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DIARY FOR APRIL.

1. SUN... *Easter Day.*
2. Mon... County Ct. and Surrogate Ct. Term commences.
7. Satur. County Court and Surrogate Court Term ends.
8. SUN... *Low Sunday.*
9. Mon... York and Peel Spring Assizes.
15. SUN... *2nd Sunday after Easter.*
22. SUN... *3rd Sunday after Easter.*
23. Mon... *St. George.*
29. SUN... *4th Sunday after Easter.*
30. Mon... Last day for comp. Asses. Rolls. Last day for [Non-res. to give lists of their lands.

THE

Upper Canada Law Journal.

APRIL, 1866.

THE ACT FOR QUIETING TITLES.

20 Vic., Cap. 25.

We are glad to learn that the benefits to be derived from this Act have been at once appreciated, and that a large number of petitions have already been presented to the Court of Chancery, many of them by members of the profession in connection with their own property.

The practice being entirely new, and there being no precedents to serve as aids in the conduct of applications under the Act, a short statement of the mode of proceeding, and of the practice adopted by the Referee, may be of service to practitioners.

A perusal of the Act must satisfy every one of its extreme simplicity.

The application is by a short petition, the form of which is given in the Act. This form should be strictly observed, and varied only as demanded by the circumstances of the particular case.

Before presenting the petition, the solicitor should thoroughly investigate the title, and the proofs of it. If the title be defective, or the proof of it not attainable, the petition should not be presented.

The petition is filed with the Registrar of the Court of Chancery, at Toronto, and upon filing it, the petitioner receives a certificate of such petition being filed, which he must register in the registry office of the county in which the land is situate. The petition is forthwith transmitted by the Registrar to the Referee, to be ready for investigation as soon as the proof of the title is laid before him.

The solicitor should next procure all necessary affidavits to be sworn, (including his own affidavit or certificate that he has investigated the title and finds it to be as stated in the affidavit of his client.) Having all his proofs complete, he is then, and not before, to carry them in to the Referee of Titles, with the other papers required by sec. 4 of the Statute, viz.:

1st. All the title deeds, if any, and evidences of title relating to the land, that are in the possession or power of the applicant.

2nd. A certified copy of the memorials of all *other* registered instruments affecting the land, up to the time of the registering of the certificate of petition above mentioned. (This certified copy should include the affidavits of execution filed on registration of each memorial. Where, from the way the property is described, the Registrar is unable to certify that such memorials are all that affect the lands, the Referee requires a surveyor to examine the property, who, after examining the Registry or memorials, is to make an affidavit that the memorials produced are all that affect the land. All this should, if practicable, be done before the memorials and papers are brought to the Referee.)

3rd. The certificate of the County Registrar in which the land lies as to the bills and proceedings in chancery, or in any County Court on its equity side, if any such be registered.

4th. A concise statement of such facts as are necessary to make out the title, and which do not appear in the documents produced, but no abstract will be required except on special grounds.

(Among these facts the following will be necessary in every case; that all taxes theretofore assessed on the lot have been paid and satisfied; that there is no execution in the sheriff's hands against any person interested in the land; that the same had never been sold by the sheriff, either on execution or for taxes, except as appears by the Registrar's certificate; and that there are no Crown debts affecting the land.)

5th. Proofs of any facts, requiring proof, to make out the title, unless dispensed with until a later stage of the investigation. (Among these matters will be the particulars mentioned in the concise statement.)

6th. An affidavit by the claimant, and a certificate signed by his counsel, to the effect

mentioned in the sixth and seventh sections of the statute.

7th. A schedule of the particulars produced under the six preceding heads.

When deeds are lost the affidavits should contain the same evidence of the loss and contents of the deeds as would be required at a trial at law or hearing in Chancery.

The affidavit as to there having been no sheriff's sale, and indeed all affidavits to be used as evidence, should state how the deponent derived his knowledge.

Where the petitioner's title is derived under a sheriffs sale, the affidavits should give the volume and page of the Canada *Gazette* where the advertisements appear, and the name and dates of the local newspapers in which they were inserted.

The Crown debts can be ascertained by a search in the office of the Clerk of the Crown in the Court of Queen's Bench, at Toronto, and the affidavit should shew that the present owner is not, and that none of the persons (naming them) who had been previovsly interested in the property was, while so interested, a debtor to the Crown; or should state what Crown debts, if any, affect the property. See Consolidated Statutes of Upper Canada, chapter 5, section 2, the words of which should be followed, viz., that "no copy of any deed, bond, or other instrument whereby, &c., has been registered," &c.

Where the title of the applicant is under a sale for taxes, the affidavits must show that all the requirements of the Consol. Statutes of Upper Canada, 22 Vic. chap. 55, secs. 125 to 131, pp. 675, 676, have been strictly complied with. In such case the Referee does not require the production of the Treasurer's warrant, but is satisfied with an affidavit by a competent person who has examined it, and who states sufficient to satisfy the Referee that it was in due compliance with the statute.

Where parties have information necessary for the applicant, and are unwilling to make an affidavit, a *subpœna ad test.* may be obtained.

It saves both time, trouble and expense, when the solicitor sees that all the proofs are complete in the first instance. If, however, through over-sight, anything be omitted or defective, an opportunity of supplying it is usually afforded by the Referee.

It may, as a general rule, be observed that the evidence required must include as well what is necessary to be produced by a vendor to a purchaser on a strict investigation of title, as what a purchaser's solicitor should satisfy himself of by searches and enquiries elsewhere, according to the principles laid down for these purposes in the English books of conveyancing. See "Dart on Vendors, caps. 8 & 11, and Sugden on Vendors and Purchasers, last edition, caps. 10, 11, 12 & 13.

Where the Referee is satisfied that a good title is shewn, he issues notices for publication. He may also direct notice to be served on any persons whom the state of the title appears to make it expedient to notify.

After these notices have been published and served respectively, if no good cause to the contrary be shewn, the Referee lays the papers before one of the Judges of the court, and if he approve of the Referee's proceeding, a certificate of title is issued, which renders the petitioner's title indefeasible, and is thenceforward conclusive in all courts without further evidence as to title.

The fees payable are as follows:

To the Registrar (fee fund) for filing the petition and for the certificate thereof	$1
For entering certificate of title, per folio,	0
Copy for registration in the County Registry Office, per folio	0
Seal on original and duplicate, each	0
To the Referee, per leaf on original and duplicate, each	0
For each deed, or memorial of deed, in the chain of title	0
For the certificate of title	2

In contested cases the Referee is entitled, in addition, in respect of proceedings occasioned by the contest, to the same fees therefor as are payable to the Master or Accountant for the like proceedings in suits.

THE THREATENED AGGRESSION.

That which the Chief Justice of Upper Canada thinks of such moment as to call forth observations from him whilst sitting upon the Bench in discharge of his judicial duties, cannot be out of place for us, as conductors of a legal journal, to notice. We therefore make no apology for following in this matter the lead of one whose example may well be followed, whether we look upon his career as a lawyer, as a judge, or as a loyal

subject, jealous for the honor of his Queen, and faithful to the interests of his adopted country. Few, we think will cavil at his views thus publicly expressed. Whilst we on our part are proud to accept them as our own.

His Lordship opened the Toronto Spring Assizes on Monday the 19th of March, and in his charge to the Grand Jury, after referring to their duties and commenting upon the calendar placed in his hands, spoke as follows:—

As a general rule courts and judges abstain from making observations to grand jurors on public or political matters not immediately connected with the administration of public justice. Occasionally exceptions arise. Thus in 1837 a painful duty in this respect was cast upon the judges, to which I am under no necessity to make and gladly abstain from making further allusion. A new era has dawned upon us since and the events of that period are now no more than matters for the historian. At a later period the public mind was much agitated by a so called question of annexation--and that, too, has fallen into oblivion, or if remembered by those who then favored it, it is, I apprehend, with a devout feeling of thankfulness that it has been irrevocably abandoned.

A third exception presents itself now. No one who passes through our streets can doubt to what I allude, and few I trust will think that it is out of place for me to offer some observations in regard to it. It is impossible to make an inquiry of the most superficial nature into the cause of what we see around us, without having our attention forced as it were upon Ireland and its condition—and we cannot avoid looking back far beyond the events of the present time to understand the pretext out of which has arisen the crisis apparently impending.

From the reign of the first Plantagenet—through the times of the Tudors—under the unsparing sword of Cromwell down to the culminating victory gained by William of Nassau, Ireland has been a battle field. Wars of invasion and territorial conquest—wars between the ancient races and the descendants or successors of the invaders, wars to maintain or extend the ascendancy of the crown of England, wars of dynasty—the latter more especially, though it was not confined to them, embittered or inflamed by differences of religion—successively wasted the land and prevented the prosperity arising from the cultivation of peaceful and industrial pursuits. And since then, down to a modern period—among some sources of active discontent, after breaking out into open violence—and among complaints not without reasonable foundation—the legal disqualification of men on account of their religious opinions held a prominent place. Since the change of law in that particular, and down to the present time, a very different course of policy has been followed—having for its leading object the promotion of the material prosperity of the whole people, without reference to differences of race or of religious opinions. But, during that time also, the impatient folly of some the perverse malevolence of others and an almost wilful blindness to the good that has been done, as well as to the promise for the future which had thus been given, has checked progress, and has, at the present, forced the adoption of repressive measures to avert from Ireland the horrors of civil warfare.

That a conspiracy—formidable by its numbers though not extending to the classes possessed of education, intelligence or property—exists against the government of that country is now beyond doubt. That such conspiracy has been encouraged if not originated, fostered if not created, by men of Irish birth or of Irish descent resident in the United States is brought home to our conviction by the daily record of passing events; and that the inevitable result must be prejudicial to the peace and prosperity of Ireland is as obvious as the necessity for vigorous measures of repression and restraint. Nevertheless, we might, here in Canada, whilst earnestly desiring the maintenance of the established government in Ireland, and that the mad effort to dismember the United Kingdom might meet with speedy and ignominious failure, have thought ourselves beyond the immediate reach of the threatened conflict. We might expect to hear its echo, but not that we should be made parties to it in our own land. For, admitting, for the argument sake, the existence of injustice and oppression which is advanced as the justification of this conspiracy—no such discontent exists or ever has existed here. Canada, among whose most valued inhabitants are many of Irish birth and descent, is no more responsible than the United States of America in which a very large number of the Irish become domiciled, for any of the causes, real or fictitious, which are made the manifesto of these conspirators—and I firmly believe that few indeed, if even one of all the Irish residents in Canada, no matter what his creed, or party, are so insensible to the advantages of our present form of government as to desire a change, least of all by armed invaders. And yet such is the danger that seems to be imminent.

It is not war, as that term is understood in the law of nations, that threatens; war tempered by modern civilization by a regard to considerations

of humanity, by a desire not to inflict needless suffering on the inhabitants of an invaded country. It is not even civil internal conflict arising between inhabitants of the same country and subjects of the same government where one part of the subjects, greater or less, of some government desire to subvert it and to establish another in its place. But it is an intended invasion from a foreign country which cannot be carried into effect without violating the laws of the foreign country and the duties of its government, by a body of men whose acts will place them beyond the pale and protection of all national law, and who cannot therefore be expected to act in conformity therewith, or to acknowledge any of its obligations. Their avowed motives include that of revenge upon England for the alleged wrongs of Ireland, and as they do not hope, at this moment to raise an insurrection and strike at the Queen's government in that country, they propose to assail this province, as a means of insult and annoyance which is more within their reach and in which they may indulge in the hope of an easier temporary success.

Such an attack, though conceived and executed in such a spirit, would, in all human probability, be an outlet for the most fiendish passions of the most abandoned of those associated in it, where success would be accompanied by rapine and violation, by wholesale plunder and unrestrained licentiousness. When I reflect on the consequences of such an invasion I feel reluctant to believe that citizens of the United States who are unconnected with its alleged motives and excuse, are, as has been repeatedly and confidently affirmed in their own public journals, contributing their means to promote such atrocious results.

I do not think the occasional outbursts of "envy, hatred and all uncharitableness" with no measured mingling of falsehood and misrepresentation, which some portions of the public press display, exhibiting in the same moment the malevolence of the worst passions with the irritating consciousness of impotency to indulge them require notice at my hand. I can understand political theorists speculating upon the superiority in their estimation of a republican form of government over a monarchy, and that in America at all events the one should supersede the other. I can underetand that enthusiasts in favor of this theory would rejoice in any course of events which would bring about such a result, and that if their sense of national obligation restrained them from active proceeding in its support they would take no measures whatever to prevent it. But I cannot understand how any men who recognise the force of national and moral obligations can aid, whatever their abstract opinions, in sending fire and sword among a neighboring people, to force them to change a form of government under which they are prosperous and contented, and to adopt another, against which their feelings revolt and from which they see no good reason to anticipate a larger amount of happiness or liberty.

But if such a storm be gathering on our horizon, thank God it will not find us divided among ourselves, or unprepared to resist the invader! I can make no stronger appeal for the truth of this assertion than to the proceedings in every part of the provinces no longer ago than Saturday last. Whatever our national origin, we are all Canadians. Whatever our convictions and opinions on religious subjects, we are all equally protected in their peaceable enjoyment. Our laws recognize no immunities, privileges or distinctions for any one class that are not equally open to all. Our institutions are both in theory and practice as free as those of any nation upon earth. To a profound and zealous adherence to our constitutional rights and liberties we add a personal devotion to our Queen, honoring her as the head of our government, loving her as the mother of her people, praying God for the prolongation of her reign and for her domestic happiness and welfare.

Experience has amply assured us that there is no despotism under her sceptre, while we are not equally convinced that there is as great a freedom from it and as great an actual enjoyment of more real liberty under forms of government more popular in their external character. And what stronger proof that we rightly appreciate our advantages could be given than is afforded by the events of the last week. The sounding of the alarm was instantaneously followed by the gathering of willing thousands to defend our altars and homes. The country which was, as it were, slumbering in peace, has aroused itself into activity and presents the aspects of a vast extended camp, and while relying as heretofore on the cooperation of the mother country, the Canadian people from Sarnia to Gaspe have sprung to arms for self defence. If forced to employ them, they will strike in a good cause, and in the humble hope of the protection of Divine Providence. There can be but one reception for the invaders—a stern and pitiless opposition to repel the aggression—striking for Queen and country, for laws and liberty, for wives and children; and may God defend our rights!

PETTIFOGGING.

The following extract from a letter said to have been written by a legal gentleman in Toronto of over 12 years' standing in the profession, to a merchant in Lower Canada, and sent to us as a curiosity. It was in the shape of a circular, and we give it in full as a warning to the unwary.

"I have made some new arrangements connected with my collecting business and will be *glad to include you as one of* my regular correspondents. The following terms are offered *only* to such persons who forward to me the whole of their collecting business in Upper Canada.

"1st. All accounts or notes forwarded for collection will be put into judgment within the very shortest period thereafter that judgment can be allowed—it being expressly understood that whenever the first court sits, we will take our verdict. This will guarantee to you *that no claim will ever come a-head of you* that is put in suit at the same time as yours.

"2nd. *Advances will be made to the extent of one-half* upon all accounts and notes placed in my hands for collection, you giving me your due bill for such advance until collected. A commission of 2½ per cent. will be charged *only* in cases where the amount is collected. *No* charge will be made where we cannot collect the debt for the advance.

"3rd. A reduction of at least 15 per cent. upon the regular taxable costs will be made in all cases where the debt cannot be collected.

"4th. Mr. —— or his partner will in every case in which it is necessary go and see the person indebted to you, find out his circumstances, position, &c., negotiate for security and in every respect act in your interest as if he were a member of your firm and personally interested in your business, and the costs will not exceed from $5 to $10 per diem according to the nature and importance of the business.

