to die without issue, to pay one moiety of his property "unto the person or persons that shall then be considered as the next of kin and personal representative or representatives agreeable to the order of the Statute of distribution; and the other moiety to pay unto the person or persons that shall then be considered next of kin and personal representative and representatives of my late wife W., (the mother of S but not of M.,) agreeable to the order of the Statute of distribution.

At the testators death S., who subsequently died without issue, was sole next of kin to her mother. M. survived S., and according to the will took her moiety for life in addition to her own, but also died without issue.

Held, that S.'s moiety went to the persons who were next of kin of W., according to the Statute, at the death of M., the surviving tenant for life, and not to the representatives of S., the sole next of kin to W., at the death of W.

L. C. & L.J. VINEY v. CHAPLIN. *May* 8.

Vendor and purchaser—Rights of purchaser as to execution of conveyance, and payment of purchase money.

There is no general rule that in every case of a purchase the purchaser can insist upon the vendor personally receiving the purchase money; but the vendor is not entitled to refuse upon the reasonable request of the purchaser, where the special circumstances would suggest such a step; and in every case where the vendor does not attend personally to receive the money, the purchaser can require the written authority of the vendor for the receipt of the money by an agent.

V. C. K. ATKINSON v. SMITH. *July* 3.

Valuntary settlement—Married Woman—Fine—Proviso for redemption—Power—Settlement.

A., and B. his wife, being seized of lands as joint tenants in fee mortgage them to B., the terms of the proviso for redemption being upon payment of principal and interest, at the request and expense of A. and B. to reconvey the premises to them their heirs or assigns or unto such other person or persons for such intents and purposes and in in such manner and form as they, the said A. and B. and the survivor of them, and the heirs and assigns of such survivor, should nominate, direct or appoint, free from incumbrances. A fine was levied on that occasion. The mortgage was paid off and the reconveyance taken by way of settlement to a trastee upon trust for A. and B. successively for life with remainder to other persons in fee. A. survived B. and sold for value and the purchaser filed a bill to set aside the settlement as void under the Statute of Elizabeth.

Held, that the settlement was voluntary, and void as against the plaintiff, and decree made according to prayer but without costs.

Held, also, that the words of the proviso for redemption, though sufficient parhaps to create a power, did not do so under the circumstances, there being on the face of the deed no indication of intention to alter the settlement of the estate to B.'s (the wife's) detriment.

V. C. K. MILNES v. AKED. *March* 22.

Will—Construction—Joint Tenancy—Tenancy in Common—Gift per stirpes or per capia.

A testator gave certain leaseholds for 999 years, and a share in the R. Waterworks, and all his estate and interest therein, to M. and A. and their assigns, during the term of their respective natural lives, as tenants in common and not as joint tenants; and from and immedietely after the deccase of them, the said M. and A., he gave the same unto all and every the lawful child and children of the said M. and A., equally, as tenants in common and not as joint tenants, and their respective executors, administrators and assigns, for all the residue of the term unexpired of 999 years, or during all his estate and interest therein, subject to the payment of the rent and the performance of the covenants, with a gift of the residue to M., A. and others.

M. and A. both survived the testator; M. had seven children, A. died leaving two surviving children. M. was in possession of the estate; and upon the question, what was the effect of the gift to M. and A. and their children—

Held, that the estate was given in equal moieties to M. and her children on the one hand, and A. and her children on the other, and that on the death of A. her share was divisible amongst her children.

L. C. & L. J. MORNINGTON v. KEANE. *March* 20.

Covenant—Construction—Lien.

By articles of separation between M. and his wife, he covenanted that he would, on or before the first of February, 1835, either by a charge on freehold estates, to be situate in E., &c., or by an investment of money, secure the payment of an annuity to a trustee for his wife.

Held, that this covenant did not create a lien on M.'s lands, but only provided for doing a future act by which a lien might be created.

