DIARY FOR FEBRUARY.

1. Thur.. Last day for Co. Treas. to furnish to Clerks of Muns. in Co.'s list of lands liable to be sold for taxes. Exam. of Law Students for call to the bar with honors.
2. Fri... Exam. of Law Students for call to the bar.
3. Sat... Exam. of Artic. Clks. for certificates of fitness
4. SUN.. *Sexagesima Sunday.*
5. Mon.. Hilary Term begins. Last day for Artic. Cks. going up for inter-exam. to file certificates.
7. Wed.. New Trial Day, Q.B. Last day for sett. down and giving notice of re-hearing in Chancery.
8. Thur . New Trial Day, C.P. Inter-examinat'n of Law Students and Articled Clerks.
9. Fri... Paper Day, Q.B. New Trial Day, C.P.
10. Sat... Paper Day, C.P. New Trial Day, Q.B.
11. SUN.. *Quinquagesima Sunday.*
12. Mon.. Paper Day, Q.B. New Trial Day, C.P.
13. Tues.. *Shrove Tuesday.* P. D., C.P. N.T. Day, Q.B.
14. Wed .. *Ash Wednesday.* P. D., Q.B. N.T. Day, C.P.
15. Thur.. Paper Day, C.P. Open Day, Q.B. Re-hearing Term in Chancery commences.
16. Fri... New Trial Day, Q.B. Open Day, C.P.
17. Sat... Hilary Term ends. Open Day.
18. SUN.. *Quadragesima Sunday.*
25. SUN.. *2nd Sunday in Lent.*

The Local Courts'

AND

MUNICIPAL GAZETTE.

FEBRUARY, 1872.

The Index and Table of Cases, as well for the *Law Journal* as for the *Local Courts Gazette*, are printed, and will be sent to subscribers in a few days. They are very full and complete. We regret that, owing to unavoidable circumstances, their issue has been delayed. We have also to apologise to subscribers that our monthly appearance has, for a few numbers past, been so late. Our present arrangements, however, will, we hope, correct this in future. We think, moreover, that we can promise to subscribers for this year more information, and of greater variety and interest than formerly. We cannot say, that the encouragement we receive from the subscribers to the *Local Courts Gazette* is such as we could wish, whilst, on the other hand, the *Law Journal* list is largely and steadily increasing. The falling off in the business of Division Courts, and the fact that its officers now as a rule thoroughly understand their duties, and the practice has become well settled, may account for the want of a general increase to the list of subscribers to the former publication.

An unsuccessful attempt was made some short time ago in our Court of Queen's Bench to establish the legality of a marriage between a coloured man named Harris, a slave in Virginia, with another slave there, in the year 1825. The marriage was performed by a Baptist minister, with the usual ceremony, and with all the formalities practicable to make it binding, but without a license, which slaves could not obtain. They lived together as man and wife until 1833, Harris having a house of his own in Richmond, and working at his trade as a painter, paying his master for his time, as was customary. In 1833 he escaped to New York, where he married another woman, while his wife remained in Richmond, and was again married there. It was proved that by the law of Virginia, until the last five years, slaves were incapable of marrying: that to constitute a strict legal marriage between free persons a license was essential; but that slaves could not obtain it or in any way contract a legal marriage, being regarded by the law as property, not persons.

It was contended that the parties having done all in their power to make their marriage binding, it must be held valid here, the only impediment to its validity in Virginia arising from the law of slavery, which our law could not recognize; but the Court held the validity of the marriage must, according to the general rule, be determined by the law of the country where it was celebrated, the parties not being British subjects.

Such a case is not likely to occur again, and its only interest now, is as a reminiscence of the past, and as exemplifying a general rule of our law, and one which must be upheld, although in particular cases it may work an injustice to innocent persons.

We devote much space in this number to the judgments delivered by six of the judges of the Court of Error and Appeal in the celebrated Goodhue case. The case will be re-argued before a fuller Bench on the 11th March, and further authorities will probably be cited *pro* and *con*. Our readers having now the judgments already given before them, will be able to form their own opinions as to the merits and law of the case. The result which we should most like to see would be the disallowance of the Act by the Governor-General. This, however, is not thought likely, and if not done, this extraordinary piece of legislation, which has caused so much litigation, will, in all probability (whichever way the Court of Appeal may decide), be

ventilated in England, not, we apprehend, to the credit of those who were concerned in passing the Act.

We direct special attention to the judgment of Mr. Justice Gwynne, who has originated a new theory, viz: that the act does not sufficiently show that the Legislature intended to affect the interests of the grandchildren. If he should prove correct in this view, which he supports by a most able and ingenious judgment, it will be a "facer" to the promoters of the bill; and the result would be sufficiently disappointing to those who have in other respects engineered their own interests so successfully. The Chief Justice, who does not agree with Mr. Gwynne, deals with the subject in his own peculiarly incisive manner.

We are indebted to our enterprising correspondent at Halifax, Mr. Meagher, (Blanchard and Meagher) for an important decision in Insolvency. Mr. Justice Ritchie seems to have followed the current of authority in England, though agreeing with the view of some of the judges there that the result of those cases is not so satisfactory as might be desired. We are not aware of any decision in our Courts on this point. *McDonald* v. *McCallum*, 11 Grant, 469, came near it, but is not an authority on the question decided in the Nova Scotia case.

We view with envy the gold-begetting list of legal notices in "the oldest law journal in the United States," *The Legal Intelligencer*, of Philadelphia. So famous is this paper, that we understand the correct pronunciation of its name is an unfailing test of whether a man is intoxicated or not. In one of the late weekly issues we count some 170 official and semi-official advertisements — the columns of this paper being the authorised medium for publishing such information to the public. Attempts are being made by other journals to have a partition of this privilege, but they are sturdily anathematised in the "leaders" of the official favourite. It has often occurred to us that there would be more sense in official notices, &c., being published in this Journal rather than in an Official Gazette, which is read by none who can avoid it.

Many men, many minds—many judges, many judgments. In Illinois, the judges in one Supreme Court held that the maxim of independence, "all *men* are created equal," does not extend to women, and that by virtue thereof, or of anything else, they have no right of suffrage. In the same State, another Supreme Court decides that this maxim does apply to vagrant children, so that a statute providing for the rescue of such "little wanderers," and the committal of them to a reformatory school is unconstitutional, and a "tyrannical and oppressive" infringement upon the liberties of the citizen. In effect, therefore, juvenile vagrancy receives judicial sanction, and the state is powerless to protect and save destitute minors and orphans! We thought "*Salus populi suprema lex.*"

DIVISION COURT LEGISLATION.

We regret to say that the Provincial Legislature has passed an Act making some alterations in Division Court practice, which, from all we can learn, is ill-considered and injudicious; but as we have not yet seen the Act as amended, we do not speak with confidence, and shall refrain from further remarks until we have had an opportunity of examining it. We can only say that the introducer of the Bill was apparently so disgusted with the mutilation it received in the House, and the lengths to which the principle he was introducing as to the allowance of others than lawyers conducting cases in Court was being pushed, that he desired when it was too late to withdraw the Bill. We can well believe that even a well conceived change in the law may be very easily spoiled in its passage through the House, when every member, legal or lay, thinks himself competent to give an opinion upon what he supposes such a simple matter as Division Courts. The want of knowledge, however, of many of them on this subject is only exceeded by their assumption of it, and the unfortunate part of it is that the result of their dabbling is often to make changes which, though perhaps harmless enough in some respects, tend to interfere with the harmonious working of a system carefully and thoughtfully devised and revised by clear heads, thoroughly trained in the theory and practice of these Courts.

REPLEVIN — GOODS IN THE CUSTODY OF THE LAW.

An important point has been decided in Chambers by Mr. Justice Gwynne on the law of replevin, which it is desirable should be made public as soon as possible. It came up

on an appeal from a decision of the Clerk of the Queen's Bench, who had refused an order for a writ of replevin against a guardian in insolvency on the ground that no such action would lie under the second section of the Replevin Act. It is very seldom that an appeal from Mr. Dalton's ruling is made, and more seldom when made is it successful; this one may, therefore, be noted as the exception which proves the general soundness of his decisions; and as to this point, it has, we believe, hitherto been supposed, amongst the profession, that the law was as laid down by Mr. Dalton.

We do not intend at present to state the facts of the case in full, as it will shortly be reported; but the point decided is simply that goods in the possession of a guardian or official assignee in insolvency are not in "the custody of any sheriff or *other officer*" within the meaning of Sec. 2 of Con. Stat. cap. 29. In other words that goods may be replevied from a guardian or assignee in insolvency, notwithstanding the second section of the Replevin Act.

The reasons which the learned Judge gives for his opinion, in a very elaborate judgment, are to our minds conclusive, notwithstanding the apparently comprehensive words of the section; but we cannot at present state them at length. He holds, however, that the term, "sheriff or other officer," means a sheriff, or such an officer as his deputy or bailiff, or a coroner, "to whom the execution of such writ of right belongs;" and that what is declared by the statute not to be authorized is the replevying the goods which *such* sheriff or other officer shall have seized under or by virtue of the process in his hands; and that when the goods are delivered to the guardian or assignee, in discharge of the sheriff, the former holds them, and has only a right to detain them, on the supposition that they are the property of the insolvent, which supposition, however, their true owner has a right to prove to be false, and take the goods as his own.

There can be no doubt at least of this, that this view is the one most consonant with practical justice; if the law be not as stated, incalculable injury might arise to the true owner, without any possibility of redress, and without doing any good either to the insolvent or his creditors.

LAW BILLS OF THE SESSION.

Among the Acts passed this Session is the following. We shall publish some more next issue.

An Act to make Debts and choses is action assignable at Law.