"5th. A quarterly report of all business in my hands belonging to you will be made, and, if possible, I will visit Montreal at least every three months. If you think these conditions will be advantageous to your business I will be glad to be appointed your attorney for Upper Canada."

In reading the above one scarcely knows which to admire most, the presumptuous assurance which pretends to guarantee to a client "that no claim will ever come ahead of you that is put in suit at the same time as yours," or the open-hearted philanthropy which offers to make advances to the extent of one-half upon all notes and accounts given to these ubiquitous, invincible, but, withal, liberal attorneys for collection.

But we do not care to discuss the contents of this precious document any further. It would be laughable were it not pitiable. Pitiable in every way; in fact it is difficult to say which we should pity *most*—the unfortunate client who might be silly enough to trust his business to the hands of persons capable of writing such a letter, or the lawyers themselves who must be so needy, or else so lost to a sense of what might be termed professional decency as to attempt to attract clients by such propositions as those given above.

We do not know, and we do not care to know, the name of the delinquent firm, but we are assured such propositions have been made to at least one merchant by these persons, and if so, we only hope that they will be treated with the same contempt by all as they were by him to whom the above letter was addressed.

We may seem to some to speak strongly on this subject, but surely it is the duty, as it ought to be the inclination of all those who respect themselves and the profession to which they belong, to frown down any thing which tends to lessen that respect or to lower their profession in the eyes of the public.

JUDGMENTS—HILARY TERM, 1866.

ERROR AND APPEAL.

Present: Draper, C. J.; Richards, C.J., C.P.; Hagarty, J.; Morrison, J.; Adam Wilson, J.; John Wilson, J.; and Mowat, V. C.

March 16, 1866.

Brigham v. *Smith.* — Appeal from Court of Chancery, dismissed with costs. *Draper*, C. J., delivered the judgment of the court.

Bettridge v. *Great Western R. W. Co.*—Appeal from the Court of Chancery. Decree for specific performance of contract to allow plaintiff to pass free over the road in consideration of land conveyed to the company reversed, and bill in court below dismissed with costs. *Mowat*, V. C., dissented. *Hagarty*, J., inclined to the opinion that the bill should be dismissed without costs. *Adam Wilson*, J., delivered the judgment of the court.

Mills v. *King.*—Appeal from Court of Common Pleas on point of form, dismissed with costs. *Held* that judgment must be entered on special case before error can be brought. *Draper*, C. J., delivered the judgment of the court.

Crawford v. *Meldrum.*—Appeal from Court of Chancery allowed. Decree to be varied by mak-

ing land liable to plaintiff's judgment, with costs against defendant. The court, with the exception of *Spragge*, V. C., concurred with the judgment of *Mowat*, V. C., in court below.

Weir v. *Matheson.*—Appeal from Court of Chancery allowed, and bill dismissed with costs. *Spragge*, V. C., dissented: adhering to his judgment as given in the court below. *Draper*, C. J., thought that bill should be dismissed without costs. *Hagarty*, J., delivered the judgment of the court.

Gamble v. *Great Western R. W. Co.*—Appeal from Court of Queen's Bench, dismissed with costs. *Morrison*, J., dissented; adhering to his opinion as expressed in court below. *Richards*, C. J., delivered the judgment of the court.

Northern Railway Co. v. *Patton*—Appeal from Court of Common Pleas dismissed with costs.

Gossage v. *The Canadian Land & Emigration Co.*—Appeal from Court of Queen's Bench dismissed with costs.

QUEEN'S BENCH.

Present: Draper, C. J.: Hagarty, J.; Morrison, J.

Monday, March 5, 1866.

Flahaff v. *Cox.*—Appeal from the County Court of the County of Wellington—dismissed without costs.

Fowler v. *Perrin.*—Judgment for plaintiff on first replication to plea of release, and for defendant on second replication to same plea. Leave granted to apply to Judge in Chambers to amend.

Wixon v. *Pickard*, rule *nisi* for new trial discharged.

Rogers v. *Munns.*—Rule discharged.

Studer v. *Buffalo & L. H. R. R. Co.*—Rule absolute for new trial, without costs.

Conger v. *Platt.*—Judgment for defendant on demurrer to plea. Leave to apply to a Judge in Chambers to take issue granted.

Savage v. *Sparling.*—Appeal from the County Court of the County of Lambton allowed.

Austin v. *Ferguson.*—Appeal from the County Court of York and Peel allowed, and rule to enter verdict for defendant in court below discharged.

Brightley v. *Rankin.*—Appeal from County Court of Frontenac allowed, and rule for nonsuit in court below to be discharged.

Coulson v. *Hutton.*—Appeal from County Court of Wellington dismissed with costs.

Leslie v. *Emmons.*—Appeal from County Court of Hastings allowed, and rule absolute for new trial in the court below.

The Queen v. *Rubidge.*—Appeal from the Quarter Sessions in Stormont, Dundas and Glengarry allowed, and judgment in Court below arrested.

Johnson v. *Hunter.*—Rule discharged.

Harris v. *Robinson.*—Appeal from the County Court of Peterborough dismissed, but without costs, as appellant appealed at the instance of the County Judge.

Waddell v. *Corbett.*—Judgment for defendants, with leave to plaintiff to apply to amend.

Stewart v. *Gesner & Henderson.*—Appeal from the County Court of Kent allowed, and rule absolute for new trial without costs.

In re Michie and the Judge of the County Court of the County of Halton.—Rule absolute for mandamus.

In the matter of conviction of Andrews.—Rule absolute to quash conviction.

The Queen v. *Ellis*—Rule to quash certiorari absolute with costs, and rule to quash conviction discharged with costs.

McIlroy v. *Hall.*—Rule absolute for new trial on payment of costs.

McPhee v. *Wilson.*—Rule absolute to enter verdict for plaintiff on second count for $160, and for defendant on the first count.

Jones v. *Jenkins.*—Rule absolute for new trial on payment of costs by plaintiff within a month, otherwise rule absolute to enter nonsuit.

The Queen v. *Stewart.*—Rule discharged.

Kerr v. *Boulton et al*—Rule discharged.

Adams v. *McCaul.*—Rule absolute for a new trial—costs to abide event.

DeCow v. *Tait.*—Rule discharged.

Waters et al. v. *Bullen.*—Rule absolute for new trial on payment of costs in sixteen days.

Saturday, March 10, 1866.

Present: Draper, C. J.; Hagarty, J.; Morrison, J.

Clarke v. *Western Assurance Co.*—Rule absolute for new trial without costs on the ground of misdirection. The Court remarked upon the injurious effect in certain cases of the late Act respecting the assignment of warehouse receipts.

McDonald v. *The Liverpool and London Fire and Life Insurance Co.*—Rule absolute for new trial, with costs to abide event.

In the matter of the Propeller "Georgian."—Rule *nisi* on Collector of Customs to restore vessel to the petitioner, G. T. Denison, jun., discharged, the Court having no power under 29 Vic., cap. 1, to grant relief, as there appeared from the affidavits filed to have been "probable cause" for the seizure of the steamer; but that as the reason for the detention had ceased, the Government might in all probability restore the vessel to the petitioner upon a proper application for that purpose, which if it had been made before might have saved the necessity of this application. The Court observed that no power of forfeiture was given by the act.

Re Thompson and Webster.—Rule *nisi* for mandamus to compel the Registrar of the County of Wellington to record a certificate of *lis pendens* refused, but without costs. The refusal to record was on the ground that a part of the land referred to in the certificate was subdivided into village lots and sold to various parties.

Hall v. *Moss.*—Judgment for plaintiff on demurrer to declaration. *Hagarty*, J., dissenting.

Shaver v. *Jamieson et al.*—Rule absolute for new trial, with costs to abide the event.

leave to the landlord to amend his notice of title by adding claim of title by length of possession.

Warne v. *Coulter.*—Judgment for plaintiff on demurrer. Arrears of taxes due on non-resident lands: in case of subsequent occupancy, arrears can only, under 27 Vic. cap. 19, be collected out of goods *on the premises*, there being no personal liability upon the subsequent occupant to pay them, and nothing which can render liable his goods which are *not* on premises.

Law Society of U. C. v. *The City of Toronto.*—Rule *nisi* for nonsuit discharged. Action to recover back from the city money paid for taxes alleged by the City to be due. *Held*, that as the Court of Revision had not, although the roll was finally passed, adjudicated upon and determined the question brought before them in this matter, the right of appeal to the County Judge had not been barred. *Hagarty*, J., dissented from the judgment of the Court, thinking that the roll being confirmed, the assessment was final.

Harvey v. *Woodruff.*—Rule absolute for new trial with costs to abide event.

Prendergast v. *Grand Trunk Railway Co.*—Rule *nisi* to set aside verdict for plaintiff, and for a new trial discharged.

Childs et al. v. *Northern Railway Co.*—Rule absolute to enter nonsuit.

COMMON PLEAS.

Present: Richards, C. J.; John Wilson, J.; Adam Wilson, J.

Monday, March 5, 1866.

Canada Permanent Building Society v. *Harris.*—Rule discharged.

Hutton v. *Trotter.*—Rule discharged.

Thorne v. *Barwick.*—Rule discharged.

Reed v. *Reed.*—Judgment for plaintiff on demurrer.

Baldwin v. *Peterman.*—Judgment for plaintiff on demurrer.

Campbell v. *Kempt.*—Rule absolute for new trial on payment of costs within three weeks.

Doyle v. *Lasher.*—Appeal from the County Court of Lennox and Addington dismissed with costs.

Bradfield v. *Hopkins.*—Judgment for defendant on demurrer for insufficiency of the replication.

McFadden v. *G. T. R. Co.*
Ball v. *G. T. R. Co.*
} Appeals from Co. Ct. Frontenac dismissed with costs.

Cook v. *Wilkie.*—Appeal from County Court of Oxford dismissed without costs.

Reed et al. v. *Mercer.*—Rule discharged.

Bond v. *Bond.*—Rule discharged. Postea to plaintiff.

Auston v. *Boulton.*—Rule discharged.

McBride v. *Lee.*—Rule discharged, with costs.

Wood v. *G. T. R. Co.*—Rule absolute to strike appeal out of the paper without costs.

Saturday, March 10, 1866.

Present: Richards, C. J.: Adam Wilson, J.; John Wilson, J.

Smith v. *Miller.*—Case struck out of list, it having been otherwise disposed of.

Hughes v. *Towers.*—Verdict on first count to be entered for defendant; and the damages on the second count to be reduced by $290.

Fowler v. *Perrin.*—Judgment for plaintiff on demurrer.

Koster v. *Holden* —Judgment for defendant on demurrer to first count; and for plaintiff on demurrer to the second count.

Trust and Loan Co. v. *Drennan.*—Judgment for plaintiff on demurrer.

Jones v. *Cameron.*—Judgment for plaintiff on demurrer.

The Queen v. *Hamilton* —Rule *nisi* discharged. The Court expressed themselves as in much doubt as to the admission of affidavits in evidence in criminal cases when moving for new trials under the act, and suggested an appeal, for which leave was granted.

Campbell v. *Knight.*—New trial as announced last Monday, with the additional terms now imposed of payment of costs within three weeks after service of the rule; and in default of payment, rule discharged.

RULES OF COURT.

The following rules were read in Court last Term:

"Michaelmas Term, 29th Victoria.

It is ordered,—That the Table of Costs established by the Rule of this Court, of Trinity Term, 20th Victoria, be amended in that part of it relating to Attorneys, and headed 'Copy and service of Writs of Summons and other Process,' by adding as follows:—

Copy and Service of Writ of Subpœna ad Testificandum, exclusive of mileage..... 50 cents.

It is ordered,—That in all cases where leave is given to raise an Issue or Issues of Law, together with an Issue or Issues of Fact, to any Declaration or subsequent Pleading, the Issue or Issues of Law shall be determined before the Trial of the Issue or Issues of Fact, unless otherwise expressly ordered by the Court or Judge in the Rule or Order permitting such Issue or Issues to be raised.

Dated 2nd December, A. D. 1865.

(Signed) Wm. H. Draper, *C. J.*
Wm. B. Richards, *C. J. C. P.*
John H. Hagarty, *J.*
Jos. C. Morrison, *J.*
Adam Wilson, *J.*
John Wilson, *J.*"

SELECTIONS.

CONDITIONS OF SALE.

The object of special conditions of sale with respect to title and evidence of title, is either to enable the vendor to oblige the purchaser to accept the title, notwithstanding some defect of evidence, or, it may be some infirmity of title involving a real risk, which the vendor cannot supply or cure, or to preclude the purchaser from calling for evidence, the production of which is possible, but would involve expense, trouble, or delay. At one time special conditions were avoided as much as possible, under the apprehension that they would discourage bidders. Special conditions of some kind have now become so usual that intending purchasers frequently bid without considering the effect of the conditions, and stipulations are often inserted as a matter of routine, which are wholly unnecessary, and even inapplicable to the title in question. But when restrictive conditions as to title or evidence are advisedly made part of the contract to be signed by the purchaser, the object of them is to compel the purchaser to accept a title more or less defective in substance or in proof. Now, it is settled that a vendor may bind the purchaser to accept such title as the vendor has, so that in the absence of fraud or misrepresentation the purchaser must take the title, though it actually appears to be bad. In *Freme* v. *Wright* 4 Mad. 364, on a sale by the assignees of a bankrupt, the condition was in these words:—"The purchaser shall have an assignment of Mr. Howard's interest to one moiety of the estate, under such title as he lately held the same, an abstract of which may be seen at the office of Messrs.—;" and though the title was defective, the purchaser was compelled to take it. But the Court said that he might, if he pleased, have an inquiry, whether the conditions were circulated long enough before the sale to give a *fair opportunity for inspecting the abstract.* So in *Duke* v. *Burnett* 2 Coll. 337, a purchaser was compelled to take a title which he had agreed "to accept without dispute," notwithstanding a defect as to the title to the legal estate, which was within the vendor's knowledge.

In each of these cases the vendor obtained the protection he desired without disclosing the nature of the defects against which it was sought. In a recent case, however, the doctrine has been asserted, that the vendor cannot, by a general stipulation, protect himself against a defect which is known to him, without disclosing the defect. The case to which we refer is *Edwards* v. *Wickwar* 35 L. J., Ch., 48; 1 L. R., Eq., 68. Under an order in that case leaseholds were sold by auction, subject to the following condition:—"It will appear from the abstract that an underlease of the property was, in 1852, granted to J. S. for twenty-one years from the 25th November then last. The said J. S. is believed to have absconded, and not to have paid any rent for several years; and inasmuch as a first underlease was on the 1st October, 1864, purported to be granted by the trustees of the testator's will, to the present tenant, who is in possession under it, no objection or requisition shall be made in respect of the underlease of 1852, nor of any derivative interest created thereout, nor of any underlease or tenancy prior to the *said underlease of 1864.*" On examining the title deeds it appeared that another underlease had been granted prior to that of 1864, which was not shown to have been surrendered. This underlease, according to the report in *The Law Journal*, was not in the abstract, but the counterpart of it was in the vendor's possession. The vendor relied on the condition; but Sir W. P. Wood, V.C., held, that the purchaser was not bound to complete unless the vendor obtained a surrender of the underlease; and for this decision his Honor gave the following remarkable reasons:—

"It is a vendor's plain duty to disclose all the facts within his knowledge. He may protect himself by general clauses, such as the one in question, from unknown or unsuspected claims; but he is clearly bound to give the fullest information in his power. An extreme case in support of the vendor's contention is *Freme* v. *Wright;* but there the vendors were the assignees of a bankrupt, and they only professed to sell under such title as he lately held. The title proved bad, but there was no suppression of facts within the knowledge of the vendors. Here, on the contrary, there is a pretended candour on the part of the vendor, in disclosing one deed while he suppresses another, which is all the time in his possession. Nothing would be more mischievous than to allow a vendor (more especially when selling under an order of this Court) to force upon a purchaser anything contrary to the strictest right."