M. R. ROLT v. HOPKINS. *May* 20.

Mortgage—Priority—Future advances.

On a mortgage to A. for a present debt and future advances, followed by a mortgage to B. in the same form—

Held, that B. was entitled to priority over subsequent advances by A., made after notice of B.'s security, and that the fact that B.'s mortgage was taken with notice of A.'s security did not alter the case.

V. C. S. CUDDON v. TITE. *May* 31.

Vendor and purchaser—Specific performance, with compensation—Demurrer—Copyholds.

The plaintiff agreed to purchase from the defendant a certain manor, of which he was to be let into the enjoyment on a certain day. Before that day arrived, one of the copyhold tenants died, and three persons were admitted as his successors by the vendors, who received the fines payable on such admission. To a bill filed by the plaintiff, praying that the said contract might be specifically performed by the defendants, with an abatement out of the purchase money by way of compensation to the plaintiff for the loss of the said fines, and for depreciation in value of the said manor caused by the admission of younger lives in lieu of the deceased tenant, a general demurrer was allowed.

V. C. S. KNIGHT v. BULKELEY. *June* 2.

Pension for wounds assigned as security—Injunction.

B. being entitled, until further order from the Crown, to a government pension for wounds received by him in military service, assigned such pension to K. to secure payment of an advance. He also executed a power of attorney, authorizing K. to draw the quarterly payments of his said pension. Subsequently, without notice to K., he revoked the said power and proceeded himself to receive and appropriate the entire amount of his pension.

Held, that K. was entitled to an injunction for restraining B. from receiving the pension in question, and from executing a power of attorney authorizing any person other than K. to receive it.

V. C. S. RE JONES'S SETTLED ESTATES.

Practice—Purchase money in Court—Re-investment in land—Costs of investigating title—Taxation.

A party who was entitled to obtain, upon petition, the re-investment in land of a large sum of money, which had been paid into Court by a public corporation, as the purchase money of lands taken by them for the purposes of their act, before presenting his petition, caused an abstract of title to the lands proposed to be purchased to be laid before his own private counsel. Subsequently the same abstract came before the Conveyancer of the Court, who in consultation with the said counsel approved the title. The

taxing master disallowed the fees of the intending purchaser's private counsel.

Held, that the taxing master was in the wrong.

When there is any question as to the costs of the re-investment of the purchase money of lands which have been taken compulsorily by a public body, the person in whose favor such re-investment is to be made ought to have the benefit of the doubt.

V. C. W. BOURDELLON v. ROCHE. *May* 27.

Partnership—Liability—Solicitor and Client—Receipt of purchase money.

It is no part of a solicitor's business to receive on behalf of his clients money coming to them upon payment of a mortgage debt, nor to retain such money for the purpose of investment generally. Therefore, where money had been received by R., one of a firm of solicitors, and misapplied by him after his representation that it had been re-invested on a mortgage, security payments purporting to be in respect of interest being made by him up to his death.

Held, that the surviving partner was not liable to make good the loss, on the several grounds—that the transaction was not within the ordinary business of a solicitor; that he had no knowledge or means of knowledge as to the receipt and appropriation of the money by his partner; and that it did not appear that the guilty party had received the money upon the faith (at the time) of its being re-invested upon a specific security.

L. J. VINT v. PADGETT. *June* 8.

Mortgage—Redemption—Tacking—Two estates—Notice.

A mortgagor mortgaged two estates separately to two mortgagees, and afterwards made a second mortgage of both estates to the defendant. Notice of the second mortgage was given to the two first mortgagees. Subsequently, the two first mortgages became vested in the plaintiff, who filed a bill to foreclose the defendant.

Held, that the defendant could not redeem one estate without redeeming the other, and that the fact of the first mortgagee having had notice made no difference.

V. C. K. WILKINS v. ROEBUCK. *June* 10.

Joint Stock Bank—General Manager—Contract for remuneration after the cessation of business—Power of Directors.