Her Majesty, &c., enacts as follows:—

1. Every debt and chose in action arising out of contract, shall be assignable at law by any form of writing, but subject to such conditions or restrictions with respect to the right of transfer as may be contained in the original contract; and the assignee thereof shall sue thereon in his own name in such action, and for such relief as the original holder or assignor of such chose in action would be entitled to sue for in any court of law in this Province.

2. The bonds or debentures of corporations made payable to bearer, or any person named therein or bearer, may be transferred by delivery, and such transfer shall vest the property of such bonds or debentures in the holder thereof, to enable him to maintain an action thereon in his own name.

3. "Assignee" shall include any person now being or hereafter becoming entitled by any first or subsequent assignment, or any derivative or other title, to a chose in action, and possessing at the time of action brought the beneficial interest therein, and the right to receive and to give an effectual discharge for the moneys, or the charge, lien, incumbrance or other obligation thereby secured.

4. The plaintiff in any action or suit where the assignment is required by this Act to be in writing, may claim as assignee of the original party or first assignor, setting forth briefly the various assignments under which the said chose in action has become vested in him; but in all other respects the pleadings and proceedings in such action shall be as if the action was instituted in the name of the original party or first assignor.

5. In case of any assignment of a debt or chose in action arising out of contract, and not assignable by delivery, such transfer shall be subject to any defence, or set-off in respect of the whole or any part of such claim as existed at the time of, or before notice of the assignment to the debtor or other person sought to be made liable, in the same manner and to the same extent as such defence would be effectual, in case there had been no assignment thereof; and such defence or set off shall apply between the debtor and any assignee of such debt or chose in action.

6. In case of any assignment in writing as aforesaid, and notice thereof given to the debtor or other person liable in respect of a chose in action arising out of contract, the assignee shall have, hold and enjoy the same, free from any claims, defences or equities which might arise after such notice as against his assignor.

7. This Act shall not be construed to apply to bills of exchange or promissory notes.

8. This Act shall take effect on, from and after the first day of April next, and shall not affect any suits or proceedings heretofore taken or pending.

MAGISTRATES, MUNICIPAL, INSOLVENCY & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

ROAD—DEDICATION.

A road had for more than fifty years been used as the road between the townships of York and Vaughan, the original road allowance being to the north of it, and this road being in fact wholly within the township of York and part of lot 25. The owner of the lot had been indicted for closing up this road and convicted in 1870; and the corporation of York then passed a by law to close it, reciting that there was no further necessity for it by reason of the road allowance.

Held, there being in the facts above stated sufficient evidence of dedication and acceptance of this road as a highway, that this was a road dividing different townships, over which the County Council only had jurisdiction; and that the by-law therefore was illegal.

Such a road need not consist of an original allowance, but may be acquired or added to by purchase or dedication.

Quære, whether any one can add to a public allowance for road by dedication, so as to to compel the local authorities to repair it.—*In re McBride and The Corporation of the Township of York*, 31 U. C. R. 355.

ALTERATION OF SCHOOL SECTIONS.

While an application to quash a by-law, No. 250, altering the boundaries of school sections 15 and 16, was pending, the corporation passed a by-law, No. 268, to remove doubts in regard to the former by-law and to confirm it but so worded as to leave it doubtful whether it was not in effect an independent by-law defining the limits of these sections. The first by-law was quashed, and an application was then made to quash this last by-law. It appeared, on shewing cause, that it had been repealed The Court, under the circumstances, quashed the by-law, notwithstanding its repeal; for the repealing by-law being, in effect, a by-law making an alteration in school sections, it could not take effect until the 25th of December following, and it was stated that the trustees of section 15 intended to act under this by-law to be repealed.—*Patterson and the Corporation of the Township of Hope*, 31 U. C. R. 360.

INSOLVENCY—REMOVED ASSIGNEE.

J. was appointed official assignee of B under the Insolvent Acts of 1864–1865 After the Insolvent Act of 1869 came into force, the creditors removed him and appointed another assignee in his place. Before his removal, J. rendered an account of his receipts and disbursements, with which the creditors were dissatisfied, and presented a petition to the Judge to examine the account, to settle and adjust it, and to order J. to produce the books, papers, and vouchers of the estate, and to pay over all moneys which might be found to be in his hands. The Judge held that the assignee, having already rendered an account, must be taken to have "fully accounted" within the meaning of the Act of 1864; that he had no jurisdiction over the removed assignee under that Act; and that he could not proceed under the Act of 1869, as the relief sought was not a "matter of procedure merely," and he dismissed the petition:

Held, on appeal, 1, that the summary remedies given by the Act of 1869 are applicable to assignees appointed under the Acts of 1864–1865; 2, that the Judge had jurisdiction even under the Act of 1864 to examine into and decide upon the correctness of the items of an assignee's account, and to adjust such account; 3, that this jurisdiction exists over a removed assignee until he has "fully accounted" for his acts and conduct while he remained assignee; 4, that an assignee has not fully accounted within the meaning of the Act by rendering an account merely, but that the expression necessarily means accounting and paying over; 5, that the "duties" of an assignee are to conform himself to the law; and the performance of these duties may under either Act be summarily enforced by the Judge, and a removed assignee remains subject to this jurisdiction until he has fully accounted for his acts and conduct while he remained assignee.—*In re Botsford*, 22 U. C. C. P. 65.

BY-LAW TO CLOSE AND SELL ROAD ALLOWANCE.

A township corporation passed two by-laws, one, No. 145, providing that certain original allowances for roads described should be closed and sold by auction on a day named, due notice being first given; the other, No. 146, was to close up that portion of the original allowance for road between lots 32 and 33 in the fourth concession, lying north of the centre of the said lots (which forms the northerly boundary of Freeman's land, and south of the land owned by C. B. and T. K., the applicants,) and comprising that portion of the said road allowance dividing the seven acres of land belonging to the heirs of the late M. C., and now

occupied by Mrs. Joice; and to sell the same to Mrs. Joice at a price named.

Held, as to by-law 145, upon the contradictory affidavits set out in the report, that the objection for want of the necessary notices before passing such by-law was not sustained, there being also the fact that the applicants were heard several times in opposition to the by-law, but never raised this objection.

2. As to both by-laws, that it was not objectionable to provide for selling, as well as for closing up the allowance.

3. Nor as to by-law 145, that it provided for closing and selling the allowance by public auction, without providing for the rights of the owners of adjoining lands, for it was shewn that such owner became the purchaser.

Semb'e, that it might be sufficient to offer the old allowance *at the auction* to the owner of the adjoining land, and on his refusal to proceed with the sale.

As to by-law 146, it was objected, that it provided for the sale to Mrs. Joice, while it shewed on the face of it that the adjoining land was owned by others. It appeared that M. C. had died intestate, leaving children under age, and that Mrs. Joice was his widow. M. C. was not shewn to have been the owner, except by the statement in the by-law, and Mrs. Joice swore that she had owned the land for five years. *Held*, that this objection failed. *Held*, also, that the road closed up by this by-law was sufficiently described. It was objected also, that the notice of the intended passing of this by-law described it as a by-law for closing up and selling the original allowance between lots 32 and 33, while the by-law as passed was to close up only a small portion of it. *Held*, no objection.—*In re Baker and Kennedy and The Corporation of Tp. of Saltfleet*, 31 U. C. R. 386.

INSOLVENCY—SCHEDULE OF DEBTS.

To an action of covenant in a morgage to pay money, defendant pleaded that, becoming insolvent after execution of the morgage, he made an assignment; that plaintiff's claim was known as that of the "Wood Estate," and was so described in schedule submitted to the assignee and creditors; that plaintiff resided abroad, and was represented in Canada by M., who had notice of the appointment of said assignee; that on the expiry of a year defendant obtained his discharge absolutely, by which he was discharged from plaintiff's claim.

Replication, that the order for discharge was made before 1st September, 1869, and that plaintiff's name was not mentioned as creditor in any schedule, and his claim was never proved against defendant's estate.

Rejoinder, that plaintiff's claim was known as that of the "Wood Estate" (plaintiff representing and being entitled to said estate) and was so entered in the schedule filed by defendant with assignee, and that plaintiff was represented by M., who had notice, &c.

Held, on demurrer, rejoinder good.—*Farrell* v. *O'Neill*, 22 U. C. C. P. 31.

HIGHWAY.

By 9 Vic. ch. 38, sec. 23, the road in question, for an injury resulting from the disrepair of a portion of which, passing through defendants' incorporated limits, they were sought to be made liable, was placed under the control and management of the Board of Works, and by 13 & 14 Vic. ch. 15, Government had power to divest the Board of Works of such control by proclamation in the "Provincial Gazette," whereupon the road again came under the control and management of the local municipalities in which it was situate. In 1851 the County Council by by-law assumed the road under the Municipal Corporation Act, and kept it in repair until 1858, when they repealed the by-law. From that time down to the occurrence of the accident which caused the injury complained of, a period of twelve years, the defendants undertook the duty of repairing the road which was within their limits.

Held, that it was to be presumed that the board of works had been in due form of law divested of all control and management of the road, and that the piece in question had properly passed under the jurisdiction of the defendants, and that they were bound to keep it in repair.—*Irwin* v. *The Corporation of Bradford*, 22 U. C. C. P. 18.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES

SALE OF GOODS.—STATUTE OF FRAUDS.

Plaintiff entered into a verbal agreement with defendant for the purchase of a piano at a certain price, and upon certain terms of payment, defendant agreeing to guarantee that the instrument was then free from defect and should so continue for five years, and that in case of its becoming defective within that period, defendant would, upon plaintiff's returning it within that time, refund the purchase money:

Held reversing the judgment of the County Court, a contract not to be performed within a year, and therefore void under the Statute of Frauds, as not reduced to writing.—*Nicholls* v. *Nordheimer*, 22 U. C. C. P. 48.