We do not see how the decision can be supported, except upon the principle stated in the judgment, that a vendor cannot protect himself by stipulation against a defect known to him, or which he has the means of knowing, unless he discloses the defect. The defect in question was doubtless merely formal: an underlease had been granted, the tenancy had been given up without the execution of a surrender, and a new tenant put in; so that if the former underlessee had claimed the possession, his claim would have been conclusively answered, under the condition for re-entry for non-performance of covenants. There was certainly no fraud in keeping back such a transaction, and the purchaser's objection could only rest on the strictest application of the Vice-Chancellor's principle. The consequences of the rule laid down in *Edwards* v. *Wickwar* are serious. Henceforth a vendor must not take his title into the market unless he is prepared to display before the world

every defect which can be found in it. He cannot say to an intending purchaser—"As I have been in possession during so many years, under a conveyance dated in such a year, you shall not make any objection in respect of the earlier title,"—unless he has himself rigorously scrutinised the earlier title, and found it unobjectionable, in which case the stipulation would be unnecessary. Nay, as defect of title and defect of proof are indistinguishable, a general stipulation that the purchaser shall not make any objection on the ground of the vendor's inability to produce any title deed prior to a certain date would be unavailable, unless accompanied by a statement of the nature and effect of every deed to which it was intended to apply.

In short, to say that general conditions against defects are inoperative if the vendor does not at the same time give the fullest information in his power as to those defects, is to say that no contract shall limit a purchaser's right to a clear and well-proved title for sixty years, unless the contract sets forth a complete abstract of the title as it stands, and that no restrictive condition shall operate unless it is associated with a commentary pointing out in detail the particulars to which it applies.

A general condition against any defect of title or evidence within the terms of the condition implies that there are such defects, and gives the purchaser an opportunity of making further inquiry. If he is willing and agrees to take his chance without further inquiry, he cannot complain of being deceived; and in the absence of fraud, we submit that it is the duty of a court of equity to hold him to his contract. We are not here speaking of artfully contrived catching conditions, which suggest, but do not absolutely assert, a better state of things than that which really exists. The condition in *Edwards* v. *Wickwar* was not a condition of that kind; nor is it to such conditions more than to others that the Vice-Chancellor's observations apply.—*Jurist.*

COLONIAL CULPRITS AND EXTRADITION STATUTES.

When the many forensic contests arising out of the Roupell forgeries were before the courts, the counsel against the ex-M. P. and his family made the most of the improbabilities and singularities of the story. It was said that the blind confidence of the father, the almost fatuous trust of the mother, the cool, determined, precocious villainy of the son as told by himself, with every point and circumstance, in the witness box, were of themselves sufficiently extraordinary; but the one great fact, the stay and stronghold of the defendant's case, the text at which Mr. Bovill pounded away with the persistency and tenacity of a puritan preacher who turned his hour-glass four times in the course of a sermon, was the marvellous allegation that a man used to an inordinate degree of luxury, accustomed to the indulgences and elegances of refined society, one who had sat for an important borough, headed a large volunteer corps, been the ostensible owner of hundreds of houses, the possessor of a fortune approaching half a million, should, without some sinister motive, some hidden purpose, some design to save for his family the fortune he had dissipated himself, have come forward to confess a crime whose inevitable consequence would be to subject him to a protracted, or as it actually happened, a life-long period of penal servitude. There is no doubt that these considerations greatly helped the counsel, and that they weighed much with the jury, nor do we by any means say that they were unfairly pressed by the one, or unduly estimated by the other. But without questioning the accuracy of those Chelmsford jurymen who stood out for the purchasers of the Roupell property or denying that the compromise ultimately arrived at was a fair and reasonable one, we cannnot help thinking that if the case were to be tried next week, the family would go into court with a much better chance of winning than on the previous occasion. We have had an illustration of the power of conscience over flagrant offenders, more wonderful in its way than that furnished by William Roupell, and though it has not as yet led to sensation trials or to melo-dramatic incidents, the plain unvarnished story may well serve "to point a moral or adorn a tale."

In the summer of 1864, Augustus George Fletcher was cashier in the Melbourne Branch of the Union Bank of Australia. His reputation was, of course, as good, his character as high, the confidence reposed in him as profound as that of the great majority of the men for whom he has proved himself an unworthy colleague. He could not stand the test of repeatedly having within his reach the opportunity of enriching himself with dishonestly acquired gains, and, yielding to the temptation, he abstracted from the bank coffers securities amounting to nearly £10,000. Unwatched, unsuspected, he continued for some time to fill his accustomed post, nor does even his return to England a few months after the robbery appear to have generated a belief of his guilt. During a short stay in this country he turned his booty into cash, and started with the proceeds for the other hemisphere. From New York he went to Buenos Ayres, and from the latter place he only recently returned to London. Those who may at any time be tempted to copy his evil example, should ponder thoughtfully the story of his subsequent adventures.

"Ill got, ill goes," is a proverb which has stood a good deal of handling, but which does not seem likely to wear out in these days of commercial and financiary delinquencies. The £10,000 had got small by degrees and beautifully less, till barely eigh-

teen months after it was stolen, not above one-fifth of it was left in the hands of its guilty possessor. Meanwhile the bank had become aware of the name of their depredator, and Augustus George Fletcher found himself in a foreign land, with occupation gone, with character blasted, with hopes destroyed. Still, he was better off than most of his order. He had £2,000 or thereabouts in his pocket, and he was in a country to which no police officer could penetrate, and from which no extradition treaty could fetch him back. He might have invested his money in foreign stocks, or employed it in some branch of commerce, or failing either of these expedients for husbanding or increasing it, he might have lived upon it carefully or recklessly while it lasted, and when the worst came to the worst, he could have earned his living and kept his freedom as a day laborer. But he did neither of these things. Tired of dissipation, worn out with excitement, stung by remorse, he communicated his crime to the British authorities at Buenos Ayres, and acting on their recommendation he took passage home, and landed with the intention of surrendering himself to offended justice.

It must be confessed that if Fletcher is out of prison, it is not for any want of effort to get into it. On the first Friday in January, he went to the bank in Old Broad Street, and presented himself just before the close of business hours, as his employers' self-confessed plunderer. But the bank officials seem to have been completely dumbfoundered by the appearance of so queer a customer. They had never had to open an account or honor a draft of this nature, in all their long experience. The secretary called in the solicitor, and the two, after a conference, decided to make no charge against the defaulter. The would-be prisoner left the bank, sought the help of the first policeman he met, poured his confession into his ear, and was promptly taken off to the nearest station-house. Thus far, therefore, he had succeeded, but his success was of short duration. He met with a fresh disappointment next morning when he was taken before the presiding alderman at the Mansion House. His confession was heard, the charge against him entered, but himself was discharged on his own recognizances, the magistrate and his adviser being of opinion that there was no jurisdiction to detain him. Some weeks have passed since Fletcher's release, and so far as we know, he is still at large in London in possession of property he is anxious to give up, and of personal liberty which he is solicitous to surrender. This anomaly arises from the wording of the "Colonial Extradition Act," by which the issue of a colonial warrant is a condition precedent to any criminal process here. Just as demands for the extradition of escaping felons from France or England, must be made in virtue of warrants issued by persons having lawful authority in the country from which the felon has escaped, so must our colonial runaways be taken back in due form, with proper process, bound with legal fetters, and shut up in a statutable goal. The idea of having to deal with a prisoner who, having got clear off with his booty, had come from the end of the earth to surrender himself and it to justice, never seems to have entered the heads of the eminently practical people who drew the Act of Parliament, and hence Augustus George Fletcher finds himself not only a free man, but a comparatively rich one, in spite of himself. The police cannot arrest him, the magistrate cannot detain him, the representatives of the customer whose property he purloined will have nothing to do with him, lest they should prejudice their remedies against the bank; the bank cannot give him into custody because there is no jurisdiction, and they cannot receive the money he is anxious to surrender, lest they should condone his offence, and put themselves in a false position. Altogether, it is a very pretty and a very singular difficulty, the like of which we do not remember to have heard before.

We must own, however, we cannot very clearly see our way to a remedy. It would never do to receive every confession that might be made here by persons professing to have done something wrong at the Antipodes. We are afraid the only result would be that the police courts would be inundated by a grand influx of the rogues and rapscallions, the waifs and strays, the odds and ends of society; the black sheep of every flock, the ne'er-do-weels of every family, the *mauvais sujets* of every circle—all ready and willing to confess sins they never committed, if that were the only requisite for getting to the land of golden dreams and ill-defined purposes, where old acquaintanceships might, perchance be shaken off; where new and better lives might, perchance, be begun. With some such promises and purposes as these would they cheat their consciences and school their minds to the perpetration of what they would consider a pious fraud. The mother country and the colony, between them, would have to bear the burden of the deportation of this undesirable class of emigrants, and the colony especially would have little reason to congratulate itself upon its bargain. There seems nothing for it but to adhere to existing rules, and maintain existing statutes. The *primâ facie* grounds for accusing a man of felony must be established in the country which claims him, and the funtions of our magistrates ought still to be limited to satisfying themselves that the warrant on which the arrest is made satisfies the requirements of reasonable caution against the colorable violation of the right of asylum. It is, however, rather singular that almost at the same moment our attention should be called, in two quarters, to the working of our extradition laws. The lack of a formal preliminary has for the time prevented the operation of the Colonial Act, and the French

Emperor's impatience of magisterial anxiety to prevent an agency for the punishment of criminals being turned into an instrument for the redemption of political offenders, has led him to give notice of his intention to put an end to the convention on which the statute rests. We regret that his Imperial Majesty should have taken umbrage at precautions which he must feel are not altogether unneeded, or have waxed impatient because constitutional usages cannot always be conformed to the wishes, even of wholesome despotism. He has accused us of being needlessly particular about forms, and of requiring an impossible amount of proof before surrendering escaping French felons. The proceedings in Fletcher's case may perhaps satisfy him that such punctiliousness is not exceptional; that even when the interests of our own colonists might apparently sanction relaxation of established rules, we say with Portia, that "it must not be, lest many an error, by the same example, should rush into the state." We trust that the history of Fletcher's surrender and release may satisfy the Emperor that our scrupulosity, if extreme, is at least even-handed, and that calm reflection will induce him to withdraw alike the notice to end the extradition convention, and the unfounded aspersions upon our mode of administering justice with which that notice was accompanied.—*Bankers' Magazine.*

ON THE APPORTIONMENT OF SENTENCES TO CRIMES.

By T. B. L. Baker, Esq., Hardwicke Court.

A new system has been suggested of regulating the sentences passed on criminals. It is assumed, and we think few will disagree with such assumption, that the diminution of future crime is the only object which we either wish or have a right to consider in the passing of sentences, and that punishment for past crime, while most valuable if it serve to deter either the person sentenced or others from future offences, ceases to be either practical, or philosophical, or Christian, if inflicted without reference to the future. That now suggested founds its claim to public consideration solely on the ground of its being more preventive of future crime than the system, if system it can be called, which is now in use.

Let us place fairly before the reader the two modes of allotting sentences to crime, and then consider the bearings of each.

Under the existing system, when a prisoner is found guilty the magistrate (whether judge, or chairman, or recorder, with or without consultation with others) considers carefully the evidence which has been adduced, estimates from it as correctly as he can the amount of turpitude in the mind and heart of the prisoner, and orders the infliction of just so much punishment as in his estimation shall be equal or proportioned to that amount.

On the other hand, the new system, while by no means suggesting that the magistrates should be restricted by law, nor that they should bind themselves to any invariable rule, proposes that they should agree amongst themselves to adopt a definite principle, which it is believed would answer well in eighteen or nineteen cases out of twenty, although in the twentieth case it might require great relaxation; and that the sentences should depend, not on the estimated amount of the guilt of the past crime, but upon the simple fact of whether the criminal had or had not been previously convicted. A scale of punishments is laid down, concerning which much discussion has arisen, but the first point for consideration is whether a scale fixed and understood by all, or one which varies with the will or opinion of each magistrate, would tend most to the diminution of future crime. The scale suggested is that a prisoner on a known first conviction in eighteen or nineteen cases out of twenty, should, if possible, be tried summarily; and receive a week or ten days' imprisonment, with a warning that if he again offend he will receive—not a sentence of imprisonment varying from a fortnight to three months, according as he may have the luck to steal much or little, or to find a lenient or a strict judge—but a commitment for trial at the sessions or assizes, involving all but a certainty of twelve months' incarceration, and for a third offence seven years' penal servitude, and for a fourth the longest term which the law allows.

A difficulty still remains with reference to that numerous class in which the prisoners' antecedents are unknown. It is proposed to meet this by making it the rule to commit all to quarter sessions, excepting such as can show to the satisfaction of the magistrates that they have not been previously convicted for, at any rate, several years. It is believed that about two-thirds of our convictions are of men who have lived for at least some years in the neighborhood, and whose characters could be easily ascertained. The remainder would be allowed to explain where they had lived, and for whom they had worked, during the last few years, and their statements might be verified by the superintendent of police during a week's remand. If such account appear to the magistrate to be satisfactory, the prisoner would receive the short sentence mentioned above; but, if he fail to show any reasonable grounds for believing that he has lately lived an honest and steady life anywhere, it should then be the rule to commit him to quarter sessions, partly to give time to inquire his antecedents, and partly to check his wandering habits.

Such are briefly the two systems under consideration. In favor of the former, it is urged that great discretion must necessarily be left in the hands of the magistrates. Offences which come strictly under the same legal definition vary extremely in the amount of guilt.

A theft, which, if practised on a stranger, and under momentary temptation, would merit only a week's imprisonment, would, if committed with premeditation, and the person robbed were a master, be deservedly punished with six months, though in either case the property were of the self-same value. Offences vary so much, that, if they are to meet an exact proportionate amount of punishment, no rule can be laid down. It is true that magistrates' estimate of the amount of wickedness in each prisoner must vary, and that the punishments given in one court must differ greatly from those allotted by another; but there can be little doubt that all are honestly adjudged, and by men who are entitled to all confidence, whether they be judges whose lives have been spent in the study of the law, or recorders, or stipendiary magistrates chosen from the Bar. Even in the case of the unpaid magistracy, whether in quarter or petty sessions, several usually act together, and the opinion of those of the greatest experience has the most weight. Thus sentences are pretty sure to be well and wisely given, and to withdraw from such a body the discretionary powers which they now enjoy, would be to cast an undeserved stigma on them and lower their position. Indeed, it is urged that there would be little use in retaining the office of a judge or magistrate, if these functionaries are to be so shorn of their dignity as to be deprived of the power of passing exactly what sentences they may think fit.

We think the above is not an unfair or unfavorable view of the opinions urged by the admirers of the present system, and to express a doubt of its truth appears almost heretical; yet, if we consider the arguments, they are hardly tenable.

First, it is stated that large discretionary powers must be given to the magistrate in order that the punishment may be accurately proportioned to the offence. It is assumed that the whole value of punishment consists in its being so allotted. Is this really so? Is it true that we derive either benefit or gratification from the inflicting a punishment exactly proportioned to the injury inflicted on society by the culprit? Probably few, if any, will be found to defend this view. But it may be said that a punishment so proportioned will deter future criminals. A little consideration will show us grave cause to doubt this. All who have had real experience of the feelings of the criminal class, well know what a reckless, thoughtless race the majority of them are. It is the common law of human nature, that we all look on our own offences with a favorable eye. The weak and unreasoning class who fall into crime are especially liable to this error. The consequence is, that as they cannot tell exactly the view the magistrates will take, they almost always hope for a less punishment than they receive. If so, our system fails to deter, and therefore to prevent, and its punishment becomes mere retribution for the past, not prevention for the future.