The governing body of a joint stock company have no right to do acts out of the common routine of the company's business, except such as they are authorized by their deed of settlement to do.

Where, in pursuance of a prior contract, the directors of a company by deed agree to give to a general manager a remuneration which may by possibility be payable after the cessation of the concern, such instrument is not only proper but valid under the deed of settlement. Where it gives the directors power to pay and allow to the general manager, &c., such remuneration as they shall think proper, and to confirm all acts done by persons acting as directors in the formation of the company.

A sum of money secured annually for a fixed number of years to an officer of a joint stock banking company, which may exceed in time the duration of the Company, is not in the nature of a superannuation allowance. Where power is given to the directors for the time being of a company, at a general meeting, to do certain acts, the words "general meeting" do not import that the act shall be done by the "general meeting," but that the directors themselves have the power to do those acts, provided that they are done at a general meeting.

V. C. S. RE BARROW (A SOLICITOR). *July* 12.

Practice—Attachment—Solicitor—Privilege.

A Solicitor was arrested under a writ of attachment while proceeding to attend an appointment with a person for whom he was acting in his professional capacity. *Held*, arrest improper.

REVIEW.

THE UNITED STATES INSURANCE GAZETTE AND MAGAZINE, for November. New York: G. E. Currill, 79 Pine Street.

This number abounds with much information, consisting of legal decisions as to the Law of Insurance, and extracts from the laws of different States of the Union. The Magazine appears to be edited with unflagging industry, and, we may add, considerable ability.

THE LOWER CANADA JURIST, for November. Montreal: John Lovell.

This number contains several interesting decisions. One is, that in an action for the recovery of subscription to a newspaper, it is sufficient to prove delivery of the paper without proof of any order for the same, and that a verbal refusal to receive the paper and notification to the carrier to discontinue it, is not sufficient (*Bristow v. Johnston, p.* 275); and another is, that a magistrate charged with the preservation of the peace in a city, who causes the military to fire upon a person, whereby the latter is wounded, is not liable in an action for damages at the suit of the injured party, if it appear that although there was no necessity for firing yet the circumstances were such that a person might have been reasonably mistaken in his judgment as to the necessity for such firing (*Stevenson v. Wilson, p.* 254).

APPOINTMENTS TO OFFICE, &C.

JUDGES.

GORDON WATTS LEGGATT, of Osgoode Hall, Esquire, Barrister at Law, to be Deputy Judge of the County Court of the County of Essex, under the Act 20 Vic. cap. 58, sec. 14.—(Gazetted Nov. 27, 1858.)

POLICE MAGISTRATES.

FRANCOIS CARON, Esquire, to be Police Magistrate for the Town of Windsor, under the Act 12 Vic. cap. 81.—(Gazetted Nov. 6. 1858.)

CLERKS OF COUNTY COURTS.

ABRAHAM RAPELJE, Esquire, to be Clerk of the County Court for the County of Norfolk.—(Gazetted Nov. 6, 1858.)

NOTARIES PUBLIC.

JOSEPH DEACON, of Perth, Esquire, Barrister at Law, to be a Notary Public in Upper Canada.—(Gazetted Nov. 6. 1858.)

JACOB VAULBAGNER SPOHN, of Hamilton, Esquire, Attorney at Law, to be a Notary Public for Upper Canada.—(Gazetted Nov. 13, 1858.)

JOHN C. FRANK, of Belleville, Esquire, to be a Notary Public for Upper Canada

FRANCIS McKELCAN, of Hamilton, Esquire, Barrister at Law, to be a Notary Public for Upper Canada.—(Gazetted Nov. 20, 1858.)

SAMUEL SMITH URMY, of Cayuga, Esquire, to be a Notary Public in Upper Canada.

JAMES REYNOLDS, of the city of Toronto, Esquire, Attorney at Law, to be a Notary Public in Upper Canada.