DECLARATION OF PARTNERSHIP.

Section 6 of 33 Vic. ch. 20 O., by which the declaration of the names, &c. of a partniship required to be filed under that Act is made incontrovertible, does not apply to the case of a penal action brought against a member of the firm for neglecting to file such declaration. The preamble and general tenor of the Act shew that it was intended for cases in which a claim is made against the firm, or in which the partnership is concerned.

Where, therefore, such declaration was filed on the 6th July, 1870, and stated that the partnership existed since the 23rd of August, 1869

Held, that it was competent for defendants to prove that in fact it was not formed until the 1st July, 1870, so that the declaration was filed in time—*Cassidy qui tam Henry*, 31 U.C. R. 345.

MASTER AND SERVANT—NEGLIGENCE.

The plaintiff was in the employment of one C., a contractor with the defendants for building fences along their line. C., as a matter of convenience to him, was permitted by defendants to carry his tools on their trains, and was thus taking two crowbars from Port Hope to a point on the line where his men were at work. As the train passed the spot C. dropped one bar out, and the baggage master pitched out the other, which struck and injured the plaintiff. C. swore that it was his business to put the bars on and take them off the car, the baggage man having nothing to do with him nor any right to meddle with his tools, nor did he ask him to put the bar out.

Held that defendants were not responsible for the injury, for the baggage man was not acting as their servant or in pursuance of his employment.—*Cunningham* v. *The Grand Trunk Railway Co. of Canada*, 31 U. C. R. 350.

INSOLVENCY—DEBT OR DAMAGES.

The insolvent, a miller, agreed to grind wheat for the claimants, and to deliver to them a barrel of flour of a specified quality for so many bushels of wheat, and he thus became liable to deliver to them 955 barrels of flour, as the equivalent for wheat received by him and made away with.

Held, that this was a bailment only of the wheat, which remained the claimants', to the insolvent: that such bailment was determined by the conversion of the wheat, so that the claimants might maintain trover for it either as wheat or as flour if ground: that they might waive the tort and sue for the value of the goods when they should have been delivered; and that the claim therefore was provable as being a debt within the Insolvent Act, not a claim for unliquidated damages.

Held, also that a claim for compensation as to a certain number of barrels which turned out not to be of the quality agreed for was clearly a claim for unliquidated damages, and could not be proved.—*In re Williams, an Insolvent*, 31 U. C. Q B. 143.

JUSTICE OF THE PEACE—FALSE ARREST.

An information for perjury, contained in three depositions prepared by counsel, was laid before two justices of the peace before arrest. After the arrest no examinations were made of witnesses, nor did the accused confess; yet he was committed to jail, there to be kept till discharged by course of law. The accused was discharged on *habeas corpus*, and afterwards for want of prosecution. Action in damages against the justices for $5,000. *Held*, reversing the judgment of Superior Court, that the commitment not being based upon information reduced to writing before the magistrates, was null, and that the magistrates were responsible for the false arrest. Judgment for $100 and costs. (Mackay, Berthelot, Beaudry, JJ.)—*Lacombe* v. *Ste. Marie et al*, 1 Rev. Crit. 474.

PERMIT.

A statute providing that no person shall sell intoxicating liquors without a permit, to be granted by the county judge, if on application he shall be satisfied that the applicant is a person "of good moral character," and that certain other requisites of the law are complied with, is constitutional.—*In re Thomas U. Ruth*, 10 Am. Law Reg 767.

CANADA REPORTS.

ONTARIO.

COURT OF COMMON PLEAS.

PALMER v. BAKER.

Insolvency—Failure to schedule debt—Pleading.

To an action on a guarantee, defendant pleaded his insolvency and issue of an attachment, and that, not having procured assent of creditors, he did, after a year from date of issue of attachment, apply to judge for discharge, which was absolutely granted after hearing defendant and creditors.

Replication, that defendant, before making of order of discharge, did not schedule plaintiff's claim, nor did he by a supplementary or any list of creditors, previous to making of said order, set forth plaintiff's claim, which was not, in fact, ever furnished to the assignee or proved against defendant's estate:

Held, following *King* v. *Smith*, 19 C. P. 319, and reversing the judgment of the County Court, replication good.

[2 U. C. C. P. 59.]

Appeal from the County Court of the County of Hastings.

The declaration was on a guarantee by defendant of a note of one McGee, payable to defendant in five years; breach, non-payment by McGee or by defendant.

Plea —Setting up the insolvency of defendant and issue of attachment under the Act of 1864, and that defendant, not having procured assent of creditors, did, after one year from date of issue of attachment, apply to judge for discharge after notice given of his application, as prescribed by the Act, and the judge, after hearing defendant and objecting creditors, granted an absolute discharge.

Replication.—That defendant, before making of order for discharge, did not mention and set forth his liability to plaintiff for the claim sued on in any statement of his affairs, nor was the claim of the plaintiff shewn by any supplementary list of creditors, or any list of creditors furnished by defendant previous to the making of the order, nor was the claim of the plaintiff ever furnished to the assignee of defendant's estate, or proved against the estate of defendant.

This replication was demurred to, and judgment given thereon against plaintiff, who thereupon appealed.

Bell, of Belleville, for the appeal, cited *King* v. *Smith* 19 C. P. 319; *Moody* v. *Bull*, 7 C. P. 71.

G. D. Dickson, contra. referred to and commented upon the Insolvent Acts of 1864 and 1865.

HAGARTY, C. J.—In the case of *King* v. *Smith*, in this Court, we had occasion to examine the Statutes bearing on this point. That was the case of an insolvent calling his creditors together, and thus making an assignment. It was replied that plaintiff's name was not mentioned in defendant's schedule annexed to his deed to assignment, nor in any supplementary schedule, and the debt was never proved against his estate.

There, as here, the insolvent obtained his discharge, on application, without the assent of his creditors. It was held that a debt not mentioned in any schedule was not barred.

It is unnecessary to repeat the very cogent reasons which we considered to require the construction we placed upon the Statutes. It has been attempted to distinguish the present case on the ground of this being a compulsory liquidation.

The necessity for a schedule in the case of compulsory liquidation was discussed by us, and we think the opinion of the Court on that point was clearly expressed. As was pointed out by my brother Gwynne, "The only clause of the Act which gives any effect to any discharge is the 3rd sub-sec. of 9th section, which provides for a discharge by consent in writing of the creditors. * * The effect of this discharge is to free him from all liabilities, except such as are specially excepted, existing against him and provable against his estate, which are mentioned and set forth in the statement of his affairs annexed to the deed of assignment, or shewn by any supplementary list of creditors furnished by the insolvent previous to such discharge, &c." Again, speaking of discharge without consent, either after voluntary assignment or compulsory liquidation, "As a discharge when granted has no effect under the Act, but that declared in sub-sec. 3, it is plain that the discharge obtained from the judge under 10 sub-sec., can have no greater effect than that obtained under sub-sec. 3."

My own view is most fully set out: "When the insolvent applies for discharge a year after the attachment (not having obtained any creditors' assent, I think it can be answered by reference to the sub-sec 3 already quoted, and that the insolvent can and ought to supply such list or schedule of creditors under the words, 'which are shewn by any supplementary list of creditors furnished by the insolvent previous to such discharge.'" It had been previously pointed out that sub-sec. 10 of sec. 9, must be read by the light of the preceding sub-sec. 3 and 5.

We do not feel at all pressed by the argument, apparently much relied on in the Court below, that the means of making out a schedule is taken from insolvent by the seizure of his books and papers. Access to them, if in the hands of an assignee, could, we presume, at all times be obtained either with the assignee's assent, or on application to the judge, who could readily see that no such difficulty should be interposed. The Statute, after directing the seizure of everything under the attachment, allows the insolvent to come in in five days from the return and petition to suspend proceedings, and call a meeting of creditors, and by sub-sec. 16, sec. 3, he shall produce with such petition a schedule of his estate, and a list of his creditors, with amount of debts, places of business and residences, with particulars of negotiable paper, &c.

No such difficulty was evidently anticipated in this proceeding, from the fact of all the papers, books, &c., being under seizure; nor would it be anticipated by sec. 11, under which the insolvent would apparently have to send notices of his intended application for discharge to all creditors, &c, in the Province.

It is also said, in the case cited, as to a discharge like the present, "there would be a list of creditors prepared by the company, guardian, or subsequent official assignee, and on the examination of the insolvent under sec. 10, or at any other time up to the application for discharge, there would certainly be in some shape or other a list or schedule furnished by or supplemented and corrected by the insolvent coming within the construction of the sub-sec. 3."

I can hardly conceive anything more objectionable in principle, or injurious to the rights of creditors, than to permit a debtor to obtain a general discharge from liabilities to creditors not named by him, nor stated as having any claim on his estate, and whose existence as such may be wholly unknown except to himself.

In the case before us, of a promise to guarantee the payment of a note of another person, the transaction might possibly have never been entered in his book, and an assignee might know nothing of it.

I attach no importance to the omission in the replication of any averment as to knowledge by the plaintiff of the insolvency proceedings.

One of the many mischiefs which may be caused by allowing a general discharge to a debtor without filing a schedule, or as to creditors not mentioned in a schedule, might be that a debtor might suppress the existence of heavy claims, and either make fraudulent or preferential arrangements with the holders of such claims, or influence the conduct of his known

creditors by making them believe his debts to be much less than they really were.

I feel much strengthened in the views I expressed in *King* v. *Smith*, by the argument and consideration of this case.

It would be much to be regretted if a just claim can be defeated on the state of facts admitted to exist by the demurrer to the replication.