This point is well worthy of close consideration. If it can be shown that either punishment, or retribution, or retaliation for the past irrespective of the future, is to be desired on either moral or religious grounds, or if it can be shown that a fixed system of allotting sentences will not deter future criminals so much as one which varies according to the will or opinion of each committing magistrate, so much of the argument falls to the ground; but it is of much importance that this question should be fairly and closely examined.

But, secondly, it is said that the judges and magistrates are such a body of men as may well be trusted with large discretionary powers. None who have had opportunities of acquaintance with them will doubt that our judges are as highly talented and upright a body of gentlemen as the world can produce, and that on any subject where they have experience, their opinions are entitled to the greatest weight. In weighing the value of evidence, in investigating the legal guilt or innocence of a prisoner, they are probably unequalled. In estimating the amount of moral turpitude displayed, they may probably, from their natural and acquired shrewdness, surpass most others. But what opportunities can they have ever had of studying the opinions and feelings of that race who are to form our future criminals, or of finding out what punishments will be most efficient in deterring them from future crime? Yet if the object sought is not retribution for the past, but prevention for the future, this acquaintance with the motives and feelings of the criminal class, is the especial knowledge required in the allotment of sentences.

To recorders and stipendiary magistrates, the same arguments apply in a less degree. They are probably, on the whole, inferior in talent to the judges, but from their labors being confined to one town, they have some opportunity of hearing from the gaoler or police what effect has been produced by many of the sentences they have passed. Some of those, however, who rank among these gentlemen as the highest authorities on the subject of the Repression of Crime, are, it may be observed, warm supporters of a *nearly* fixed and intelligible system of sentencing.

The great unpaid body of magistrates, as they are sometimes termed, are, it must be conceded, far inferior in talent to the judges, yet such as fill the post of visiting magistrates, have far larger opportunities than judges of gaining a knowledge of the effects of punishment; nevertheless, in spite of this advantage their very number precludes a hope that they would exhibit such uniformity of action as will have a really strong effect in deterring future criminals, unless some principles of action are laid down and agreed to.

But the most extraordinary and the least complimentary idea, is that which supposes

the *dignity* of judges, recorders, and country gentlemen to depend on their freedom to order for a criminal just what punishment they may fancy, without having any rule to guide them to a similarity of action. It seems to be held treasonable to show that one system is more efficient than another, because such showing would deprive them of their liberty to take the less efficient course. We may leave such arguments to answer themselves. If the dignity of the bench did not stand on more secure ground than this, we might indeed tremble for it.

But the important question comes, Will such a nearly fixed system as that which is proposed tend to diminish crime? For many reasons we may expect that it will do so. If a man who has received a ten days' imprisonment is aware that his next conviction will ensure a detention for twelve months, instead of some uncertain period which he invariably hopes will be shorter than it proves to be, such knowledge will be unquestionably more deterrent than the present uncertainty; and at the same time, when the consequences are clearly laid before him he will have far less right to complain of harshness than now, when he is frequently tempted to hope for a light punishment, but practically receives a heavy one.

Furthermore, such a system must ere long bring to an end the very existence of skilled thieves; for as a man would, on his conviction, be sentenced to twelve months' detention, and on his third to seven years, it would be impossible that he could acquire the skill necessary for the higher branches of the art.

But, instead of reasoning on probabilities, let us look to facts. The system has been tried throughout England on a class. In 1856, it became the practice to commit all juvenile offenders on their second conviction to reformatories, and therefore to long terms of detention, almost irrespective of the magnitude of the special offence. This became, therefore, a fixed and cumulative system, well understood by the juvenile offenders, instead of an attempt at an exact retribution. What was the consequence? Juvenile crime had been steadily rising, and had reached the number of 16,981 convictions in 1856. But, in 1860, it had sank to 8029, and the worst class of boy thieves had entirely disappeared. The Judicial Statistics show that in each large town the decrease exactly followed the adoption of the fixed and cumulative system of sentences, in place of the uncertainty which had till then prevailed among boys, and still prevails among adults.

Foremost, perhaps, among remarkable instances of this, is the case of Cheltenham. For many years juvenile crime had been on the increase, and, in 1856, 53 boys were committed to prison. The magistrates then adopted the plan of sending every boy on his second conviction to a reformatory. The next year the number sank to 14; the next there were 25, then 14, and in 1860 only 13. In 1861, the magistrates reverted to their former system, and passed sentences which they believed to be proportioned to the offence. The certainty of the sentence ceased, and that year 24 were convicted, and in 1862, there were 49. In 1863, they returned to the fixed sentences for second convictions, and the number fell to 24, and in 1864 to 13. Can it be held that this was an accidental rise and fall? or are all these instances the effect of mere chance? Surely not. Let us then attempt to diminish adult, as we have already diminished juvenile crime. God forbid that we should consider the sin and suffering caused by habitual crime (putting out of sight for the moment the loss inflicted on the honest man, who is first robbed and then heavily taxed to punish the the thief) as objects unworthy of our care?—*Journal of Social Science.*

LEGISLATURES BE CAREFUL!

A question of great interest, has just been decided in the Supreme Court of the United States. The Legislature of New York, it appears, about sixty years ago incorporated a bridge company to build a bridge across the Susquehanna at Chenango Point, now Binghamton; and declared in the charter that it should not be lawful for any *person* or *persons* to erect any bridge or establish any ferry within two miles, above or below such bridge. In time "Chenango Point," having become Binghamton—a large and flourishing town—a new bridge became necessary and a new one having been authorized, by the New York Legislature, within eighty rods of the first one, the old company filed a bill to enjoin the erection; the ground of the objection being, of course, that the later act of the Legislature impaired the obligation of a contract made by the former. The court below, we believe, considered that the first charter meant only to say that *ordinary persons i.e.* in their natural capacity, should not build any second bridge within two miles; but that the first charter did not mean to impose upon the Legislature any restriction against the exercise of power by *it*. The distinction was perhaps nice. The Supreme Court, it appears, considered it more nice than sound and reversed the decree. The great question therefore, which had jurisprudence and politics—how far the Legislature at one of its sessions can surrender the sovereignty of the State so as to bind the body at all subsequent sessions—a question of great magnitude indeed—seems to be decided in favor of the right of surrender. The Supreme Court seemed to consider that if the people send incompetent or corrupt men to represent them in the Legislature, they must take the consequences and bear the penalties of their own folly; that contracts whether made by individuals or by States are of perpetual force.—*Legal Intelligencer.*

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(*Reported by* C. Robinson, Esq., Q.C, *Reporter to the Court.*

Cameron v. Gunn.

Quit claim deed—Construction and effect of.

Defendant being in possession of land, executed a deed by which, in consideration of 5s., he remised, released, and for ever quitted claim to the plaintiff, his heirs and assigns for ever, the said land, to hold to the plaintiff, his heirs and assigns, to and for his and their sole and only use for ever. The plaintiff having brought ejectment,

Held, that the deed could not operate as a release, there being no estate or possession in the plaintiff to support it, nor as a conveyance, for want of apt words; and therefore that nothing passed by it. *Nicholson* v. *Dillabough*, 21 U. C. Q. B. 594, distinguished.

[Q. B., M. T., 1865.]

Ejectment for lots numbers three and four, in the third concession of the township of Carrick. The plaintiff's notice of title was under "a deed conveying" the land, made by the defendant to the plaintiff, dated 13th February, 1865. The defendant asserted title in himself under a grant from the Crown.

The trial took place in October, 1865, at Goderich, before Richards, C. J.

The plaintiff proved the execution of a deed, dated 13th February, 1865, from defendant to the plaintiff, by which defendant, in consideration of 5s., remised, released, and for ever quitted claim to the plaintiff, his heirs and assigns for ever, the two lots mentioned in the ejectment summons, to hold to the plaintiff, his heirs and assigns, to and for his and their sole and only use for ever. This deed was duly registered, but it contained no covenants.

It was proved that the defendant had been in possession of the property in question for two years before he was served with the ejectment summons in this cause, which bore date the 4th September, 1865.

It was objected for the defendant that the deed was a mere release: that nothing passed by it, as the plaintiff was not in possession when it was executed. It did not contain the words grant, bargain, or sell.

The plaintiff obtained a verdict, leave being reserved to enter a nonsuit on the objection taken.

In Michaelmas Term, *Moss* obtained a rule on the leave reserved, calling on the plaintiff to shew cause why a nonsuit should not be entered.

Gwynne, Q. C., shewed cause, contending that by the form of the indenture, expressing that it was made upon a pecuniary consideration, the defendant was estopped from setting up a title contrary to his own deed: that the only difference between this deed and that in *Nicholson* v. *Dillabough*, 21 U. C. R. 594, was, that the latter was professedly made in pursuance of the act to facilitate the conveyance of real property, a statement not contained in the present deed.

Moss, contra.—There are no words in this deed which can pass the estate, unless the plaintiff had some sort of interest or possession upon which it could operate by way of enlargement. It could not operate as a grant, nor by estoppel. As to *Nicholson* v. *Dillabough*, the court relied on the deed being made in pursuance of the act to facilitate the conveyance of real property, and on its containing a covenant that the releasee might enter and take possession. Neither of these particulars are to be found in the deed now under consideration. *Watt* v. *Feader*, 12 U.C. C.P. 254; *Doe Connor* v. *Connor*, 6 U.C.Q.B. 298; Preston on Conveyancing, vol. i. p. 41; Sanders on Uses, 61.

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

In *Nicholson* v. *Dillabough*, taking all the deed together—1, Its being made in pursuance of the act to facilitate the conveyance of real property: 2, Its being made for a valuable money consideration, £75: 3, The habendum being to the party of the second part, and his heirs and assigns, to his and their sole use for ever: 4, Its containing a covenant that the party of the second part might enter and take possession—the Chief Justice inferred it might be treated as a bargain and sale; and Burns, J, by the reference to *Shove* v. *Pinch*, 5 T. R. 124, and to our statute 14 & 15 Vic, ch, 7, seems to imply that it may operate by way of grant.

Three of these grounds of decision are wanting in this case, the habendum being the only one of the four in which the two are alike, and that alone is not in our judgment sufficient to sustain the plaintiff's contention, and to make a dry release, founded upon a nominal pecuniary consideration, operate as effectively as a conveyance by lease and release would do.

It is necessary that the party to whom a release is made "must have some estate in possession, in deed or in law, or in reversion in deed, of the lands whereof the release is made, to be as a foundation for the release to stand upon; for a release, which must enure to enlarge an estate, cannot work without a possession joined with an estate." Shep. Touch. 324.

There being no such possession in this case the deed cannot operate as a release, and for want of apt words it cannot operate as a conveyance to pass the estate, which apt words are as necessary since as before the legislature enacted that corporeal tenements and hereditaments should, as regards the conveyancy of the immediate freehold thereof, be deemed to lie in grant as well as in livery. While fully deferring to the authority of the case of *Roe* v. *Tranmer*, 2 Wils. 75, we are compelled to hold that there are no apt words to pass the estate unless by way of release, in which mode the deed cannot operate for the reason above given.

We think, therefore, the rule must be made absolute.

Rule absolute.

The Queen v. Hogg.

Falsely personating a voter at a municipal election is not an indictable offence. Remarks as to the form of indictment in such a case.

[Q. B., M. T., 1865.]

Criminal case, reserved from the Court of General Quarter Sessions for the county of Grey held in September, 1865.

The defendant, Nicholas Hogg, was tried and convicted at the said sessions upon the following indictment:—

"The jurors for our Lady the Queen upon their oath present, that on, to wit, the third day of January, 1865, at the annual municipal election for the election of a member of the municipal council of the corporation of the township of St. Vincent, for the year aforesaid, for ward number two of the said township, holden in the said ward number two, on, to wit, the second and third days of January in the year aforesaid, and at which election two persons, name'y, Cyrus Richmond Sing and James Grier, were uly nominated for the said office of councillor for said ward number two of said township of Saint Vincent, and a poll duly demanded, Nicholas Hogg did unlawfully, wilfully, and knowingly personate and falsely assume to vote and did vote for one of the said candidates, namely, James Grier, in the name of George McVittie, whose name appears on the last revised assessment roll, being the assessment roll for the year of our Lord, 1864, of and for the said township, as a freeholder of the municipality of the said township, and who is rated on the said last revised assessment roll for real property in said ward number two, held in his own right, and whose name, with the assessed value of the real property for which he was so rated in said ward number two, appears on the proper list of voters furnished for the purposes of the said election to the returning officer for said ward for said year 1865, under section 97, sub-section 2, of chapter 54 of the Consolidated Statutes of Upper Canada."

At the close of the case for the Crown, the counsel for the prisoner asked that an acquittal should be directed, on the following grounds:

1. That there is not a statute of Canada making the personating a voter at a municipal election an offence or crime. 2. That it is not an offence at common law.

The court reserved these questions of law for the consideration of the justices of Her Majesty's Court of Queen's Bench for Upper Canada, under the authority of the statute in that behalf.

Robert A. Harrison, for the Crown, cited Russ. C. & M. II. 539; 2 East P. C. ch. 20, sec. 6, p. 1010; Dupee's Case, 2 Sess. Cas. 11; Rosc. Crim. Ev. 447; *The Queen* v. *Preston*, 21 U. C. Q B. 86.

McCarthy, contra, cited *Regina* v. *Dent*, 1 Den. C. C. 157.

Hagarty, J., delivered the judgment of the court.

It is conceded that our statute law contains no provision for the punishment of a person falsely personating a voter.

The case cited of *Regina* v. *Dent*, 1 Den. C. C. 159, is in point. *Patteson*. J., on a similar charge of fraud on the Imperial Municipal Act, decides that such a count discloses no offence at common law. "No case to maintain the affirmative was cited, nor is it believed that any such can be found. * * The analogy is all the other way."

Sec. 97, sub-sec. 9, of our Municipal Act authorises the oath to be taken by an elector that "he is the person named in the last revised assessment roll;" and sec. 428 would seem, though very loosely worded, to declare such a false statement to be perjury. It is not, however, necessary to decide this latter point.

Grave objections might be taken to the indictment before us. No averment is apparent negativing the identity of defendant with the voter suggested to be personated; and it is open, perhaps to be contended that the charge, as it reads, is for personating and voting for the candidate James Grier in the name of George McVittie, the voter whose name is on the roll, not for personating George McVittie.

We think the conviction cannot be upheld.

COMMON LAW CHAMBERS.

(*Reported by* Henry O'Brien, Esq., *Barrister-at-Law.*)

The Commercial Bank of Canada v. The Great Western Railway Company.

Discovery and inspection of documents—Lis mota.

Application by plaintiffs to inspect and take copies of documents, especially the statement made by certain accountants acting under instructions from a committee of investigation appointed by defendants to obtain information respecting certain proceedings of the managing and financial directors of the company, and to investigate the accounts and affairs of the company respecting certain transactions between these directors and the plaintiffs as to a debt due by the D. & M. R. Co., which proceedings and transactions resulted in this suit. But it appeared that no suit had been actually commenced or dispute arisen at the time this investigation was had and statement thereupon made.

Upon this ground therefore it was *held* the plaintiffs were entitled to the inspection and copies asked for.

Inspection of some other documents which were not sufficiently identified was refused.

Extent and meaning of the expression *lis mota*.

[Chambers, November 22, 1865.]

On the 6th of October, *Crooks*, Q. C., obtained a summons for the plaintiffs, calling upon the defendants to shew cause why the plaintiffs should not be at liberty to inspect and take copies of the following documents:

1. The statement of Messrs. Coleman, Turquand, Young & Co., accountants, relating to the dealings and transactions between the defendants and the Detroit & Milwaukee R. Co.