ROBERT WILLIAM ADAMS, of the city of Hamilton, Esquire, Attorney at Law, to be a Notary Public in Upper Canada.

THOMAS R. WESTCOTT, of the city of London, Esquire, to be a Notary Public in Upper Canada.

ROBERT THOMPSON, of the Village of Smithville, Esquire, to be a Notary Public in Upper Canada.

ALEXANDER GEORGE LUMSDEN, of the Town of Galt, Esquire, to be a Notary Public in Upper Canada.—(Gazetted Nov. 27, 1858.)

CORONERS.

WILLIAM MOSTYN, Esquire, M.D., to be an associate Coroner for the United Counties of Lanark and Renfrew.—(Gazetted Nov. 6. 1858.)

WILLIAM HARKIN, Esquire, M. D., to be an associate Coroner for the United Counties of Prescott and Russell.

THOMAS MESSENGER, Esquire, to be an associate Coroner for the County of Haldimand.—(Gazetted Nov. 22, 1858.)

TO CORRESPONDENTS.

JUDEX C.—Many thanks. The form of Warrant shall receive attention in our next.

W. D. M.—Letter returned too late for this number.

J. R. C.—Have not forgotten you, but so far been too much engaged to do what you require.

OTTO KLOTZ and J. H.—Under "Division Courts."

W. A. W.—Subscriber—and J. J.—under "General Correspondence."

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Village of Elora, in the County of Wellington, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. cap, 32, and have subscribed a sum exceeding Ten pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the minister of Agriculture;

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

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 10th March, 1858.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Parishes of St. Joachim, Ste. Anne and St. Foreol, in the County of Montmorency, in Lower Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. Cap. 32, and have subscribed a sum of not less than Ten pounds to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture;

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

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 9th March, 1858.

NOTICE.

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

TO MASTERS OR OWNERS OF STEAM VESSELS.

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

By Command,
E. A. MEREDITH,
Asst. Secretary.

NOTICE.

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

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

P. M. VANKOUGHNET,
Minister of Agr.

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

NOTICE.

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

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

P. M. VANKOUGHNET,
Minister of Agr.

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

NOTICE.

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

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

P. M. VANKOUGHNET,
Minister of Agr.

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

INSPECTOR GENERAL'S OFFICE.

Customs Department,

Toronto, 11th June 1858.

HIS Excellency the Governor General in Council, having had under consideration on the 22nd ultimo, the Departmental Circular of the Customs Department, dated 29th April 1853, by which importers of goods, in every case, are allowed to deduct the discount actually made for cash, or that which, according to the custom of Trade, is allowed for cash, has been pleased to rescind the same, and to direct that no such deductions be allowed hereafter, and that the duties be collected upon the amount of the invoice without regard to such discount; And notice is hereby given that such Order applies to goods then in bond, as well as goods imported since the passng of the Order in question.

By Command, R. S. M. BOUCHETTE,

Commissioner of Customs.

NOTICE.

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

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

Minister of Agr.

Bureau of Agriculture and Statistics.

Toronto, dated this 8th day of Feb., 1858.

INSPECTOR GENERAL'S OFFICE.

Customs Department,

Toronto, October 30, 1857.

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

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

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

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

By command,

R. S. M. BOUCHETTE

Commissioner of Customs.

NOTICE.

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

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

Minister of Agr.

Bureau of Agriculture and Statistics.

Toronto, dated this 8th day of Feb., 1858.

OPINIONS OF THE PRESS.

THE UPPER CANADA LAW JOURNAL AND LOCAL COURTS' GAZETTE, is the name of an excellent monthly publication, from the establishment of Maclear & Co., Toronto.—It is conducted by W. D. Ardagh, and R. A. Harrison, B. C. L., Barrister at Law.—Price $4 per annum.—*Oshawa Vindicator*, October 13th., 1858.