I can conceive a case where after attachment issues, the insolvent may, for a long time, either be absent or take no part in the distribution of his estate. A schedule of creditors must of course be prepared by the assignee for dividend and other purposes. If the insolvent petitions for his discharge, it may be that he may adopt it as his own, or frame his application so that it refers to that as his schedule, and as the schedule of the claims from which he seeks discharge. We think the case of *King* v. *Smith* governs the present.

We direct that the appeal be allowed, and judgment given in the Court below for the plaintiff on the demurrer to the replication.

If the defendant be advised that he can bring himself within the operation of the Statute, he may perhaps on the payment of all costs incurred by these proceedings, be allowed by the Court below to amend This however is, of course, only by way of suggestion.

GWYNNE, J.—As this is an appeal case, our decision in which is final, I have reviewed our observations in *King* v. *Smith*, which was not a case of compulsory liquidation, with a view to a further consideration of the question now pointedly arising, whether a different effect should be given to a discharge granted by the Judge to an insolvent in compulsory liquidation than to that given by consent of creditors; and if, upon more natural reflection, I had any reason to doubt the suggestions made in *King* v. *Smith*, I should not in this case have felt myself bound by that judgment; but I see no reason whatever to vary from anything there said as to justify a doubt that the effect of a discharge, however obtained, is the same in compulsory as in voluntary liquidation.

A debtor has no claim to exemption from payment of all his debts in full, except in so far as the Act expressly declares he shall be discharged: for the effect of a discharge in any case, whether in compulsory liquidation, or upon a voluntary assignment, we must look to the Act, and to the Act alone. The only effect which it declares that it shall have is, that it shall discharge the insolvent from all liabilities which are mentioned and set forth in the statement of the insolvent's affairs annexed to the deed of assignment, or, as the Act of 1869 has it, "exhibited at the first meeting of creditors," or which are shewn by any supplementary list of creditors furnished by the insolvent previous to such discharge, *and* in time to permit the creditor therein mentioned obtaining the same dividend as other creditors on his estate, or which appear by any claim subsequently furnished to the assignee" It is contended that this sentence is inapplicable to the case of compulsory liquidation, as the insolvent in that case *is not required* to furnish a list of creditors as he is in the case of a voluntary assignment. The answer to this argument is that the section in which the words are found is expressly declared to apply equally to the case of compulsory liquidation, as to that of voluntary assignment. But it is said the discharge there spoken of is one granted by *consent* of creditors. True, but there is nothing in the Act to justify the idea that a discharge given by a judge can have any greater effect than that given by the consent of creditors, for the judge can only be called upon to give, after the expiration of a certain period, that which within the period the insolvent might have obtained by the consent in writing of his creditors. It is only in the event of the insolvent not having gotten the consent of his creditors that the Statute gives the judge jurisdiction to give that which the creditors might have, but have not, given. It follows then that the act of the judge can only be co-extensive with that of the creditors, if by their consent the discharge had been obtained. There is not a syllable in the Act which gives to the discharge of the judge any greater effect, nor is there in principle any reason why it should have any greater effect, than that given to a discharge by consent of the creditors. It is said, further, that the lists spoken of are *not required* in compulsory liquidation. Assume that they are not required; what then? The Act makes the discharge or its effect, depend upon their being supplied; and if an insolvent desires to be discharged, it is his *interest*, if he is not *required* by the Act, to furnish the list without which he cannot get a discharge. The Act need not compel the insolvent to entitle himself to his discharge: it may leave that optional with him; but it does provide him with the means, and if he neglects the means, he must blame himself, and not the law, if he cannot obtain an effectual discharge. I cannot understand why he should expect that a law passed for the purpose of securing equal justice to all creditors, should be construed so as to enable him to defraud certain creditors by suppressing their claims altogether. The law, as it seems to me, offers a premium to an honest debtor furnishing faithfully a list of all his creditors, so that all may alike share in his estate, by giving him a discharge from the claims of such creditors, so furnished, on his surrendering his estate, holding *in terrorem* over him, to compel him to be honest, the alternative that, in so far as he fails to do so, he shall not be discharged.

GALT, J., concurred.

Appeal allowed.

McRAE v. TORONTO & NIPISSING RAILWAY CO.

Railways—Government aid to—34 Vic. ch. 2 sec. 3—"Construction"—Meaning.

Held, that the defendants, who had contracted merely for the *grading and fencing* of a portion of their road before the date specified in sec. 3 of 34 Vic. ch. 2, were not disentitled to aid under that section, as having contracted for the *construction* of such portion of their road.

[Special Case, 22 U. C. C. P. 1.]

On the 1st of November, 1870, defendants made a contract with some person or persons for the grading and fencing of a portion of their line of road between Uxbridge and the Portage Road. On March 2nd, 1871, defendants contracted with plaintiff to build, construct, and complete the same portion of the road, with the exception of the grading and fencing (previously contracted

for), at a specified rate per mile, to be paid for, on the certificate of their engineer, as the work proceeded, with the exception of 15 per cent, to be retained until three months after the completion of the contract, if the defendants were entitled to claim aid from the Government of Ontario under the provisions of the "Act in aid of Railways" (1871); but if the defendants were not so entitled, then said deduction of 15 per cent. was to be paid by the defendants to the plaintiff in one month from the completion of the contract.

By this statute (34 Vic ch. 2) the Lieutenant-Governor in Council might authorize payments from time to time to any railway company of sums not less than $2,000 nor more than $4,000, per mile, of any portion or portions of such railway, after report by the Commissioner of Agriculture and Public Works, that the Company had completed such portion of its road, in respect of which payment was to be made, including sidings and stations, within the period prescribed by its charter.

Section 3 provided that no such authority should be given in respect of any portion of a railway *for the construction of which portion a contract had been entered into prior to the 7th day of December*, 1870, nor until satisfactory proof had been given that the capital and assets were sufficient for the completion thereof within the appointed time.

The question upon which the opinion of the Court was sought, was whether the defendants were disentitled to aid under the 2nd section of the Act, in consequence of their contract for the grading and fencing of their road having been entered into before the 7th of December, 1870.

The whole argument turned on the meaning of the word "construction" as used in the 3rd section of the Act.

T. Moss, for the plaintiff, referred to *Webb* v. *Manchester and Leeds Railway Co*, 4 M & C. 116; *Gildart* v. *Gladstone*, 11 Ex. 685; *Birks* v. *Allison*, 13 C. B. N. S 23; 31 Vic. ch. 41; 34 Vic. ch. 2; 27 & 28 Vic ch. 121 sec 31, (Imp); *Grantham Canal Co.* v. *Ambergate, &c., Railway Co.*, 21 L J Q B. 322.

J. H Cameron, Q C., contra, referred to the meaning of the word as given in Johnson's and the Imperial Dictionary, also to its Latin derivation, and the Greek equivalent therefor, both denoting a *complete* putting together, a finished, or "a going concern," in Lord Cairns's words, as cited in *McCallum* v. *G. T R Co.*, 30 U. C. 122.

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

The point submitted for our decision on this somewhat singular contract is, whether the fact of the defendants having contracted for the grading and fencing of this portion of the road prior to the day named in this Act, viz., December 7th, 1870, are disentitled to any assistance from the Government under the second section of the Act.

Mr Moss, for the plaintiff, was forced to argue that the fact of the Company having contracted before the appointed day for any substantial part of the work, absolutely disentitled them to the benefit of the Act.

The intention of the Legislature seems very plain. The expressed intention is to give aid towards the construction of railways to or through sections of the country remote from existing thoroughfares, or passing through thinly settled tracts, or leading to the Free Grant territory, or to the inland waters; but they at the same time provide that such aid was not to be given to railways for the construction of which provision had been already made by contract prior to December 7th, 1870, the first day of the Session in which this legislation was announced and perfected.

Where the construction of the road, or portion of road, had been already provided for, the Government aid was not to be given. The fact that a company had succeeded in contracting for the grading and fencing of a portion of a road cannot in our judgment amount to a contract for the "construction" of such portion. A contract to "construct" ten or twenty miles of a railway must mean to put such portion in a state to be used as a railway, and such a contract could never be fulfilled merely by grading and fencing the line.

A company might succeed in providing funds to grade and fence a portion, and then be utterly unable to do more It seems impossible for us to hold that, being in that position on the 7th of December, 1870, they were disentitled to aid under the statute Whether they should obtain such aid or not would be a matter for executive consideration; it is sufficient for us to hold, as a matter of legal construction, that they are not disentitled by the words of the Act.

If a statute provided certain new regulations for the governance of railways, and then enacted that such provisions should not apply "to any railway constructed before the passing of this Act," we think the exception would certainly not apply to an undertaking which, before the Act, had been graded and fenced with a view to making it ultimately assume the shape of a "railway." We think a narrow strip of land graded to a particular level, and fenced on each side, is not a "railway," although by the expenditure of money it may finally acquire that character.

In the discussion of a case of some celebrity, *Hammersmith Railway Co.* v. *Brand*, L. R 4 H. L. 171, as to the right of compensation for damage to the owners of property effected by the working of a railway, but where no land is taken, the expression "construction of a railway" was criticised, but it was in a sense different from this case, viz., as to the compensation for injuries to parties, &c. Lord Cairns says, "Parliament does not look upon the words 'construction of the railway,' or 'the execution of the works authorized,' as meaning the digging out so much land, the putting so much brick and mortar together, the making a viaduct or embankment, or the mere structural aspect of the work: it looks upon the railway as an undertaking, as a going concern, if I may so call it, as a thing which is to be there for a certain purpose and to fulfil a certain end which the Legislature had in view, &c." See also Mr. Justice Lush's words in the same case. This case is noticed in *McCallum* v. *Grand Trunk Railway Co*, 30 U. C. 127.