2. The letters and copies of letters to and from Messrs. Brydges and Reynolds, or either of them, and the chairman or secretary of the defendants' company, relating to the Detroit & Milwaukee R. Co.

3. The books of account and other records of defendants relating to same railway, all of which are more particularly referred to in the affidavits filed.

And also, why the defendants, by the oaths of their president, secretary, treasurer, and manager, or some or one of them, should not answer on affidavit or affidavits, what documents the defendants have in their possession or control, or in that of their attorney, or agent or agents, relating to the matters in question in this cause, or in whose custody they or any of them are; and whether the defendants object (and, if so, on what grounds) to the production of the aforesaid documents, or any of them.

The affidavit on which the summons was obtained, was made by Mr. Crooks, the agent of the plaintiffs' attorney in this cause, and having the conduct and management of the cause.

The affidavits set forth the proceedings which have been had in the cause; and also, that it will be necessary for further evidence to be de-

duced by the plaintiffs on the trial about to take place, and among other questions that will arise, will be that relating to the authority, and the extent of it, of Chas. J. Brydges and Thos. Reynolds, the managing and financial directors of the defendants' company, to act for and bind the defendants; and to the application and expenditure of certain moneys, in all about $1,250,000, directed by the shareholders of the defendants' company to be expended in the completion of the Detroit & Milwaukee R. Co.

That the plaintiffs will have to be prepared with evidence upon the questions, and to establish that other sums charged against the appropriation of $1,250,000 were not only not within but contrary to such directions, and that in fact large sums of money which should have been paid to the plaintiffs in reduction of the account, and sued for, were misappropriated and misapplied by the directors of the defendants' company to other objects and purposes than those directed by their shareholders.

That it appears from documents printed and published by the company, or their directors and agents, and especially from the report of the committee of investigation, appointed at a meeting of the shareholders of the defendants' company on the 4th of April, 1860, that certain accountants, namely, Messrs. Coleman, Torquand, Young & Co., were directed to investigate the financial affairs of the company, and amongst others, those connected with the Detroit & Milwaukee R. Co., in which are involved the matters in question in this cause; and that these accountants, after an investigation of the books and papers of the company, presented to the committee a full statement "respecting the dealings and transactions between the Great Western directors and the Detroit & Milwaukee R. Co.

That it further appears, from documents produced by the defendants at the former trial, that on the 28th of December, 1857, and on the 12th of January, 1858, Brydges and Reynolds, wrote to the chairman or secretary of the defendants' company in London, England, and therein set forth certain matters connected with their proposed operations on the Detroit & Milwaukee R. Co., which received the assent of the defendants' board, resident in England, and it also appears that Brydges and Reynolds, in their respective capacities of managing and financial directors of the defendants' company, wrote and received divers other letters to and from the chairman and secretary of the defendants', relating to the matters in question in this cause, and which letters (the deponent said) are now, he believes, on file, and in the custody of the defendants.

That the accountants examined into various books of account and other records of the defendants which contain entries and statements relating to the account sued for, and to the matters in question in this cause.

And that it is advisable and necessary the plaintiffs should inspect and be prepared to prove on their behalf at the trial, the matters contained and appearing in the said statement of the accountants, and in the said letters, books of account, and records aforesaid.

That it is believed, that besides the said statements, letters, and books of account, there are various other documents and papers in the custody of the defendants which contain matter in relation to the questions in issue, and that it is material and necessary for the plaintiffs, in order to support their claims on the trial and to prepare for such trial, to have such documents and papers, as well as the statement of the accounts, letters, books of account, and records aforesaid, produced for the inspection of the plaintiffs, their attorney or agent, and that the plaintiffs will derive material advantage and support in their case from the production of all the aforesaid documents.

And that the plaintiffs, it is believed, have just ground to maintain the action.

On behalf of the defendants, the following affidavits were made:

Thomas Muir, the accountant of the defendant, says, he is not aware the *statement* has ever been in possession of the defendants; that the accountants were sent to this Province in 1860, by certain shareholders in the defendants company, at a meeting of the shareholders, held in April, 1860, appointed as a committee to investigate the accounts and affairs of the company; and that these gentlemen were known as "The Committee of Investigation," and that they engaged Coleman, Torquand, Young & Co., known as "The Accountants," to investigate the affairs of the defendants.

These accountants having arrived in this Province, called before them the officers and clerks of the company, and obtained a very great quantity of information. The information was not imparted under oath; the accountants collected information from the books, and then returned to England, taking a great mass of papers, as well as the ledgers, journals, and minute books of the meetings of the directors.

The accountants did not confine themselves to examining the officers and clerks of the defendants, but examined persons who had formerly been connected with or in the employment of the defendants, as well as other persons, some of whom were known to be hostile to the directors and officers then governing the company's affairs.

The Committee of Investigation, on the return of the accountants to England, prepared a report upon the information which the accountants had collected in this Province, and issued the same to the shareholders, a copy of which is now shewn to the deponent, marked A, and a copy of which, the counsel for the plaintiffs had in his possession at the trial of this cause, in May, 1862.

That the statement or information made by the accountants to the Committee of Investigation has not, to the deponent's knowledge, ever been in possession of the defendants, and he thinks it has never been sent to this Province, else he would have heard of it.

That at the trial, in May, 1862, the deponent stated he had no detailed statement of the manner in which the account of the loans made by the defendants to the D. & M. R. Co. had been spent, save as appeared by a synopsis of the said accounts which he then had, and at that time produced in court.

That at the time of the trial, the ledger from which the synopsis of the said account had been extracted was in England, having been taken there in 1860, by the accountants, and was not

returned from England to my custody, till long after the trial.

That the ledger does not show any different account than that which is contained in the synopsis thereof before mentioned as produced in court.

And that there are not, and never were any entries in this ledger involving any amount in excess of the loans of £250,000 sterling made by the defendants to the Detroit & Milwaukee R. Co.

And the ledger will not, of itself, show the payments made by the secretary of the defendants in England on behalf of the Detroit & Milwaukee R Co., more than by a general statement to that effect.

Mr. Irving, the attorney on record for the defendants, stated that, in April, 1862, the plaintiffs, after issue joined, obtained a summons from the present Chief Justice of Upper Canada, calling on the defendants to shew cause why the plaintiffs should not be at liberty to inspect and make copies of all books, and entries therein, all documents, letters and writings in the custody or control of the defendants, touching the matters in question in this cause; but that upon the return of the summons, the Chief Justice declined to make the order, and discharged the summons.

That on the 5th of May, 1862, the defendants obtained from the then Chief Justice of Upper Canada (McLean), a summons calling on the plaintiffs to shew cause why the defendants should not have leave to inspect certain books and letters which passed between the officers of the plaintiffs. Upon the return of this summons, the Chief Justice declined to make the order asked for in respect of the inspection of the letters, but granted an order so far as the minute books of the directors' meetings of the plaintiffs was affected by the application.

On the 11th October, *Irving* Q. C., and *Anderson*, with him, shewed cause. The application of the plaintiffs was not warranted by the authorities: it was more in the nature of an attempt to investigate the defendants' case than for the purpose of maintaining their own; it was also an attempt to discover confidential and privileged communications between different branches and members of the defendants' own company, and it might be said that no suit was then actually pending, that these were propositions made with the view of probable and expected litigation.

Crooks, Q. C., contra.

The proposition was clearly for the plaintiffs' own use and benefit, to enable them to maintain their own rights. There was no such privilege, as that alleged, and as to the apprehended litigation, there was neither *lis pendens* nor *lis mota*. *Chartered Bank of India &c.* v. *Rich*, 4 B. & S. 73; *Colman* v. *Trueman*, 3 H. & N. 871; *Walsham* v. *Stainton*, 2 Hem. & Mil. 1; 9 L. T. N. S. 603; *Woolley* v. *Pole*, 14 C. B. N. S. 538.

Adam Wilson, J.—This application is made under sections 189 and 197 of the C. L P. Act, to inspect and take copies of documents, and to have the defendants state on oath what documents they have in their possession or control relating to the matters in dispute.

This power, with respect to the inspection and taking copies and documents, "is to be exercised in all cases in which previous to that act a discovery might have been obtained by bill or other proceeding in equity." The general rule is thus stated, in *Flight* v. *Robinson*, 8 Beav. 22; S. C., 8 Jur. 888, by Lord Langdale, M. R. "According to the general rule, which, as I apprehend, has always prevailed in this court, every defendant is bound to discover all the facts within his knowledge, and to produce all documents in his possession which are material to the case of the plaintiff. However disagreeable it may be to make the disclosure, however contrary to his personal interest, however fatal to the claim upon which he may have insisted, he is required and compelled, under the most solemn sanction, to set forth all he knows, believes, or thinks in relation to the matters in question; and the plaintiff being subject to the like obligation on the request of the defendants in a cross bill, the greater security which the nature of the case is supposed to admit of is afforded for the discovery of all relevant truths, and by means of such discovery, this court, notwithstanding its very imperfect mode of examining, has at all times proved to be of transcendent utility in the administration of justice."

The Master of the Rolls, in a subsequent part of his judgment, in referring to privileged communications, laid down this rule: "I am, therefore, not to order the defendants to produce documents which are properly to be considered as confidential communications made between solicitor and client, acting merely in the relation of solicitor and client, and which took place either in the progress of the suit or with reference to the suit previously to its commencement," and accordingly he directed confidential communications which passed between the attorney and counsel and client, but which did not take place either in the progress of the suit, or with reference to the suit previously to its commencement to be produced. These communications passed between the assignees of an insolvent and their professional advisers *before the sale* of the estate, at which Flight, the party seeking the discovery, became the purchaser. These documents were permitted so far, that the attorney would not have been permitted to disclose them, "but they were not so privileged as to protect the defendants themselves from discovering them in answer to the plaintiff's bill."

The steps taken by the defendants, to clear up the objections of the plaintiff taken to the defendant's acts "were considered as communications with reference to the dispute which resulted in the present investigation," and therefore privileged.

So the plaintiff is entitled not only to a discovery of what constitutes his own title, but also of what may enable him to repel the anticipated defence; he has also the right to know what the defendants' *case* is, but he cannot ask the defendants *how* he makes his case out, or by *what evidence* he proves it. *The Attorney-General* v. *The Corporation of London*, 2 M. & G., 247; S. C., 14 Jur. 205; *Hunt* v. *Hewitt*, 7 Exch. 236, 244.

In the case of *The Chartered Bank of India* v. *Rich*, 4 B. & S. 73, it was held that the defendant, who had been the agent of the plaintiffs at Bombay, was not entitled to a dis-

covery of communications between the head office of the bank in London and their officers at Bombay, not forming part of the *res gestæ*, but written after the defendant had left the service of the bank, and after the dispute had arisen, to enable the bank to decide as to the mode of proceeding against the defendant, several of them having been written under the immediate direction and advice of the attorney of the plaintiffs, and some of such documents being the reports of the officers of the banks and replies specifying the evidence which could be adduced in Bombay to prove the defendant's breaches of contract complained of, because it was confidential. So also in *Walsham* v. *Stainton*, 9 L. T. N. S., 603, the reports of one accountant, employed by the defendant's solicitor to investigate books, were held to be privileged. Wood, V. C., said: "The accountant's work, he being employed by the solicitor, was just as much privileged as the work of the attorney himself. In such a case, the expert was *pro hac vice* the clerk of the attorney, and the report was to *form part of the instructions for the answer.*"

Counsels' briefs, so far as they are copies of the proceedings, may be inspected; but as to the observations on the briefs intended for counsels' use, and their marginal notes, and even interlineations pointing out those parts of the case on which the defence might rely, those also ought to be protected.

In *Woolley* v. *Pole*, 14 C. B., N.S., 538, the court, in an action on a fire policy, made an order for the production of the communications which passed between the company and their agent by whom the insurance was effected, and between the company and other offices which shared the risk relative to the value and existence of the property about to be insured, but it refused to allow the plaintiff to inspect the reports and list of salvage made out for the company by their own officers. Erle, C. J., said:—"The office having already offered the plaintiff every facility to examine and make the most of the salvage of the ruins of the fire for himself, the plaintiff has no right to see these reports—that which will form the brief of the defence."

In *Colman* v. *Trueman*, 3 H. & N. 871, an order was held to have been rightly made for the inspection of correspondence between the plaintiffs, who sued for not accepting goods, and the consignors of the goods, and between the plaintiffs and their broker, after the contract and the alleged breach of it, to which action the defendant pleaded fraud. Pollock, C. B., said:—"It would be monstrous if an attorney could not write to a stranger for information respecting the suit, without being liable to have his correspondence called for; but certainly the correspondence amongst the parties themselves, or between them and their agent has been ordered to be produced. In my opinion, there is no reasonable ground for any distinction between such correspondence before the contract and after the alleged breach of contract. In equity, a defendant may obtain inspection down to the time when his answer is filed, and there is no reason why the same rule should not apply here." Watson, B., said:—If the plaintiffs have committed a fraud, and have written on the subject among themselves or to their agents, there is no reason why the correspondence should not be produced." (See this case explained per Blackburne J., in 4 B. & S. 84.)

It is said, that the true extent and meaning of *lis mota* is, that "there must not be merely facts which may lead to a dispute, but a *lis mota* or suit or controversy preparatory to a suit actually commenced or dispute arisen, and that upon the very same pedigree or subject matter which constitutes the matter in litigation." *Davies* v. *Lowndes*, 6 M. & G. 528.

The commencement of the controversy, and not of the retention from which it springs, is the commencement of the *lis mota*, and terminates the admissibility of a family declaration. There must be more than the existence of facts on which the claim is founded, or even of litigation on kindred matters, there must have been a controversy in respect of the very point in dispute as to which the evidence is tendered. *Shedden* v. *Patrick*, 3 L. T. N. S. 592.

The privilege as between attorney and client applies to all communications, whether pending and with reference to litigation, or made before litigation and with reference thereto, or made after the dispute, followed by litigation, though not in contemplation of it with reference to that litigation. 1 Tayl. on Ev., 4th Ed. 799. But correspondence between attorney and client, *before any dispute* has arisen between the client and his opponent, is not privileged, p. 800.

In this particular case, the statement of the accountants, made in the year 1860, before there was any dispute or controversy between the plaintiffs and the defendants with respect to the subject of this statement, I do not think to be in any degree privileged as against the claim of these plaintiffs. The accountants were investigating the affairs of the defendants' company for the purpose of enabling the company to determine what they should do with respect to the matters connected with these transaction by or on behalf of the Detroit & Milwaukee R. Co. They had not then come to any decision on these affairs one way or the other. They did not really know what had in fact taken place, and they wished to be informed respecting it, and whether the result of that investigation would lead the defendants to adopt all that Brydges and Reynolds had done in the Province, and which it was contended by the plaintiffs, bound and implicated the defendants, or to repudiate, or at any rate dispute what they had done, or any particular portion of it; it was simply an inquisition or investigation they were holding for the purposes of informing themselves of what had been done, and with no determined object beyond that, none so far as I can see, with respect to any dispute or controversy with the plaintiffs, in any way whatever.

The passage on the argument, referred to in the report on page 6, fully confirms this view of this particular proceeding and procedure. The committee say, "there have been some transactions in Canada of a very unsatisfactory description between Messrs. Brydges and Reynolds and the Commercial Bank of Canada, respecting a large debt due to the bank by the Detroit & Milwaukee R. Co.; and whether or no the Great

Western shareholders will suffer further by the unauthorized acts of these gentlemen in respect of such transactions, the committee are not yet in a position to determine; it is a matter which will require serious consideration."

I am of opinion, upon the authorities above stated, that the plaintiffs are entitled to an inspection and copy of the statement, because no suit had actually commenced nor dispute arisen at this time connected with the subjects of the statement. This document is somewhat like the salvage in *Woolley* v. *Pole*, because it is the material from which the report was made, and inspection was not refused of it in that case.