LAW JOURNAL, for November has arrived, and we have with pleasure its invaluable contents. In our humble opinion, the publication of this Journal is an inestimable boon to the legal profession. We are not aware of the extent of its circulation in Brantford; it *should be taken*, however by every member of the Bar, in town, as well every Majistrate and Municipal Officer. Nor would politicians find it unprofitable, to pursue its highly instructive pages. This journal is admitted by Trans-Atlantic writers to be the most ably conducted Journal of the profession in America. The Publishers have our sincere thanks for the present number.—*Brant Herald*, Nov. 16th., 1858.

U. C. Law Journal, August, 1858: Toronto Maclear & Co.

This valuable law serial still maintains its high position. We hope its circulation is increasing. Every Magistrate should patronize it. We are happy to learn from the number before us that Mr. Harrison's "Common Law Procedure Acts" is highly spoken of by the English *Jurist*, a legal authority of considerable weight. He says it is "almost as useful to the English as to the Canadian Lawyer, and is not only the most recent, but by far the most complete edition which we (*Jurist*) have seen of these important acts of parliament."—*Cobourg Star, August 11th*, 1858.

UPPER CANADA LAW JOURNAL.—The August number of the *Upper Canada Law Journal and Local Courts Gazette*, has just come to hand. Like its predecessors, it maintains its high standing as a periodical which should be studied by every Upper Canadian Law Student; and carefully read, and referred to, by every intelligent Canadian who would become acquainted with the laws of his adopted country, and see how these laws are administered in her courts of Justice.—*Stratford Examiner, August 12th*, 1858.

THE UPPER CANADA LAW JOURNAL, *and Local Courts Gazette.*

The August number of this sterling publication has been at hand several days. It opens with a well written original paper on "Law, Equity and Justice," which considers the questions so frequently asked by those who have been, as they think, victimized in a legal controversy:—"Is Law not Equity? Is Equity not Law?" Liability of Corporations, and Liability of Steamboat Proprietors, are next in order, and will be found worth a careful persual, 'A "Historical Sketch of the Constitution, Laws and Legal Tribunals of Canada," is continued from the July number; it is complied with care, and should be read by every young Canadian.

The correspondence department is very full this month. There are letters from several Division Court Clerks, asking the opinions of the Editors on points of law with which it is important every clerk should be familiar. There are communications too from Justices of the Peace, asking information upon a great variety of subjects. All questions are answered by the Editors; and a glance at this department must be sufficient to satisfy every Clerk, Justice of the Peace, Bailiff or Constable that in no way can they invest $4 with so much advantage to themselves as in paying that amount as a year's subscription to the *Law Journal*. The report of the case, "Regina v. Cummings," by Robert A. Harrison, Esq., occupies in the Court of Error and Appeal, is very full, and of course will receive the careful attention of the profession. The Reports of Law Courts add greatly to the value of the publication.

The *Law Journal* of Canada will compare favorably with any similar work either in Great Britain or the United States, and it is to be hoped that it will receive a patronage commensurate with its deserts. ROBERT A. HARRISON, one of the Editors, is a gentleman who has earned an enviable position in the profession, and who has reflected credit upon the Province by his numerous valuable additions to the Legal Literature of the British Empire. In the *Jurist*, London, England, of July 3rd, we notice an extended and highly commendatory notice of Mr. HARRISON'S last work, which is pronounced as useful to the English as the Canadian Lawyer. It would be surprising indeed, if in the hands of such a gentleman, and his able assistant A. D. S. Ardagh, Esq., the *Law Journal* did not merit a large share of public favor and support.—*Port Hope Guide August.*

THE UPPER CANADA LAW JOURNAL, &c.

We are indebted to the publishers of this interesting law periodical for the numbers till this sale of the present volume, (Vol. 4.) commencing with January last. Its pages have been looked over by us with much interest. It is the only legal periodical published in Upper Canada, and is conducted with great ability. Each number contains elaborate original articles on professional subjects, mainly of importance to the bar of Canada, but also entertaining to that of the United States— communications on mooted points and replies thereto, serial instructions to magistrates and other officers—and numerous decisions of the Division and other Courts of Canada. We welcome it as an excellent exchange.—*The Pittsburgh Legal Journal, Sept. 4th*, 1858.