We think that the defendants are entitled to our judgment.

Judgment accordingly.

CHANCERY.

(Reported for the CANADA LAW JOURNAL *by* T. LANGTON, M.A., *Student-at-Law.)*

RE CAVERHILL.*

Quieting Titles Act—Title by prescription—Evidence of length of possession—Notice to person holding paper title—Deeds.

A petitioner claiming title by length of possession must prove possession for the requisite length of time by clear and positive evidence, which should be of more than one independent witness.

In such a case, a notice prepared and signed by the Referee should be served upon the person having the paper title, if he can be found; but if not, evidence should be put in, both of search for him and his representative; and if such search prove fruitless, possession should be shewn to have been long enough against him, even though he had no notice of such possession

A mortgage more than twenty years old appeared upon the Registrar's abstract A discharge of this did not appear to have been registered, none was produced nor was any proof given of the mortgage ever having been discharged. It was stated on affidavit that nothing was known of the mortgagees, and that no demand had ever been made for the mortgage debt, though nothing had been paid, and that no acknowledgment had been given within twenty years or more.

Held, that evidence should be adduced of search for the mortgagees or their representatives. That a single *ex parte* affidavit that no payment or demand has taken place, would not bar claims of mortgagees who could be served with notice. But if they could not be found, notice might be dispensed with after a great length of time, and satisfaction presumed.

[November 20, 1868.—*Mowat*, V. C.]

This was a petition by Thos Caverhill, under the Act for Quieting Titles. The chain of title put in as a schedule to the affidavit of the petitioner, shewed the paper title to be in Oliver Grace, who purchased from the patentee in 1810, and appeared never to have parted with his interest. The next record was a deed in 1820 from one Wm. McGinnis, whose title was not apparent, to one Meigham. In 1831 the property passed by deed from Meigham to R. W. Prentice; in 1833 by deed from Prentice to Jarvis. As these three last deeds were not produced it did not appear whether or not they contained a bar of dower. In 1823 Meigham gave a mortgage to J. Spragge and Wm. Hutchinson, no discharge of which was registered. In 1839 Jarvis conveyed to Michael Crawford through whom the petitioner claimed. From that time Crawford or those claiming under him had been in possession, and previous to Crawford's possession, the lands had been a state of nature or nearly so. The land of which the petitioner had been in possession since 1863 was not an entire lot, a portion having been conveyed by Crawford to the Hamilton & Toronto Railway Co. in 1853. Crawford made an affidavit, stating that during his possession no demand had been made for any part of the mortgage debt under the mortgage from Meigham to Spragge and Hutchinson: that he never paid anything on account of the same, nor ever had given any written acknowledgment of the right of any person or persons, thereto signed by himself, or any person as agent for him: and that no demand was ever made for dower by the wives of McGinnis, Meigham or Prentice, and that he did not even know that they had wives.

MOWAT, V. C.—To make out a title by prescription where the proceeding is *ex parte*, the evidence should be clear, strong and satisfactory. It should be by more than one independent witness, and should shew that the possession was of the whole lot, as it had been decided in several cases in the Queen's Bench* that possession of part does not give a title by prescription to the whole lot. Unless the evidence for this purpose is clear, it should be given *viva voce* and before a judge. But the testimony of a single witness in the loose and general terms of Michael Crawford's affidavit would never do.

The rule hitherto acted upon, and which it seems most important to observe is to require notice to be given to the person having the paper title, where a title is claimed in opposition to it by prescription, the notice being prepared and signed by the Referee. To dispense with the necessity of this notice there should be due search for the person having the apparent paper title, and it should be shewn by affidavit that nothing can be ascertained of him or his heirs. Here Oliver Grace appears as owner, and he or his family may be well-known, for all that appears on the papers. Inquiry about him should be made with such diligence as the case admits of, and as to his representatives. Amongst other things a search at the Probate office should not be omitted.

If the search proves fruitless and is shewn to have been so, the possession should be shewn to have been long enough against him, even though he had no notice of the possession; or there should be proof of his having been aware thereof.

There is no evidence of search for the following deeds, of which the names are put in evidence and the evidence necessary to let in secondary evidence at *Nisi Prius* is necessary here. I refer to the deeds, McGinnis to Meighan, Meighan to Prentice, and Prentice to Jarvis.

Evidence should also be given to dispense with notice to Spragge and Hutchinson. Some one in Montreal, acquainted with the business people there forty years ago, can no doubt be found, who may know something of them. If they are dead search should be made in the Probate office for will or administration.

If not ascertained to be dead, and not known what has become of them, notice to them may be dispensed with, in view of the long time that has elapsed. A single *ex parte* affidavit that no payment or demand has taken place within the twenty years, is not alone sufficient to bar the claim of mortgagees who can be served with notice. But if they cannot be served with notice, I may properly, I think, presume satisfaction.

If these difficulties are removed, the certificate will be subject to any dower of Mrs. McGinnis, to the taxes of 1868, and the particulars reserved by the 17th clause of the Statute for Quieting Titles, as also to Crown bonds.

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* We have unearthed the following judgment, which it appears has not yet been reported, and publish it for the benefit of practitioners. The points decided are important, and the case is an authority with the Referee.—EDS. L. J.

* See *Hunter* v. *Farr et al.*, 23 U. C. Q. B. 324; *Dundas* v. *Johnston et al.* 24 U.C. Q.B. 550; *Young et al.* v. *Elliott et al.*, 25 U. C. Q.B. 334.—EDS. L. J.

NOVA SCOTIA.

SUPREME COURT.

(*Reported by* W. H. MEAGHER, ESQ., *Barrister-at-Law.*)

IN RE W. L. DODGE & CO., INSOLVENTS, AND THOMAS G. BUDD, AN INSOLVENT.

Insolvency—Partners—Proving on notes.

Held, on the bankruptcy of a firm, that promissory notes drawn by the firm in favor of, and endorsed by one of its members, do not entitle the holders who were cognizant of the connection of the parties, to prove against both estates, but they may elect against which estate to prove.

Held, also, that proof may be abandoned before dividend paid.

[Halifax, November 30, 1871.]

In this case the Bank of British North America, at the time of the insolvency of W. L Dodge & Co., and of Thos. Budd, held a note made by the former, and endorsed by the latter in his individual character, he being a member of the firm of W. L. Dodge & Co., of which the Bank was cognizant. The judge of Probate having decided that the Bank was entitled to rank upon the estate of the firm, and also upon that of Thomas G. Budd, for the full amount of the debt due that institution on the note above mentioned, an appeal was asserted by Messrs. J. T Gilchrist & Son, creditors of Budd, on the ground that the Bank had no right to rank upon both estates, but must elect on which to rank, and having proved against the estate of the firm, must be held to his election, and is precluded from proving against the separate estate of Budd, until his separate creditors should have been paid in full; and, on the argument, their counsel relied on a rule to that effect which prevailed in England in cases of bankruptcy, and should prevail here, as he contended, in cases of insolvency.

On the part of the Bank it was contended that the rule referred to did not extend to such a case as this, and that if it did so in England, our courts were not to be bound by it in carrying out the provisions of the Dominion Insolvent Act, especially as English judges, who felt themselves bound by it, had characterized it as inequitable and arbitrary, and the Legislature, in the English Bankrupt Act (24 & 25 Vic cap. 134 sec. 152) had introduced a different rule. It was further contended that, if the rule should be held to prevail here, the Bank, though its debt had been proved against the estate of the firm, has the option of abandoning that proof and resorting to the individual estate of Budd, as no dividends had been received, and in fact none had been declared.

C B. Bullock for the appellants.

James Thomson for the Bank of British North America.

RITCHIE, J —The general rule of commercial law as to the application of joint and separate property of partners is, that the joint estate shall be applied to the joint debts, and the separate, to the separate debts, and the surplus of each reciprocally to the creditors remaining on the others; and if this were the only rule applicable to the case, the Bank of B. N. America would be entitled as the creditor of W. L. Dodge & Co., the makers of the note, to rank on the assets of the firm, and as the creditors of Budd, the endorser, on his individual assets, of course only to the extent of 20s. in the pound in the whole, from both estates; but in the case of bankrupt estates, a rule has been adopted by the English courts that a creditor who had a joint and several security for his debt was not entitled to double proof against the joint and separate estates, whether the debt was secured by the same or by two independent instruments. It is true, doubts have existed as to the extent to which the rule should be carried, and it has been found difficult to assign very satisfactory reasons for its adoption in the first instance, and judges, who have felt themselves compelled to yield to this authority, have sometimes questioned its wisdom; but, after a thorough investigation, it has received the sanction of the highest judicial tribunal of England in *Goldsmid* v. *Cazenove*, 7 H. L Cas. 785. That case was first argued before Knight Bruce and Turner, Lords Justices (See *Ex parte Goldsmid*, 1 DeG. & J. 283) who differed in opinion on the question. Knight Bruce, L J., after referring to decisions recognizing the validity of the rule, especially *Ex parte Moult*, 2 Deac. & Ch. 419, and *Ex parte Hinton*, DeGex 550,—the latter a case decided by himself as Vice-Chancellor under the authority of previous decisions,—uses this strong language: "Thinking myself now at liberty (as when Vice-Chancellor I did not) to decline being bound by *Ex parte Moult* and *Vanzeller*, and holding myself free to depart from *Ex parte Hinton*, I avow my opinion to be, that abstract justice, and the principles of commercial law, and general jurisprudence are with the petitioners, and that the law of England is not opposed to them." In *Ex parte Moult* it had been decided that the holders of a bill, the indorser and the acceptors of it being members of the same firm, were not entitled to double proof; and *Ex parte Hinton*, where three partners of a firm of six carried on a distinct trade by partnership and indorsed a promissory note made by the six, which was discounted by a person who believed at the time that the three were partners in the aggregate firm, but the funds were distinct, it was held that the creditor was not entitled to double proof. Lord Justice Turner on the other hand, recognized the authority of these cases as decisions of equal validity with their own, and having so long governed the practice of bankruptcy he would not venture to disturb them, and added if this must be disturbed at all, it should be by a higher authority, that of the House of Lords.