Then with respect to the letters and copies of letters to and from Brydges and Reynolds, or either of them, and the chairman or secretary of the defendants' company, relating to the Detroit & Milwaukee R. Co., the cases in 4 B. & S. 73, 9 L. T. N. S. 603, and 3 H. & N. 871, justify the right to inspect and have copies of these letters, so long as they were written before suit or dispute or controversy had commenced. The case of *Woolley* v. *Pole*, is not against the direction, because the reports and lists of salvage there made, were made for the special purpose of checking the plaintiff's demand upon the policy, and with a view to probable controversy or litigation between them; and it would have been destructive to the defence in the cause, without being properly serviceable to the plaintiff, to have compelled the defendant to discover to him the information which had been procured to counteract any attempt he might make to obtain more than was due to him.

The books of account of the defendants relating to the matters involved in this suit may also be inspected, but I ought not to make an order for the inspection of the "other records" of the defendants relating to the Detroit & Milwaukee R. Co, as they have not been sufficiently pointed out or identified in the affidavit filed for the plaintiffs. *Thompson* v. *Robison*, 2 H. & N. 412; *Hunt* v. *Hewitt*, 7 Exch. 236.

I must add on this application, as I did on the one lately made in this cause, that as I was one of the counsel for the plaintiffs at the commencement of this litigation, I ought to reserve to the defendants the right to apply to any other judge to modify or rescind any order, for it unfortunately so happens that these applications should have to be made to me, as the only Judge in Chambers at the present time.*

The order, therefore, will go to the extent I have stated.

THE COMMERCIAL BANK OF CANADA v. THE GREAT WESTERN RAILWAY CO.

Adding pleas after new trial ordered—Never indebted—Plea calculated to embarrass plaintiffs.

The defendants, after an appeal to the Court of Error and Appeal in this country, and to the Judicial Committee of the Privy Council, and after a new trial had been ordered, applied to add to their plea of never indebted a plea of payment and a special plea.

Held, that for the purposes of the application the case must be considered as though awaiting trial for the first time. That the plea of payment ought clearly to be allowed, but that the special plea was calculated to embarrass the plaintiffs unnecessarily, and if a defence at all, was covered by the plea of never indebted.

[Chambers, October 8, 1865.]

The defendants obtained a summons calling on the plaintiffs to shew cause why they should not have leave to amend their pleadings by adding to the plea of never indebted, a plea of payment, and a special plea, the effect of which is sufficiently stated in the judgment.

Crooks, Q. C. shewed cause.

The plea of payment should not be allowed to be added now after the trial that has taken place, and after the appeal to the Court of Error and Appeal in this country, and subsequently to the Judicial Committee of the Privy Council.

And as to the last proposed plea it should not be allowed to be pleaded at all, because it amounts to never indebted—it would be needlessly embarrassing to the plaintiffs, and it is bad in law.

M. C. Cameron, Q. C., in support of the application.

The plea of payment should be allowed to be added at any time, and the amendment sought for must be considered as if no trial had ever taken place or the proceedings in appeal been had which have been referred to—it is a proper, fair and reasonable plea.

And as to the last plea it did not amount to never indebted only, and the defendants conceived it to be absolutely necessary to be added for the purposes of a full and efficient defence upon the facts and law.

ADAM WILSON, J.—I think the case must be considered for the purposes of this application, as if the case were now awaiting trial for the first time; and I think the plea of payment being a plea which the defendants might in the first instance have pleaded without the order of a judge, and being a plea almost of course, when a defence is intended in such an action as the present, and as it cannot have the slightest tendency to delay or embarrass the plaintiffs, but may be of very great advantage, and perhaps of absolute necessity to the defendants, I feel no difficulty in permitting it to be added as I intimated in the course of the argument.

The third plea I should also allow for the same reasons, and particularly in so important an action as the present, where the plea is desired *bonâ fide* for the purposes of defence, and not with the view of embarrassing the plaintiffs. If I were of the opinion that it was of any service to the defendants, or that the defence sought to be made under it were not already secured by the plea of never indebted, or that the plea would not be embarrassing to the plaintiffs, but I am of opinion the plea should not be allowed for all of these reasons.

The statement in the proposed plea, that the defendants are an incorporated railway company with power to lend and advance its funds for the purposes alleged, to such an amount only as should be approved of by a vote of two-thirds of the shareholders of the Co., is not of much consequence in itself; as to that amount it certainly is the fact, but it indicates what afterwards appears, that, as to all beyond that amount, the defendants mean to assert they had no kind of authority to lend and advance their funds for such purposes for want of the necessary formalities which the statute required.

* On appeal to the full Court the decision of the learned Judge was sustained.—EDS. L. J.

I do not attribute much weight to the expression of lending and advancing its funds, although the defendants do probably intend to raise the question, as they did before, that this power conferred upon them no right or authority to borrow money for the purposes in question, and that borrowing money was not properly a lending of their own funds, for it appears to me that however the defendants procured the money, whether by accumulation or by borrowing was of no consequence, the money when once raised or procured by them was money which composed a part of their own funds.

Then the plea states that the money sought to be recovered is for money lent and advanced by the plaintiffs for the purposes of the Detroit and Milwaukee Railway Co., and which were expended on that railway, and not upon the defendants railway, nor for the purposes of the defendants railway.

This is an allegation that the money having been lent by the plaintiffs for the Detroit and Milwaukee Railway Co., was not money lent and advanced by the defendants to the company under the statute, and that it was not lent by the plaintiffs to the defendants, but to the Detroit and Milwaukee Railway Co.

The plea then proceeds to state, that the defendants have fully paid to and expended on account of the Detroit and Milwaukee Railway the full amount of the £250,000 sterling so authorized to be loaned by the shareholders of the defendants company.

The defendants here do not admit that they ever received one farthing of this money from the plaintiffs, and yet it may be for all the plea shows to the contrary, that they did receive it from the plaintiffs, although they may mean to assert, that although they did receive it in fact they did not lawfully receive it; or it may be that they did receive it lawfully from the plaintiffs, but that they claim to be exempted from liability on account of it, because they did afterwards exceed their powers by laying out £250,000 which they did not get from the plaintiffs; or it may be that the very money which they paid to and expended on account of the Detroit and Milwaukee Railway Co, and the money they had received from the plaintiffs for that purpose; but if this be so, still they ought to repay the plaintiffs the amount of such money, although they did pay it and expended it on account of this other railway company.

If this were the defendants own money, or if at any rate it were not and never had been the money of the plaintiffs, it is the plainest imaginable case of a defence arising under the plea of never indebted; and if it were the plaintiffs money it should have been admitted, and some reason given why, notwithstanding this, the defendants should not nevertheless be liable.

The plea then adds: and any monies the plaintiffs may recover in this action will subject the defendants to a liability in excess of the legal and authorized powers of the defendants to increase, and cause the defendants to pay a greater sum than £250,000.

This portion of the plea denies the right of the plaintiffs to recover any money at all in this action, because it will be in excess of the £250,000, and yet the plea gives no answer, so far as the plaintiffs are concerned, to the £250,000. That the defendants paid it to the Detroit and Milwaukee Railway Co. is no reason why the plaintiffs should not be paid that amount if it be the plaintiffs money, and if it be not the plaintiffs money that fact should be distinctly stated.

The conclusion of the plea is, that the said excess was not in any manner authorised by the defendants under their corporate seal, which is again an allegation of *ultra vires*, and which is meant by the plea of never indebted, although it may be the subject of a special plea; but it still leaves it in doubt whether the defendants mean to give any answer to the £250,000 or only to the excess.

In whichever way this proposed plea can be viewed it appears to me to present a defence—if any sensible or certain defence can be extracted from it—which amounts to never indebted; but it is framed so as not to admit any claim of the plaintiffs to the £250,000, and to deny their right to the excess, and yet not to give any answer, or any proper answer, as to the £250,000. It is calculated also, although no doubt not intentionally, to embarrass the plaintiffs in their pleading.

If such a plea had been presented to me in an ordinary action instead of in one of the great consequence which this is—I should not, although it was very strongly pressed upon me as a good and proper plea in law, or at any rate as a proper, reasonable and arguable plea—have taken time to consider its sufficiency or propriety; for it is not often I have seen one which in my opinion can be so little defended.

I have no doubt whatever that the plea should not be allowed, and I have as little doubt that the defendants will lose no advantage by its not being pleaded; but I feel, as I had a retainer for the plaintiffs in this cause while I was at the bar, that the defendants should not be precluded from renewing their application to another judge to be allowed to plead this plea if they shall be so advised.

The order therefore will be, that the defendants be allowed to plead the plea of payment, but not the other plea.

McDonagh et al. v. Provincial Insurance Co.

Changing venue—Newspaper articles prejudicing mind of public—Delay in making application.

On an application to change the venue in an action against an insurance company, it appeared that the plaintiffs' claim had been much discussed, and the conduct of the defendants severely remarked upon in newspapers in the county, and in the vicinity of the county in which the venue was laid. This was considered a sufficient reason (upon the facts as proved) for granting a change of venue—but *held* that, as the defendants had unnecessarily delayed for several weeks in making their application, only making it a few days before the commission day of the assizes, the summons must be discharged, but without costs.

[Chambers, October 23, 1865.]

The defendants obtained a summons calling on the plaintiffs to shew cause why the venue should not be changed from the county of Middlesex to the county of the City of Toronto, or elsewhere, on the ground that a fair and impartial trial cannot be had in Middlesex, and on grounds disclosed in affidavits and papers filed.

Among the papers filed was a pamphlet published by the plaintiffs containing the evidence and proceedings of a trial of the action of the plaintiffs against the Royal Insurance Company, being one of a number of actions which the plaintiffs had brought, including the present one, against insurance companies for losses which they had sustained at the same fire, and which affected all these companies. This pamphlet, which was published immediately after the trial in last spring, was prefaced with some observations which the defendants assert reflect injuriously upon them and upon the other insurance companies; and, as they have been widely dispersed, that the effect of this publication is to prejudice their defence, and to prevent them from having a fair and impartial trial in that locality. The defendants also say the plaintiffs have through the public newspapers circulated matters of the same tendency and character, and that the venue should therefore be changed.

Several affidavits were filed.

M. C. Cameron, Q.C., shewed cause.

Hon. J. H. Cameron, Q.C., supported the summons.

Adam Wilson, J.—The preface to the pamphlet gives the plaintiffs' version of the story with respect to the extent of their business before the fire, and the value of their stock at the time of the fire. They speak of the cruel nature of "the attempts made by the insurance companies to blast the characters of the plaintiffs, and to defraud them of the amounts due to them." They speak of insurance companies taking advantage of the conditions of their policies, as "deserving public condemnation;" "that such conduct was a mere subterfuge to avoid payment of the loss;" that the insurance companies have no doubt since learned the plaintiffs were not to be "tricked out of their insurance;" that the companies held an investigation not for the purpose of bringing about a settlement, but for the purpose of finding out by what means they could "shirk their responsibility to the insured;" that the companies at the last trial made "a most trumpery defence."

And they say a great deal more of the same nature, the substance and intent of it being an argument for the plaintiff against the defendants in which, as is usual in such a case, the advocate makes as strong a case as he can for himself, and as bad a one as he can for his opponent, in which he attributes motives very freely, but all the bad motives are put against his opponent, and in which he assigns some praise, but he reserves that entirely for himself.

The account of the evidence may be quite correct, but the observations superadded to it are the voluntary work and contribution of the plaintiff.

The plaintiff Kent in his affidavit states "that very few of the pamphlets have been circulated in London and in the county of Middlesex, and most of them have been circulated at a distance from the county of Middlesex; and I say that I refrained from circulating them in London and in Middlesex in order that the defendants in this and in the other causes might not have any reason to complain of the jurors of the said county being prejudiced or biased thereby."

The plaintiffs by affidavits put in assert that a fair trial can be had in Middlesex, but they have not satisfactorily denied the statement in the defendants' affidavits that "the plaintiffs through the different newspapers published at London and other places, have endeavoured to prejudice the minds of the public in London and in the county of Middlesex against the defendants, by frequent articles therein to their preju lice, and in favour of the plaintiffs * * * and that they have thereby purposely caused such a prejudice to be raised in the city and county against the defendants and the other companies. and such a bias in favour of the plaintiffs," that a fair and impartial trial cannot be had therein so far as the defendants are concerned; and this is sworn to by five persons.

Two newspapers (London *Prototype*) have been filed, one of the 27th of July, the other of the 31st of August last.

In the first of these papers it is said—

"Already some twenty newspapers have given their views freely on the result of this trial, *and when such an influence is brought to bear* on the question, who can doubt its ultimate termination."

There are very lengthy quotations then made from the Brantford *Courier*, the Woodstock *Times*, the Quebec *News*, the St. Mary's *Standard*, the Ingersoll *Chronicle*, and in one of these articles it is stated that if the defendants in the former action should obtain a new trial "we hope the jury will take a proper and enlightened view of the subject, *and follow in the path of their predecessors.*"

The paper of the later date publishes comments made by the Stratford *Examiner* and the Guelph *Advertiser*. They are all of the same tenor, approving of the whole conduct and proceedings of the plaintiffs, and condemning the whole conduct and proceedings of the insurance companies.

The plaintiff McDonagh, with reference to the newspaper publications, states that "I have not, either before or since the last trial, through the newspapers published in London, or in any other way whatever, endeavoured to prejudice the minds of the public in London in favour of the plaintiffs or against the defendants, in reference to the matters in question in this cause."

He ought to have answered whether he had or had not published or procured the matters in these two papers to be published, which are put in as specimens of the nature of the publications which have been made from time to time. He was present at the argument on the 21st instant before me, and might have answered it if he pleased. It may be he did not endeavour to prejudice the public mind, but if he caused these publications to be made, I and not he should have to make the inference from the publication. It is therefore his direct answer that is required, and not the opinion he has formed concerning it.

The other plaintiff, Kent, has answered in precisely the same manner, and as he states that the pamphlet contains "only a just and fair report of the case * * and was not intended to prejudice the defendants on the trial of this cause," it shows the necessity of particular facts being answered, instead of these facts being given in their place.

This is an action of that importance which justifies an application of this kind being made. There is here the "*dignus vindice nodus*," mentioned by Lord Mansfield, C. J., in *Loff* v. ——

——— 50. And there is here that strong reason to believe that the case cannot be impartially tried in the county of Middlesex, where the plaintiffs reside, and where all these publications have been made, part of which is admitted by the plaintiffs to have been made directly by themselves, and the rest of which they have not satisfactorily denied.

In *Walker* v. *Ridgway*, 11 Moore, 486, the venue was changed, when a new trial had been ordered, because *anonymous* letters had been inserted in the newspapers of the county, where the cause had been first tried, reflecting on the character of the plaintiff. *Pybus* v. *Scudamore*, 7 Scott, 125.

I should have changed the venue in this and the other causes, if the application had been more promptly made, and there is no reason why it should not have been made several weeks since, for all of these publications had been made, and were well known to the defendants more than two months ago. The explanation of the defendants is that negotiations were pending for a settlement until within the last few days, when it finally fell through; but this the plaintiffs deny, and the correspondence which was had in May, and upon which nothing more was done by the defendants until the 14th of the present month, are more in accordance with the plaintiffs' allegation that the former proposal for a settlement was completely determined, and no negotiations whatever were pending, as the defendants have alleged; although it is true the defendants made a fresh proposal a few days ago, which the plaintiffs immediately declined to accept.

As this is now the 23rd of October, and the Middlesex assizes begin to-morrow, and as the defendants did not apply for a change of venue until the 19th instant, and there was no reason whatever for their not making a much earlier application, I feel obliged to discharge the summons, which I do with some regret, for I feel the defendants will not have an impartial trial in Middlesex, and that the cause of that is to be attributed chiefly, if not wholly, to the plaintiffs themselves.