The Upper Canada Law Journal. Maclear & Co., Toronto. This well conducted publication, we are glad to learn, has proved eminently successful. Its contents must prove of great value to the Profession in Canada, and will prove interesting in the United States.—*Legal Intelligencer*, Philadelphia, August 6, 1858.

THE UPPER CANADA LAW JOURNAL for July. Maclear & Co., Toronto. $4 a year.—To this useful publication the public are indebted for the only reliable law intelligence. For instance, after all the Toronto newspapers have given a garbled account of the legal proceedings in the case of Moses R. Cummings, out comes the *Law Journal* and speaks the truth, viz: that the Court of Appeal has ordered a new Trial, the prisoner remaining in custody.—*British Whig, July 6*, 1858.

THE UPPER CANADA LAW JOURNAL. *Toronto: Maclear & Co.—The July* number of this valuable journal has reached us. As it is the only publication of the kind in the Province, it ought to have an extensive circulation, and should be in the hands of all business as well as professional men. The price of subscription is four dollars a year in advance.—*Spectator, July 7*, 1858.

Upper Canada Law Journal.—This highly interesting and useful journal for June has been received. It contains a vast amount of information. The articles on "The work of Legislation," "Law Reforms of the Session," "Historical Sketch of the Constitution Laws and Legal Tribunals of Canada," are well worthy of a careful persual. This work should be found in the office of every merchant and trader in the Province, being, in our opinion, of quite as much use to the merchant as the lawyer.—*Hamilton Spectator.—June 8*, 1858,

The Upper Canada Law Journal and Local Courts Gazette, for June. Toronto.—Maclear & Co., Publishers; Messrs. ARDAGH and HARRISON, Editors.

This is a most excellent publication. The present number contains very able original articles on the following topics—'The work of Legislation,' 'Consolidation of the Laws of Upper Canada,' and 'Law Reforms of the Session—General Review (continued). The reports of important cases tried in the Local Courts, are full and very interesting. Altogether this magazine is conducted with much ability, and it richly deserves to be widely patronized.—*Thorold Gazette.—June 9*, 1858.

THE UPPER CANADA LAW JOURNAL for May is full of is interesting articles —instructive alike to the profession and the general public. The editorials, as usual, evince the sound knowledge and legal experience of the writers under whose management the journal is now published,—and the opening one, on the "Power of a Colonial Parliament to Imprison for Contempt," embraces an amount of interesting record from opinions of high authorities, upon which the author is led to conclude that the power to commit for contempt cannot justly be exercised by the Provincial Parliament. The other principal articles are—"Remuneration to Witnesses in Criminal Cases;" "Law Reforms of the Session—General Review;" "University of Toronto—Law Faculty;" "Historical Sketch of the Constitution, Laws, and Legal Tribunals of Canada," &c. An original essay on the latter subject is to be commenced in the next issue, and continued monthly till completed, and it is promised that the aim of the writer will be to narrate—not to discuss. His materials are, we are informed, the best that can be had, consisting of several French and English, Manuscripts now out of print. To this may be added all the information that can be from *Edits, Arrets*, and *Ordonnances* of the French Government and of the Province of Quebec together with the *Ordonnances* and Acts of Parliament of the Provinces of Upper and Lower Canada. No pains are to be spared, either in research or compilation, that can be made tributary to the object of the writer. The period embraced will be nearly three centuries—that is, from the settlement of Canada by the French to the present day. This is a subject so fruitful in details of a most interesting character, that if the promises referred to are carried out—(as we have every reason to expect they will, from the deservedly high reputation of the editors)—the *Law Journal* will considerably increase its popularity as a reliable record. —*Colonist May, 14th*, 1858.

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

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

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

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

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