On the case coming before the House of Lords, it was very fully argued by eminent counsel, and it was admitted by the counsel for the appellant that there could not be double proof, when one of the two firms on the bill consisted of a single person, who was also a member of the joint firm, as in the present instance, and Lord Campbell in his judgment said, "I have come to the conclusion that *Ex parte Moult* ought not to be overturned and the counsel for the appellant have been unable to distinguish upon principle between that case and *Ex parte Hinton* I think Lord Justice Knight Bruce when Vice-Chancellor properly decided *Ex parte Hinton*, and he did well in considering *Ex parte Moult* as a sound authority:"—the other law lords concurred. I might

mention that the case of *Ex parte Bank of England* 2 Rose 82, decided some time previously is directly applicable to the case before me. There, Graves, Sharp and Fisher endorsed a bill to their partner, Fisher, who was a distinct trader, and he discounted the bill with the Bank of England, the Bank requiring and obtaining his endorsement, and thereby raising a contract for double security, yet it was held that the Bank was not entitled to double proof, but must elect.

The law being clearly established in England by these decisions, are our courts to be governed by it in carrying out the provisions of our Insolvent Act? The rule in question is not one depending on legislation, but was established by English judges on principles supposed to be applicable to distribution of insolvent estates, and it is as applicable to the Insolvent Act of 1869 as to the Bankrupt Acts of England, though it is not to be found enacted in either; for the provisions of our act, referred to on the argument, do not seem to me to touch the question. Section 56 certainly has no bearing on it, and section 64 does not refer to a case like this, where one creditor has the joint security of a firm, and the several security of one of the partners for his debt, but generally provides for the distribution of assets where an insolvent owes debts both individually and as the member of a firm.

The applicability of the rule to other cases than those under the Bankruptcy Act of England, came in question in *Goldsmid's case*, for there, while one of the estates had become bankrupt in England, the other had been declared insolvent under proceedings in the nature of a bankruptcy in a foreign country, and it was contended that the rule would not apply, but the court assumed that the proceedings in the insolvency were in their nature analogous and tantamount to an English bankruptcy; and it was held that the case was to be decided upon the footing of English law. The case of *Rolfe and Bank of Australasia* v. *Power, Salting & Co.*, L R 1 P C 27, is still more to the point. This was an appeal from a decision on the Insolvent Act of Victoria; and it was contended there, as in the present case, that the estates were to be administered under the insolvent law of the colony, and under an Act which contains various provisions different from the Bankrupt law of England, especially in reference to the proof of joint and separate debts, and that the English rule, the adoption of which was urged on the court in that case, has been laid down without any consideration of its justice or expediency, and was most unjust in its operation. Lord Chelmsford in giving the judgment of the court, page 47, said, "too much reliance was placed upon the notion that the Colonial Legislature was impressed with a sense of the injustice of the rule prevailing in England, and were determined to guard against it in their new code of insolvent law," but if this was the case, "and it was the object of the Colonial Legislature to prevent the operation of the rule which they considered unjust, it is hardly to be imagined that they would have committed their intention to the equivocal meaning of a few words in a single section of the Act, it is just as reasonable to suppose, that knowing the rule established in England, which is not founded upon any statute but upon general principles applicable to many other cases, they did not intend to disturb it." The same reasoning applies to the case before me and under the authority of the case I have referred to, I can arrive at no other conclusion than that the Bank of B. N. America is not entitled to double proof: but as no dividends have been received or declared, the proof on the joint estate of W. L. Dodge & Co., may be abandoned, and the Bank may elect to resort to the separate estate of Budd.

As the effect of my judgment is to reverse that of the judge of Probate and Insolvency, and the question involved is a new one under the Insolvent Act, and the contention of the appellant has not been wholly sustained, there should be no costs.

ENGLISH REPORTS.

COURT OF EXCHEQUER.

KENT *v.* THOMAS.

Bond—Penalty—Debt due upon a contingency—Provable debt—Bankrupt Law Consolidation Act, 1849, ss. 177, 178.

A debt due upon a contingency can be proved in Bankruptcy under sections 177 and 178 of the Bankrupt Law Consolidation Act, 1849, only if its value is capable of estimation.

To a declaration upon a bond the plea set out the condition, which, after certain recitals, was declared to be that if the defendant should, within six weeks after the death of E.P., obtain the transfer of £1,100 Consols, the Bond should be void. The plea proceeded to allege that, after the passing of the Bankruptcy Act, 1861, but before the passing of the Bankruptcy Act, 1869, the defendant became bankrupt. The replication alleged that, at the time of the Bankruptcy, no breach of the condition of the bond had happened, and that the order of discharge was obtained before six months after the death of E.P.

Held, on demurrers to the plea and replication, that the bankruptcy of the defendant did not defeat the right of action on the bond, and that the plaintiff was entitled to judgment.

[Ex. 18 W. R., 1148, June 9, 10]

The plaintiff declared on a bond, dated 31st October, 1857, for £1,000. The defendant pleaded a plea setting out the condition of the bond, which recited that the defendant had agreed with the plaintiff for the sale to him of £1,100 Three per Cent. Consols, being one-fifth of £5,500 Consols to which Mary Ann, the wife of the defendant, was entitled upon the death of her mother, Elizabeth Price, under the will of Robert Brown, deceased, which fifth part was, by a deed of assignment of even date, assigned to the plaintiff, his executors, administrators, and assigns; and also recited that Mary Ann Thomas might survive her husband, and refuse to confirm the assignment, or that the plaintiff might, through the default of the defendant or otherwise, never realise the benefit of the same. The condition was declared to be that, if the defendant should, within six months after the death of Elizabeth Price, obtain the transfer of the said fifth part, or if the trustees of the sum of £5,500 Consols, or the share of Mary Ann Thomas, should, within six months of the death of Elizabeth Price, pay, transfer, or assign the said share to the plaintiff, his executors, administrators, or assigns, then the bond should be void. The plea proceeded to state that after

the making of the bond and the passing of the Bankruptcy Act 1861, but before the passing of the Bankruptcy Act, 1869, and before action, the defendant became bankrupt, and received his order of discharge.

Demurrer.

The replication alleged that at the time of the bankruptcy and discharge, no breach of the condition of the bond had happened, and that the bankruptcy took place and the order of discharge was obtained before six months after the death of Elizabeth Price.

Demurrer.

R. V. Williams appeared for the plaintiff.

Horne Payne for the defendant.

The following authorities and statutes were cited in the course of the argument:—The Bankrupt Law Consolidation Act, 1849. ss. 177, 178; 8 & 9 Will. 3, c. 11, s. 8; *Metcalf* v. *Hanson*, L R 1 E & I. App. 242; *Warburg* v. *Tucker*. 6 W. R 755; *Cary* v *Dawson*, 17 W. R. 916; *Ex parte Pickering*, 17 W. R 38; *Boyd* v. *Robins*, 7 W. R 78; *Hopkins* v. *Thomas*, 7 C B N.S. 711; *Re The General Estates Company, Hastie's case*, 17 W. R. 302; *White* v. *Sealy*, 1 Douglas, 49; *Alsop* v. *Price*, 1 Douglas, 160; *Adkins* v *Farrington*, 5 H. & N. 586; *Saunders* v. *Best* 13 W. R 160; *Ex parte Barker*, 9 Vesey, 110; *Wyllie* v *Wilkes*, 2 Douglas, 510; *Perkins* v *Kempland*, 2 W. Blackstone, 1106; *Ex parte Marshall*, 1 Mon. & Ay. 145; *Atwood* v. *Partridge*, 12 B. Moore, 431; *Staines* v. *Planck*, 8 Term 386; *Ex parte Thistlewood*, 1 Rose, 290; *Simmon* v. *Miller*, 3 B & Ad. 596; *Ex parte Day*, 7 Vesey, 391; *Ex parte Fisher*, 1 Buck, 188; *Ex parte Myers*, 2 Den. and Ch. 251; *Ex parte Simpson*, 3 Den. and Ch. 792; *Ex parte Barwis*, 4 W R 106; *Ex parte Brook*, 6 De G. M & G. 771; *In re Willis*, 4 Ex. 530; *South Staffordshire Railway Company* v. *Burnside*, 5 Ex 129; *Storey* v *Barnes*, 7 East, 435; *Mudge* v. *Rowan*, 16 W. R. 403; *Brett* v. *Jackson*, 17 W. R. 532.

BRAMWELL, B.—The plaintiff is entitled to our judgment. I express no opinion whether he will get the sum of £1,000 as a matter of course, or whether he will recover only the amount as to which he may be damnified, or whether the bond is or is not within the statute 8 & 9 Will 3, c. 11, s. 8; the plaintiff may get a parcel of the £1,100, and the sum of £1,000 may be strictly a penalty and not liquidated damages. But, however that may be, in neither case is the bond brought within the sections 177 and 178 I think that the opinion which I expressed in *Warburg* v. *Tucker* right Section 177 refers to contingencies capable of valuation. If the Court cannot ascertain the value, it is not provable against the Bankrupt's Estate. If the duration of the mother's life were alone in question, a value might be put upon it; but there were other contingencies. The defendant might survive his wife and be entitled to the whole money as her representative; if the wife survived, she might claim the whole, and refuse to assent to her husband's conveyance. But if they both survived the mother, the husband might file a bill for the payment of £1,100, and then would arise the question of a wife's equity to a settlement. Suppose the bankrupt were to die worth £20,000, and Consols were to go down to £80, the wife might prefer to transfer the Stock, and thus fulfil the condition. When all these contingencies have been taken into account, how can it be said that the bond was provable in the defendant's bankruptcy? No value could be set upon it; it was not payable upon a contingency within sections 177 and 178 of the Bankrupt Law Consolidation Act, 1849. Judgment must be given for the plaintiff.