Perdue v. The Corporation of the Township of Chinguacousy.

24 Vic., cap. 53—Change of Venue—Local action.

In an action for trespass to the realty situate in the County of Peel, the venue was laid in the County of the City of Toronto. An application to change the venue to the former county was refused.

Quære, is the common affidavit sufficient in such case.

[Chambers, Oct. 17, 1865.]

Jas. Patterson obtained a summons on behalf of the defendant, calling on the plaintiff to shew cause why the venue in this cause should not be changed from the County of the City of Toronto to the County of Peel, one of the United Counties of York and Peel.

The cause of action was, that the defendant cut a ditch in the highway near to the plaintiff's land, and dammed the water back upon the plaintiff's land.

The defendants pleaded several pleas, and among them one denying that notice of action had been given one month before action.

Harman showed cause, and contended that even if this be considered a local action, the venue is nevertheless rightly laid in the City of Toronto, according to the decision of *Paton* v. *Cameron* 21 U. C. Q. B. 364.

Jas. Patterson, contra.

This action is a local action strictly, and the 24 Vic. cap. 53, although giving an election to the plaintiff to lay the venue in either place in ordinary local actions, does but give this right of election in actions which by the Con. Stat. of Upper Canada, cap. 126, must be laid in the county where the act complained of was committed, and which if not laid there was an express ground of nonsuit; and that as there was conflicting decisions between the Q. B. and C. P. as to the Municipal Corporations being or not being entitled to notice of action under cap. 126 just referred to, it was better to move to change the venue than to rely upon moving for a nonsuit.

Adam Wilson, J.—I think the plaintiff had the right to lay his venue in the county of the city, even if this be considered as an action having locality actually in the County of Peel, for by the 24 Vic. cap. 53, the plaintiff had the right to elect in which county he would lay the venue.

This however, does not determine the question of this action being a local one or not, and it is not at all necessary I should decide whether it is so or not. If it be a local action, and if the plaintiff had no right to lay his venue in the City as he has laid it, the plaintiff may be nonsuited under cap. 126. If he had the right to lay it in the city, as I think he had, I ought not to change it upon the common affidavit, if it be a local action in the ordinary sense of the term; but, although if it be a local action, I am inclined to think that under the peculiar provisions of the 24 Vic. cap. 53, the venue may be changed from the county, to which the locality does not really apply, into the county in which the locality in point of fact exists, for in such a case, the general rule against changing the venue in a local action does not apply. I expressed this opinion lately in a case of *Anderson* v. *Brown*, and I still entertain the same opinion. Upon a special affidavit, however, the venue might be changed, according to my construction of this act.

If this however, be a transitory action, why should the venue be changed? the place of trial is the same in both counties. The time of trial may be a matter of consequence, and the fact that a different class of jurors is usually found in the one place from that which is found in the other may be a reason why the venue may be changed also in transitory actions, from the one of these counties into the other.

I rather think, the common affidavit is not the proper affidavit, either in a local or in a transitory action, when the purpose is to change the venue from the city to the county or the contrary.

It appears that there is no difference between an action local in its nature—as ejectment and trespass to the realty, and an action to which

locality is affixed by statute—as an action against a Justice of the Peace, *Greenhow* v. *Parker*, 31 L. J. Exch. 4; 6 H. & N. 882.

Summons discharged, costs to be costs in the cause.

Jones v. Hewson.

Reference to arbitration to increase or reduce verdict, with power to Judge in Chambers to certify for costs—Full costs—Unliquidated damages—Arbitrator's duty.

Where transactions amounted to about $1,100 on one side, and to about $800 on the other, and on which defendant paid into Court $176, and plaintiff recovered $102.30 by the award of the arbitrator to whom the dispute was referred, *Held*, that full costs should be allowed to the plaintiff.

Remarks upon the inconvenience and loss occasioned by the neglect of arbitrators to dispose finally of the matters referred to them.

[Chambers, December 20, 1865.]

The plaintiff obtained a summons calling on the defendant to show cause why the Judge in Chambers should not grant a certificate or order allowing to the plaintiff full costs to be taxed in this cause.

The declaration was on the common money counts in assumpsit, and the pleas were

1. Payment into Court of $176 in full of the plaintiff's demand; 2. As to residue never indebted; 3. Set-off. Issues thereon.

The record was entered for trial at the last Spring Simcoe Assizes, when it was agreed that a verdict should be taken for the plaintiff for $500 subject to be increased or reduced, or a verdict or nonsuit entered for the defendant.

The order of reference provides that the costs of the cause shall abide the event of the award or certificate, and the costs of the reference and award or certificate shall be in the discretion of the arbitrator; and it is likewise ordered that the plaintiff, if necessary, shall be at liberty to apply to a Judge in Chambers for a certificate for costs on affidavit.

The award was made reducing the damages for the plaintiff to $102.30, and directing the defendant to pay his own and the plaintiff's costs of the reference, and that the defendant shall pay the costs of the award.

The arbitrator made affidavit that he made his award giving full costs to the plaintiff as he believed, and that plaintiff's demand was unliquidated, and that he would have given a certificate, but he did not do so because he thought none was necessary.

Other affidavits were also filed, to show that the demand was unliquidated.

For the defendant an affidavit was put in explaining that the order of reference was never examined because it was believed it was in accordance with the consent to refer endorsed on the record, and it was not known to the defendant that it was in it until about a fortnight ago, and that the demand was of that nature that full costs should not be awarded upon it.

The plaintiff also filed an affidavit in which Mr. Boys, partner of the plaintiff's attorney, said "at the time the minutes (endorsed on the record) were drawn up by Mr. McCarthy, who was acting as counsel for the defendant, I verily believe that neither Mr. McCarthy, nor myself, who was acting as counsel for the plaintiff, had any thought about either inserting or leaving out such a clause."

McCarthy shewed cause, and cited *Kemp* v. *Hammond*, 9 U. C. L. J. 157; *Smith et al.* v. *Forbes*, 8 U. C. L. J. 72; *Spain* v. *Cadell*, 8 M. & W. 129; *Calder* v. *Gilbert*, 9 U. C. L. J. 213; *Bury* v. *Dunn*, 1 D. & L. 141.

Scott supported the summons.

Adam Wilson, J.—I must take it that the clause as to applying to a Judge in Chambers was rightly inserted. It may be the defendant's attorney did not observe it in the reference, but I cannot imagine any reason for considering it prejudicial to the defendant, and I have no doubt if he had seen it he would not have objected to it any more than to the power which he consented to give to the arbitrator over the costs. The question now is not altogether between the plaintiff and the defendant. The question rather is with the arbitrator. He knew nothing of this supposed difficulty, and he may have been misled by its being there, and so not have adjudicated upon the costs, preferring to have it determined by the Judge in Chambers.

I must therefore act upon the clause being rightly there, and proceed as if the arbitrator had purposely forborne to exercise the power he had as to the costs, and as if it had been reserved for and referred to the Judge in Chambers.

The question then, is the plaintiff entitled to a certificate for full costs.

He has a verdict for $102.30 beyond the $176 which was paid into Court. For the purpose of the question the demand must be regarded positively to have been for $278.20.

The cause of action arose upon a written agreement dated the 31st of January, 1864, made between the parties, by which the defendant was to cut into lumber of particular kinds all the logs then at the defendant's mill from the date of the agreement till the first of the following August, and to deliver the same loaded on the cars at the Barrie station, not later than the 15th of August; and by which the plaintiff was to pay for the same monthly, upon inspection, certain prices per thousand feet, according to the quality.

And also upon another agreement in writing dated the 12th of April, 1864, by which the defendant sold to the plaintiff all the sound merchantable lumber then piled at the switch near Barrie station, and also that then at the defendant's mill in Innisfil, except such as had been cut into 3-inch planks at $6 per thousand, which the defendant should have manufactured by the 15th of May following, and to be delivered by the defendant piled at the switch convenient for loading on the cars not later than the 20th of May aforesaid, and by which the plaintiff was to pay $100 on the day of the agreement, $100 in one week after, and the balance on delivery.

And also on another contract in writing by which the defendant sold to the plaintiff certain common and clear lumber at the defendant's mill, supposed to contain about 100 feet, to be delivered at the railway station, well piled and shipped, at $9 per thousand, payable when measured.

On some of the advances the defendant was to pay interest at ten per cent.

The plaintiff paid altogether	$1,078 17
And he received in lumber altogether.	794 53
Leaving as over payments	$283 64
And if interest be added	41 17
The total claim will be	$324 81

There was a dispute upon the first contract as to the differences between 70,300 feet and 60,707 feet or 9,593 feet, equal to $96.81, which the plaintiff said had been overpaid.

I cannot make out clearly from the evidence what the differences were on the other two contracts, but I make out very clearly that while the payments were not, and perhaps could not have been disputed, that the amount of the lumber delivered by the defendant and received by the plaintiff was disputed. The measurements were what was in dispute.

I cannot, therefore, say that open transactions amounting to about $1,100 on one side, and to about $800 on the other, and upon which the defendant paid into Court $176, as all that he thought was due, while the plaintiff had recovered $102.30 over above that sum, which he claimed to be due to him, show that "the amount was liquidated or ascertained by the act of the parties, or by the signature of the defendant."

I shall therefore make an order for the allowance of full costs to the plaintiff. I hope hereafter that arbitrators will complete their own business by finally disposing of the costs, as well as the other matters in difference, instead of forgetting them or leaving them to the judges to close up for them, which they can only do at a great loss of time and much inconvenience, as they have to learn the whole history of the case, which is almost equal to a trial, while the arbitrator has the full knowledge of the facts.

Order for full costs.

UNITED STATES REPORTS.

SUPREME COURT OF MICHIGAN.

From the American Law Register.

Amperse et al. v. Burdeno.

Under statutes giving power to a married woman to enjoy, contract, sell, transfer, convey, devise, or bequeath her property, in the same manner and with like effect as if she were unmarried, a husband can convey real estate to his wife by deed directly, without the intervention of a trustee.

The opinion of the court was delivered by

Campbell J.—Burdeno sued plaintiffs in error in trespass for alleged wrongful acts upon his freehold, being land covered by water. The suit was for treble damages to Burdeno, as proprietor of the land, the statutory action not lying for mere possession: *Achey* v. *Hull*, 7 Mich. R. 423. Defendants offered to show that Burdeno had, in September 1861, conveyed the property by deed to his wife, Victoria Burdeno. This deed was objected to as invalid, because of the relation of the parties; and the court below sustained the objection, and rejected the evidence.

The question is presented, therefore, whether, as our laws now stand, a deed can be made by a husband to his wife. To determine this question, we must see how their relations were governed, in this respect, before our present system was introduced.

The effect of marriage was to produce what is called in the law books *unity of person*; the husband and wife being but one person in the law: Co. Litt. 112 a; 1 Bl. Comm. 442. The wife, by her coverture, ceased to have control of her actions or her property, which became subject to the control of her husband, who alone was entitled, during the marriage, to enjoy the possession of her lands, and who became owner of her goods and might sue for her demands. The wife could neither possess nor manage property in her own right, could make no contract of a personal nature which would bind her, and could bring no suit in her own name. In short, she lost entirely all the legal incidents attaching to a person acting in her own right. The husband alone remained *sui juris*, as fully as before marriage.

It followed from this legal merger by coverture into a single personality, that the husband could make no grant to the wife, and the wife could make none to the husband. And furthermore, a grant to her by her husband, of a freehold, would be, in effect, a grant to take effect *in future* (the husband retaining possession for life), and such a grant was unlawful because a freehold could only pass by "*livery of seisin*, which must operate either immediately or not at all. It would, therefore," continues Blackstone, "be contradictory, if an estate, which is not to commence till hereafter, could be granted by a conveyance which imports an immediate possession:" 2 Bl. Com. 165. But a husband might make a devise to his wife, "for that such devise taketh no effect but after the death of the devisor:" Littleton, § 168; Co. Litt. 112 a, b. The same incidents of coverture which made the husband sole possessor of his wife's lands, led to the rule which made estates in their joint names differ from joint tenancies proper, and regarded the title, not as held by moieties, but as an entirety: 2 Bl. Com. 182; Co. Litt. 187 a.

Whether the common-law rule preventing husband and wife from making grants to each other is a rule springing from, and inseparably attached to, the relation of marriage, or whether it is an incident to the wife's disability to control property in her own right, must guide us somewhat in determining the effect of our enabling statutes. There can be no doubt that there are incidents of marriage independent of all considerations of property. The common-law writers never attempted to classify them, and we must get such light as we can from examples and analogies. It is safe, however, to assume that no act can be absolutely inconsistent with the marriage relation, if it has received the sanction of either law or equity. We must, therefore, see whether the disabilities which applied at common law, in cases like the one before us, have been regarded as universal and personal disqualifications. Upon this we have abundance of authority.

There were *local customs* whereby a wife might take by *immediate* conveyance from her husband; as, for example, at York: Fitzh. Ab. *Prescription* 61; Brown's Ab. *Custom* 56 (cited Tomlyn Law Dic. *Baron and Feme*). The Queen Consort may sue and be sued, alone, may take grants from her husband, as well as from strangers, may take as well as receive grants, and may covenant: Com. Dig. *Roy*, F 1. A husband could convey

to the use of his wife under the Statute of Uses, whereby the use vested in her directly as a legal estate, without the action of the feoffee: Com. Dig. *Baron and Feme*, D 1, citing Co. Litt. 112 a. And he might, under the same statute, covenant with a third person to stand seised to the use of his wife: Id.

It appears, therefore, that the law did not prohibit a husband from accomplishing for his wife the precise thing which he would have accomplished by a direct conveyance; and it would seem from this that the rule was one of technicality, and not of substance. But there are further illustrations which will throw light upon the subject. When husband and wife were dealing, not in their own right but in a representative character, or what is termed technically *in autre droit*, either might sell and convey to the other, as to a stranger: Co. Litt. 112 a. 187 b; Com. Dig. *Baron and Feme*, D 1. It needs no remark to suggest that if the common law was designed to produce unity of will, and to prevent action except by one not under influence or compulsion, no such influence over his wife is personal, and will operate just as strongly, in fact, in one class of dealings as in another. The rule can only be made sensible by holding that, as to matters which a wife could be allowed to hold and manage separately from any interest of her husband, these disabilities of coverture did not exist, or, in other words, that they were not regarded as personal only, but as relative to property. Thus far we have considered only such rights as are *legal*, as distinguished from equitable, and are enforced in all courts alike. But there has grown up by the side of the common law, a system of equitable rights and powers, which places married women, in regard to property, on the same footing in most respects with single women. When property is set apart for the *separate use* of a married woman, she is, in regard to it, emancipated from the disabilities of coverture, so far as the terms of the trust warrant. This emancipation from her legal disabilities does not depend upon the husband's consent, nor upon any ante-nuptial agreement. It can be accomplished by any one, relative or stranger, who sees fit to provide a fund for her benefit.

She may sue and be sued concerning it; she may contract concerning it, and her contracts will bind it and be enforced; she may give it, or sell it. Her title is technically an equitable one, and not a legal one; but the trustees are bound to follow her directions, and the distinction is purely formal. The income and proceeds are under her separate control and enjoyment, and her husband has nothing to do with them. Her doings, though not under the dominion or enforcement of courts of law, are recognized by such courts as valid, just as they are recognized and enforced in equity. If the legal disabilities were essential elements of coverture, then equity, which recognizes and follows all the substantial principles of law, could not dispense with them. It would be a gross absurdity for any court to destroy the substantial rights of the husband, or remove his lawful control. And it would be still more absurd to permit this interference at the hands of any meddling stranger at his option. But the doctrine has been long settled that as to her separate estate a wife is on substantially the same footing with a *feme sole* See *Pybus* v. *Smith*, 1 Ves. Jr. 189; *Sturgis* v. *Corp.*, 13 Ves. R. 190; *Essex* v. *Atkins*, 4 Id. 542; *Wagstaff* v. *Smith*, 9 Id. 520; *Grigby* v. *Cox*, 1 Ves. Sen. 518; *Frceman* v. *More*, 1 Bro. P C. 237, 1 Hov. Sup 49-50, 2 Spence's Eq Jur. 513; *Jacques* v. *Methodist Episcopal Church*, 17 J. R. 548, 2 Story Eq. Jur., § 1395-6.