CHANNELL, B.—The plaintiff is entitled to judgment, but after the opinion of my brother Bramwell it is unnecessary to give the grounds of my decision.

PIGGOTT, B.—The plaintiff is entitled to judgment on the ground that the bond is not within sections 177 and 178. It must be a debt capable of valuation. The Legislature did not mean to fasten upon the Court a task impossible to be performed In whatever way the bond is viewed, the contingencies are too numerous to allow it to be valued. It is uncertain whether the whole or a part would be payable. The value could not be estimated. The wife might want one-third to be settled on herself How can it be said that the defendant was entitled to the whole amount of the stock? It was clearly not a debt capable of being valued; and the authorities show that in order to be proved in bankruptcy a debt must be capable of valuation.

Judgment for the Plaintiff.

CHANCERY.

ROLLAND v. HART.

Mortgage—Priority—Notice—Common solicitor—Fraud—Middlesex Registry.

Certain lands in Middlesex were vested in a solicitor upon trust to raise certain moneys by mortgage. In execution of this trust he raised two sums of money, and mortgaged the lands to two persons successively, without giving notice to the second mortgagee of the prior charge upon the property. He acted as solicitor for both mortgagees, and did not register either mortgage The second mortgagee subsequently registered his mortgage before the first mortgagee had done so.

Held that as the common solicitor had actual knowledge of the first mortgage at the time the second mortgage was executed, the second mortgagee must be deemed to have had like notice, and that his security, though registered first, must be postponed to that of the first mortgagee.

[*The Lord Chancellor*—25 L. T. N.S. 191, July 10, 11, 1871.]

This was an appeal from a decision of the Master of the Rolls. The facts and arguments were fully reported in the court below (24 L. T. Rep. N. S. 250.) James Hall a builder, being in embarrassed circumstances, vested certain lands in Middlesex in Mr. H G. Robinson, a solicitor, upon trust to raise moneys by mortgage In execution of this trust Robinson raised two sums of money, and mortgaged the lands to Amelia Marianne Leigh and George Stagg successively, without giving notice to the latter of the prior charge upon the property. He acted as solicitor for both mortgagees, and did not register either mortgage. The second mortgagee before the first mortgagee had done so. In the court below it was held that the second mortgagee was entitled to priority, the mere constructive notice which he had obtained through the solicitor's knowledge of the existence of an earlier charge not being

sufficient to deprive him of the benefit which he had obtained by registration.

Upon the appeal,

Joshua Williams, Q. C., and *Burget*, for the applicant, cited *Le Neve* v. *Le Neve*, Ambl 435; 2 White & Tud. L. C. 28; *Tunstall* v. *Trappes*, 3 Sim. 301; *Benham* v. *Keane*, 5 L. T. Rep. N. S. 439, 3 De G., F. & J. 318; *Buskell* v. *Bushell*, 1 Sch. & Lef. 99; *Cheval* v. *Nichols*, 1 Strange, 664; *Sheldon* v. *Cox*, 2 Eden. 224; *Davis* v. *Earl of Strathmore*, 16 Ves. 419; *Nixon* v. *Hamilton*, 2 Dr. & Walsh, 364; *Robinson* v. *Woodward*, 4 De G. & Sm. 562; 12 L. T. Rep. N. S. 535; *Wormald* v. *Maitland*, 13 W.R. 832; *Espin* v. *Pemberton*, 32 L. T. Rep. 250, 345; 3 De G. & J. 547; *Lee* v. *Green*, 26 L. T. Rep. 302; 6 De G., M. & G. 155.

Southgate, Q. C., and *Everitt*, for the respondent cited—*Jolland* v. *Stainbridge*, 3 Ves. 478; *Wyllie* v. *Pollen*, 9 L. T. Rep. N. S. 71; 3 DeG. J. & S. 596; *Hine* v. *Dodd*, 2 Atk. 275; *Sharpe* v. *Foy*, 19 L. T. Rep. N. S. 541; L. Rep. 4 Ch. App. 35; *Chadwick* v. *Turner*, 14 L. T. Rep. N. S. 86; L. Rep. 1 Ch. App. 310; *Kennedy* v. *Green*, 3 My. & K. 699; *Atterbury* v. *Wallis*, 27 L. T. Rep. 301, 8 De G., M. & G. 454; *Wyatt* v. *Barwell*, 19 Ves. 435; *Hewitt* v. *Loosemore*, 9 Hare, 449; *Lord Forbes* v. *Deniston*, 4 Bro. P. C. 189, 19 L. T. Rep. N. S. 288; *Newton* v. *Newton*, L. Rep. 6 Eq. 135.

The Lord Chancellor (Hatherley)—I cannot agree with the view taken by the Master of the Rolls in this case. The case is, in my opinion, settled by the authorities, and the only question which has to be decided is, had or had not Mr. Stagg (the second mortgagee) at the time he advanced his money, notice of a prior incumbrance? Looking at the facts, it is not easy to say he had not. Now, it was settled in the case of *Hine* v. *Dodd*, and has been held in every case of a similar kind since then, that it is not sufficient that the person having the second incumbrance in point of date, should at the time have a mere suspicion of an earlier incumbrance, but it must be proved that he had actual notice of it; but such actual notice when clearly proved renders it fraudulent to attempt to obtain priority, when you are not entitled to it, by attempting to take advantage of the Registry Acts; and where there is such actual fraud in the person registering the second incumbrance, the first incumbrance, though unregistered, will not be postponed. The question remains, what is actual notice? Notice to the solicitor about the transaction in question at or near the same time as employment of him by the client is clearly such. It is not incorrect to call such notice actual notice the client, for whatever notice your agent has, that notice must be imputed to you. There was in this case plain and distinct notice on the part of the solicitor at that time employed by Mr. Stagg, and this notice must be carried on to him. No moral guilt is imputed to Mr. Stagg. Robinson, the solicitor, was also the trustee of this very property for the purpose of mortgaging it. Hall, to whom the property belonged, seems to have concurred in these mortgages, and Robinson then, in pursuance of his trusts, proceeded to raise money, first from Miss Leigh on the 10th May, 1862; and on the 9th July he raises money from Mr. Stagg; Robinson being then employed by Stagg as his solicitor. In that state of facts it could not be argued that the solicitor had not at that time notice of the first incumbrance: that point has been raised in some of the cases cited, but that question did not arise here, for it was money being raised on the same property and almost at the same time as Mr. Stagg's incumbrance. As to *Kennedy* v. *Green*, that was a case where the solicitor was himself the author of the fraud which affected the title, and the fraud was committed under circumstances apparent on the face of the deed, which would have excited the suspicions of a professional man, and have led to inquiry. In *Atterbury* v. *Wallis*, Lord Justice Turner, referring to that case, meets it by saying, "The case of *Kennedy* v. *Green* was much relied on upon the part of the defendant in the argument upon this part of the case, but I thought in *Hewitt* v. *Loosemore*, and I continue to think, that that case does not govern cases like the present. In that case there was fraud independently of the question whether the act which had been done was made known or not. In such cases as the present the question of fraud wholly depends upon whether the act which has been done was made known or not." In *Sharpe* v. *Foy*, the case was like *Kennedy* v. *Green*; there was an express intent to defraud. In connection with this, a point which I thought during the argument might create a difficulty, does not seem to do so, when the facts are examined, viz., whether or not Robinson, being guilty afterwards of gross fraud, you could fasten upon him at the date of these mortgages any fraudulent intent? But I cannot see that this is possible, for though he neglected his duty grievously, he was not then concerned in any fraud—at least so far as appears from the evidence. I cannot adopt the view of the Master of the Rolls as to the wife in the case of *Le Neve* v. *Le Neve* being a party to the fraud there practised, though the whole transaction was clearly fraudulent from beginning to end. Lord Hardwicke in that case said that a second purchaser with notice of a prior purchase getting his own purchase first registered, was guilty of fraud, the design of those Acts being only to give parties notice who might otherwise, without such registry, be in danger of being imposed on by a prior purchase or mortgage, which they are in no danger of when they have notice thereof. There is no difference in the Registry Acts as to the point of notice. I hold that what the solicitor knows, the client must be clearly taken to know, unless the case can be brought within the principle of *Kennedy* v. *Green*. It has been argued that because another solicitor was employed by Stagg after these transactions, who, in fact, registered his mortgage, that ought to put Stagg in a better position, but I am unable to see how that can be. Being of opinion, therefore, that the authorities on this subject have been all one way, and that actual notice of Miss Leigh's mortgage by Robinson (Stagg's solicitor) has been clearly proved, Stagg himself must be deemed to have had notice of it, and therefore cannot take advantage of his prior registration. The decree of the Master of the Rolls must, therefore, be reversed, and the chief clerk's certificate upheld, and Miss Leigh's mortgage declared a prior incumbrance to that of Mr. Stagg.

MIDDLESEX SESSIONS.

Reg. v. Taylor and Smith.

Conspiracy—Evidence.

Prisoners were indicted for conspiring to commit larceny.
A second count charged an attempt to commit a larceny.
The evidence was that the two prisoners, with another boy, were seen by a policeman to sit together on some door-step near a crowd, and when a well-dressed person came up to see what was going on, one of the prisoners made a sign to the others, and two of them got up and followed the person into the crowd. One of them was seen to lift the tail of the coat of a man, as if to ascertain if there was anything in the pocket, but making no visible attempt to pick the pocket; and to place a hand against the dress of a woman, but no actual attempt to insert the hand into the pocket was observed. Then they returned to the door-step and resumed their seats. They repeated this two or three times. There was no proof of any preconcert, other than this proceeding.
Held, not to be sufficient evidence of a conspiracy.
Held, also, not to be evidence of an attempt to steal.

[25 L. T. N. S. 75.]

The prisoners were indicted for conspiring together to commit larceny from the person of Her Majesty's subjects.

Another count in the indictment charged an attempt to commit a larceny.

Moody for the prosecution.

It was proved by two detective officers that a crowd was collected in the street, that the prisoners, with another boy, were sitting on a door-step; that when a well-dressed man or woman went to look into the crowd one of the prisoners nudged the others, whereupon two of them rose and followed that person. In the case of a man, they were seen to lift his coat-tail, as if to ascertain if there was anything in his pocket; but they did not attempt to insert a hand in the pocket. In the case of a woman, they went and stood by her side; the hand of one of the prisoners were seen to go against her gown, but it was not seen as attempted to be thrust into her pocket, nor was any complaint made by these persons of any such attempt.

Mr. Serjt. Cox—There is no evidence either of a conspiracy or of an attempt to steal. To constitute an attempt, some act must be done towards the complete offence. Feeling a coat-tail to ascertain if there is anything in the pocket is not an attempt to do the act of picking a pocket, for it may be that nothing was found to be in it, and therefore they did not proceed to the commission of the act itself; and if there was nothing in the pocket, even putting the hand into it has been held not to be an attempt to steal. But here there is not any proof that the pocket either of the man or woman contained anything, or indeed that they had any pockets at all.

Moody—But the count for conspiracy meets this objection. It charges them with conspiring together to commit larceny, which is an indictable offence, and it will be for the jury to say if being together and acting together in the manner described is not evidence that they had concocted a system of robbery.

Mr. Serjt. Cox.—To sustain a charge of conspiracy there must be evidence of concert to do the illegal act. In cases of treason, where the law of conspiracy has been most frequently applied, some evidence has usually been given of something said or done by the defendants previously to the commission or attempted commission of the act for which they have conspired, from which the conspiracy may be inferred. The peculiarity of this case is that the only evidence of conspiracy is the act itself, and the manner in which it was done. But then, according to the view which I have just taken of the act itself, it was not illegal, because it did not amount to an attempt to pick pockets. It appears to me to be impossible to say that the doing of an act not illegal is evidence of a conspiracy to do an illegal act, there being no other evidence of the conspiracy than the act so done. I cannot allow the case to go to the jury. The point is a very nice one, and, I think, quite new; but I am so clearly of opinion that, whatever may be the suspicions as to the intentions of the prisoners, there is not sufficient evidence to justify their conviction, that I cannot reserve it.

Not Guilty.

CORRESPONDENCE.

Houses of Industry, and Payment for Religious Instruction.

To the Editors of the Local Courts Gazette.

Gentlemen,—The Act respecting Municipal Institutions of Upper Canada, section 413, amongst other things, enacts that the Council of every County may establish a House of Industry and a House of Refuge, and provide by by-law for the erection and repair thereof, and for the appointment, payment, and duties of inspector, keepers, matron and other servants for the superintendence, care and management of such House of Industry or Refuge, and in like manner make rules and regulations, not repugnant to law.

Under the above provisions would it be illegal or repugnant to law for a County Council to grant county funds to pay a minister of any of the Christian denominations to visit the House of Industry for the purpose of giving religious instructions to the inmates.

By giving your opinion in your next issue of the *Local Courts and Municipal Gazette*, you will oblige.

A Subscriber.

County of Norfolk, 16th Feb., 1872.

[We think it was not the intention of the Legislature that the funds of the municipality should be expended in providing religious instruction for the inmates of Houses of Industry and Refuge. The County Council may under section 413 provide by by-law for the appointment, payment and duties of inspectors, keepers, matrons and *other servants* for the *superintendence, care* and management of such House of Industry or Refuge. But these words cannot be held to include

spiritual care or management by ministers of religion, without placing upon them a forced construction.

Again by the 416th section, which says that "the inspector shall keep an account of the charges of erecting, keeping, upholding and maintaining the House of Industry or Refuge, and of all the materials found and furnished therefor, &c," it would seem that the inspector's account should include all the expenses of the House, and yet this section does not seem to contemplate charges such as those for religious instruction.

The policy of the law in this country is against any such appropriation of public funds—whether wisely or not, is a matter which does not enter into this discussion.]—EDS. L. C. G.

REVIEWS.

OUR FIRESIDE FRIEND: A new Chicago venture, that covers the same ground in illustration and letterpress as the *New York Ledger*. We have found some amusement in looking over its columns. "*Bandy Tag*" commences in the most thrilling manner, though we notice the author rather confuses the functions of *shuttlecocks* and *battledores*. This story is probably quite as objectionable as the ordinary run of American works of fiction. The verses on "The Burning of Chicago," by Will. M. Carleton, fully sustain the reputation of that young, though widely-known poet.

One graphic couplet refers to the attempt of some enterprising citizen of the baser sort to set fire to a row of houses on his own account:

"The best line of action to follow, for yonder unprincipled scamp,
Is simply a line of stout cordage—one end on the post of a lamp!"

APPOINTMENTS TO OFFICE.

CORONERS

BENJAMIN THOMAS McGHIE, Esq., M.D., to be an Associate Coroner for the United Counties of Leeds and Grenville; HUGH ALEX. MABEE, Esq., M. D., to be an Associate Coroner for the County of Norfolk. (Gazetted Nov. 25th, 1871.)

NOTARIES PUBLIC FOR ONTARIO.

JOHN G RIDOUT, MARTIN H. L GORDON, and GEORGE KERR, Jun., of the City of Toronto; JOHN R. KIRCHOFFER, of the Town of Port Hope; and DAVID THOMAS DUNCOMBE, of the Town of Simcoe, Esquires, Barristers-at-Law. (Gazetted Dec 2, 1871)

WILLIAM PORTE, of the Village of Lucan, Esq., and JOHN WINCHESTER, of the City of Toronto, Attorneys-at-Law. (Gazetted Dec 9th, 1871.)

JOHN BAIN, of the City of Toronto, and THOMAS MAITLAND GROVER, of the Village of Norwood, Esqs., Barristers-at-Law. (Gazetted Dec 30th, 1871)

JOHN ROBISON CARTWRIGHT, of the Town of Port Hope, GEORGE CHRISTIE GIBBONS and HUGH MACMAHON, of the City of London, JAS. STRACHAN CARTWRIGHT, of the Town of Napanee, and THOMAS MAITLAND GROVER, of the Village of Norwood, Esqs., Barristers-at-Law, and SAMUEL BARTON BURDETT, of the Town of Belleville, Gentleman, Attorney-at-Law. (Gazetted Jan. 6, 1872)

COUNTY ATTORNEY.

EDWARD GEORGE MALLOCH, of the Town of Perth, Esquire, Barrister-at-Law, to be County Attorney and Clerk of the Peace in and for the County of Lanark, in the room and stead of Donald Fraser, Esquire, deceased. (Gazetted Jan. 6, 1872.)

DEPUTY CLERK OF THE CROWN.

IVAN O'BEIRNE, of the Town of Peterborough, Esq., to be Deputy Clerk of the Crown and Clerk of the County Court of the County of Peterborough, in the room and stead of Thomas Fortye, Esquire, deceased. (Gazetted Jan. 6, 1872.)

SPRING CIRCUITS, 1872.

EASTERN CIRCUIT.

(Hon. Mr. Justice Morrison.)

Brockville	Wednesday	13th March.
Perth	Tuesday	19th March.
Kingston	Monday	25th March.
Ottawa	Monday	8th April.
Cornwall	Tuesday	23rd April.
L'Orignal	Tuesday	7th May.
Pembroke	Tuesday	14th May

MIDLAND DISTRICT.

(Hon. Mr. Justice Wilson)

Napanee	Wednesday	13th March.
Belleville	Monday	18th March.
Cobourg	Monday	1st April.
Peterborough	Monday	15th April.
Lindsay	Monday	22nd April.
Whitby	Tuesday	30th April.
Picton	Tuesday	7th May

NIAGARA CIRCUIT.

Barrie	Wednesday	13th March.
St. Catharines	Tuesday	12th March.
Welland	Monday	18th March.
Hamilton	Thursday	4th April.
Milton	Tuesday	23rd April.
Owen Sound	Monday	13th May.

OXFORD CIRCUIT.

(Hon. Mr. Justice Gwynne.)

Cayuga	Thursday	21st March.
Simcoe	Monday	25th March.
Brantford	Tuesday	2nd April.
Berlin	Wednesday	10th April.
Stratford	Monday	15th April.
Guelph	Monday	22nd April.
Woodstock	Tuesday	7th May.

WESTERN CIRCUIT.

(Hon Mr. Justice Galt.)

London	Monday	25th March.
St. Thomas	Tuesday	9th April.
Chatham	Tuesday	16th April.
Sarnia	Tuesday	23rd April.
Sandwich	Tuesday	30th April.
Goderich	Monday	6th May.
Walkerton	Tuesday	14th May.

HOME CIRCUIT.

(The Hon. the Chief Justice of the Common Pleas.)

Brampton	Wednesday	13th March.
Toronto	Tuesday	19th March.