Not only may she make disposition of it to others, but she may do so also in favor of her husband. The disability of the common law which arose from the very fact that she was *sub potestate viri* (and which undoubtedly is usually the case as a matter of fact to a great degree), was not considered as existing in equity, which sustained such dealings if fair and not unduly biassed: 2 St. Eq. Jur., § 1395; *Essex* v. *Atkins*, 14 Ves. R. 542; *Jacques* v. *Methodist Episcopal Church*, 17 J. R. 548, 1 Hov. Sup. 49, and cases above. She can even bargain with her husband concerning her separate estate, and the agreement will be enforced: *Lady Arundel* v. *Phipps*, 10 Ves. R 140; *Livingston* v. *Livingston*, 2 Johns. Ch. R. 537; *Wallingford* v. *Allen*, 10 Pet. R. 583; *Bullard* v. *Briggs*, 7 Pick. 533.

Instead of looking with disfavor upon the settlement of separate property, equity has favored it. A separate estate will not fail for the lack of trustees, and if the legal title comes into the husband's hands, he himself will be held to be a trustee to his wife's separate use, and therefore subject to her orders; and he may be made a trustee expressly: 2 Kent's Com. 162; 2 Spence's Eq. Jur. 507; *Wallingford* v. *Allen*, 10 Pet. R. 583. Not only may a husband settle property to his wife's use through trustees, but he may make himself a trustee by agreement, or even by gift, where he has by some distinct act set apart the property. In *Lucas* v. *Lucas*, 1 Atk. 270, where a husband caused stock to be transferred to the name of his wife, although at law it would of course continue to be his own property, it was held to have been made his wife's separate fund. So in *Shepard* v. *Shepard*, 7 Johns. Ch. R. 57, and in *Wallingford* v *Allen*, above cited, it was held that a conveyance directly from husband to wife should under the circumstances be enforced as valid in equity.

When equity recognizes a power in the wife, who is the disabled party, not only to deal with others, but even to contract with and make provision for her husband out of her separate funds, it can hardly be claimed that the husband, who was always *sui juris*, is restrained by any but technical rules from transferring to her directly. We have seen that equity will enforce even such conveyances. But there never was a time when he could not by his deed put property where she could control it If it were not that by standing in her name he became legally the owner of the usufruct, there could be no valid reason why indirection ever need be resorted to. It is not against the policy of the law that the wife should have the real benefit of his gift; and equity, looking through the form at the substance, calls it, as it is in fact, a gift from husband to wife. The doctrine laid down by Coke, in connection with the Statute of Uses, is of itself sufficient to show that the disability as to conveyances springs entirely from the wife's incapacity to act for her-

self; and it is stated in 2 Kent's Com. 163, n. b., that by the present English statutes a husband is now authorized to make a direct conveyance to his wife.

Our statutes have given power to a married woman to enjoy, contract, sell, transfer, mortgage, convey, devise, or bequeath her property in the same manner, and with the like effect, as if she were unmarried: 2 C. L. § 3292. Where it stands in trust for her, the trustees are authorized to transfer it to her: 2 C. L. 3293. The statute evidently designs to do away with indirect dealings, and make her rights legal instead of equitable. Passive trusts have been entirely abolished, and where a deed creates them the title passes at once to the beneficiary: 2 C. L. § 2633-4-5. To require a husband (who is not supposed to be under her control or fear) to go through the farce of conveying to some one else, who is at once to pass the property over to his wife, is to keep up a fiction which has not even a legal basis to support it, since the husband has ceased to have possessory claims over her property. He is now in law a stranger to her estate during coverture instead of its possessor and manager; and his consent is not necessary to her disposal of it: *Farr* v. *Sherman*, 11 Mich. Rep. 33; *Watson* v. *Thurber*, 11 Id. 457. Whatever protection she may require when dealing with him, he certainly never was supposed to need any against her.

Believing, as we do, that the basis of the common law disability was in the peculiar disqualifications and burdens of the wife, and that the removal of these removes all the reasons which ever required the intervention of equitable trusts, we think there is now no objection to a deed from husband to wife, which should render it invalid.

The court erred in excluding the deed. The other points become immaterial.

Judgment must be reversed, with costs, and a new trial granted.

Christiancy and Cooley, JJ., concurred.

Martin, C. J., was not present.

GENERAL CORRESPONDENCE.

The Law of Evidence.

To the Editors of the Law Journal.

Gentlemen,—In the last number of the Journal you justly compliment the Attorney-General for the good service he has rendered in improving the laws of his country. No person can justly withhold the credit which is so properly due to him on this score. There remains, however, one thing to be done, which I hope will not remain unaccomplished at the conclusion of the ensuing session, and that is the removal of those absurd and antiquated restrictions by which the testimony of litigating parties in civil suits is excluded.

It is not very easy to prevail against preconceived opinions and old prejudices. Fully 20 years were required to educate the majority of the British people into a belief of the soundness of Adam Smith's Commercial Philosophy. And many years transpired after Jeremy Bentham and others pointed out the absurdity of the restrictions above alluded to, before the British Parliament were so influenced by public opinion as to put an end to this.

A. and B. have a dispute about some property and go to law. Why? In order that it may be decided which of them is in the right. Now what course is so obviously simple, plain, and rational as to interrogate A. and B. themselves?

Now, this is just what they did in England some 15 years ago. And not a single judge or individual, lay or professional, of any note has, I believe, ever complained of the evil working of the change. On the contrary, the testimony of any enlightened jurist or intelligent observer has been in favor of the change. Strange it is that we of Canada who are sometimes twitted by our American cousins for copying in a slavish manner the legislation of the parent country, should have diverged from it so greatly in this respect.

A. and B. go to law in Canada. A. puts his sons and daughters in the witness box, and B., if he has any, does the same. Our law says it would not do to put A. or B. into the box as a witness on his own behalf because he is interested. Pray are the children not interested? more than that, may they not be coerced?

In the State of New York, about a year ago, they followed the English legislation in this respect. In France and other European countries it prevails, with admirable results. Why, then, do we cling so pertinaceously to exploded notions in Canada?

Because it would encourage perjury, I fancy I hear some one say. To some extent this is true, because the more testimony you admit, the larger the scope for perjury. But surely this is a poor argument. The man who advocates the restrictions of evidence in order to lessen the opportunity for perjury, ought to go further and exclude all testimony on oath, and then he might also exclude all perjury.

But evidence is necessary, and unfortunately instances of perjury will never be wanting.

But to say that perjury is likely to be more common in Canada than in England or in the State of New York, is surely saying very

little for the character of our people. To see and to hear the litigants themselves in the witness box must form one of the very best means of arriving at the truth, and that surely is a most important object in judicial investigations.

It is marvellous what good results have arisen in the parent country from the abolition of arbitrary restrictions upon trade and commerce. In like manner good results must follow the abolition of artificial and arbitrary restrictions in the law of evidence imposed when very narrow and contracted notions prevailed.

W. E.

London, March 21, 1866.

REVIEWS.

Journal of Social Science, including the sessional papers of the National Association for the promotion of Social Science: Chapman & Hall, Picadilly, London.

We have received the first three numbers of a monthly publication bearing the above title, and under the editorial management of Edwin Lancaster, Esq., M.D., F.R.S., &c.

The objects and aims of this periodical are set forth in the introduction as follows: "The *Journal of Social Science* has been started with the object of circulating the papers read before the London meetings of the National Association for the promotion of Social Science and of supplying original papers and various information on the subjects embraced in the departments of the Association." The object of the Association here referred to, and the existence of which as yet is known probably to few in this country, is to place before the world in their most manifold applications the great facts and principles which have already been observed respecting Law, Education, Political Economy and Health, and as far as possible to advance those enquiries and methods of investigation which shall lead to yet further discoveries.

It commences by laying down what might, we think, be supposed now-a-days to be the obvious proposition, that it is not lawyers alone who are interested in the principles of legal procedure, not schoolmasters only who need study the question of education, nor merchants or statesmen who are alone interested in political economy, nor that to doctors only should be confided the great secrets by which health is maintained, and that no member of a civilised community, however low, is not interested in understanding and discussing the great principles by which the welfare of society is regulated.

The introduction then goes on to state that the subjects to be embraced under the different heads of law, education, public health and economy and trade, and concludes with a defence of the Association from the objections raised to the possible use or benefit of discussing matters of social interest from a scientific point of view, holding that there are, contrary to commonly received opinion, scientific methods of dealing with social phenomena.

The subjects brought before the Association are discussed by men fully able for the task, and whilst, as of course is to be expected in such matters, much may be said that is beside the mark, it is not possible where so many persons as are from time to time collected to listen to the discussions of this association that a large quantity of the seeds of knowledge thus sown will not "in future unlooked for occasions, bring forth an abundant harvest."

The original articles, some of which we reprint in our columns, are most interesting, treating of a variety of subjects of daily interest and of great practical importance, and not to be obtained that we know of in the same readable and accessible form in any other place. The publication does not conflict with any other and will be, to say the least, an interesting record of current matters connected with the subjects embraced in the introduction and the progress of "Social Science."

The London Quarterly Review: Leonard, Scott & Co., 38 Walker Street, New York.

We are in receipt from time to time of this and the other British quarterlies and Blackwood from the enterprising firm that republishes them on this continent. We need scarcely say that they are, as heretofore, unsurpassed in the range of subjects which they treat of.

The January number commences with an interesting *resumé* of the African discoveries in South Africa—the Zambesi and its tributaries—principally by the indefatigable Dr. Livingstone. This is followed by an historical article treating of the stirring times of the wars of the Barons in England, taking as a text Simon de Montford, Earl of Leicester. Tennyson's "Enoch Arden," that much debated poem, comes in for its share of interesting criticism. And amongst others of more interest to some and less to others is a sketchy description of what must be a very entertaining book, "A history of caricature and grotesque in literature and art;" and a political article on "The Coming Session."

The North British Review: Leonard, Scott & Co.

The January number is rich in interest to the literary man, containing articles under the following titles: — 1. An article on Samuel Taylor Coleridge, whose life and writings are also treated of in the last number of the

Westminster. 2. German Novelists. 3. Plato and other companions of Socrates. 4. Mr. Henry Taylor's later plays and minor poems. 5. Pindar and his age. 6. On the "Gothic" Renaissance in English literature.

The concluding article (No. 7,) gives an instructive history of the Cattle Plague, its rise, progress, and the author's views as to the most effectual means of checking it. It will be well for us if we have not a closer knowledge of the scourge in this country. Let us therefore do all in our power to avert such a calamity before it be too late.

The Westminster Review: Leonard, Scott & Co.

The number for December last commences with "John Stuart Mill on the Philosophy of Sir Wm. Hamilton"—rather heavy for ordinary readers, but those who are in search of something lighter have only to turn to some of the succeeding articles—Physiological experiments, Vivisection—The Polish insurrection of 1863—or Dr. Livingstone's recent travels. If they are inclined for politics, they may read "A sketch of Lord Palmerston's eventful career."

Blackwood's Magazine: Leonard, Scott & Co.

This popular publication has commenced the year with articles more interesting even than usual. All who can afford it should subscribe for it.

The place British Americans have won in History.

This is the title of a small pamphlet comprising a lecture delivered at Aylmer, L.C., in February last, by H. J. Morgan, Esq., Corresponding Member of the New York Historical Society. It gives us a short sketch of many native Canadians, whose deeds and talents have won for them notice in the pages of history, but many of whom are almost less known here than elsewhere. Though there are several eminent men to whom no reference is made, and whose names we might have expected to see mentioned, we are always pleased to see, and it should be the duty of every loyal Canadian, especially in times like the present, to encourage every attempt, great or small, which tends to make us feel that, though yet in its infancy, we having laid, as we trust, the foundation of what will be in times to come a prosperous, free, and enlightened nation with a history of its own upon which its inhabitants for generations to come may look back with honest pride.

At Englefield, Spadina Avenue, Toronto, on Monday night the 26th March last, Anna E. Mickle, the beloved wife of Robert A. Harrison, Barrister-at-Law and one of the conductors of this Journal, departed this life in peace aged 27 years.

APPOINTMENTS TO OFFICE.

CLERK OF THE PROCESS

ALAN CAMERON, Esquire, to be "The Clerk of the Process," in the room and stead of Robert Stanton, Esquire, deceased. (Gazetted March 10, 1866.)

POLICE MAGISTRATE.

ALEXANDER McNABB, of Osgoode Hall, Esquire, Barrister-at-Law, to be Police Magistrate in and for the City of Toronto. (Gazetted March 17, 1866.

NOTARIES PUBLIC.

JOHN FARLEY, of St. Thomas, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.

ALFRED BOULTBEE, of Newmarket, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

EDWARD JAMES DENROCHE, of the City of Toronto, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

ROBERT VASHON ROGERS, jun., of Kingston, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted March 3, 1866.)

JOHN WILLIAM FERGUSON, of the City of Hamilton, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

HENRY JAMES GIBBS, of the city of Ottawa, Advocate, Esquire, to be a Notary Public in Upper Canada.

HENRY WETENHALL, of the city of Hamilton, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.

WILLIAM KINGSTON FLESHER, of the Village of Flesherton, Esquire, to be a Notary Public in Upper Canada. (Gazetted March 10, 1866.)

DUNCAN CHISHOLM, of Port Hope, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.

GEORGE MONCRIEFF, of the City of London, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.

ANDREW FRASER SMITH, LL.B., of Brampton, Esquire, to be a Notary Public in Upper Canada. (Gazetted March 24, 1866.

GEORGE EDMISON, of Peterborough, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted March 31, 1866.)

CORONERS.

RALPH JONATHAN PARKS MORDEN, Esquire, to be an Associate Coroner, for the City of London.

THOMAS AUCHMUTY KEATING, of Morristown, Esquire, to be an Associate Coroner for the County of Wellington.

DUNCAN McINTYRE, of Wardsville, Esquire, M.D., to be an Associate Coroner for the County of Middlesex.

JOHN JAY HOYT, of the Town of Ingersoll, Esquire, to be an Associate Coroner for the County of Oxford.

PITKIN GROSS, of the Village of Brighton, Esquire, M.D., to be an Associate Coroner for the United Counties of Northumberland and Durham.

CHARLES DUNCOMB TUFFORD, of the Township of Burford, Esquire, M.D., to be an Associate Coroner for the County of Brant. (Gazetted March 3, 1866.)

JOHN NICHOL, of the Village of Listowell, Esquire, M.D., to be an Associate Coroner for the County of Perth.

THOMAS WALTON STEVENSON, of the Township of Alnwick, Esquire, to be an Associate Coroner for the United Counties of Northumberland and Durham.

JOHN PHILP, of the Village of Listowell, Esquire, M.D., to be an Associate Coroner for the County of Perth. (Gazetted March 10, 1866.)

CHARLES DOUGLASS, of the Village of Oil Springs, Esquire, M.D., to be an Associate Coroner for the County of Lambton. (Gazetted March 31, 1866.)

TO CORRESPONDENTS.

"A Subscriber"—We are sorry not to oblige you, but your questions are not such as come within our province to answer.

"W. E."—Under "General Correspondence."