DIARY FOR APRIL.

1. Mon... County Court and Surrogate Court Term commences. Local School Superintendent's term of office begins.
6. Sat..... County Court and Surrogate Court Term ends. Local Treasurer to return arrears for taxes due to County Treasurer.
7. SUN... *5th Sunday in Lent.*
14. SUN... *6th Sunday in Lent.*
19. Friday *Good Friday.*
21. SUN... *Easter Day.*
23. Tues... *St George.*
24. Wed... Appeals from Chancery Chambers.
25. Thurs. *St. Mark.*
28. SUN... *Low Sunday.*
30. Tues... Last day for Non-Residents to give list of their lands, or appeal from assessment. Last day for L. C. to return oc. lands to Co. Treasurer.

The Local Courts'

AND

MUNICIPAL GAZETTE.

APRIL, 1867.

ACT FOR PROTECTION OF SHEEP.

A Correspondent puts the following case, involving the construction of some of the sections of the above act. Thus:—A. has a dog, which killed the sheep of B. A lives in a Municipality adjoining the Municipality in which B. lives. A. has no goods upon which the damages can be levied. Can the Justices certify the facts to the Clerk of the Municipality in which A. lives, so as to make that Municipality pay the damages, or should the Municipality in which B. lives, which is the Municipality wherein the sheep were killed, be made to pay the damages?"

The questions proposed are interesting, and not without difficulty.

The provisions of the Act 29 & 30 Vic., ch. 55, as respects remuneration to the owners of sheep from the Municipality are somewhat analogous to the old remedy in England against the Hundred.

The 6th sec. constitutes a fund for the purpose of paying damage from dogs killing sheep *in such Municipality.*

The 7th sec. makes the owner of dogs liable for damages done by them.

The 8th sec. enacts a mode of procedure to render this liabilty available to the owner of the sheep.

The 9th sec. makes, *inter alia*, provision for the sheep-owner, failing to recover from the owner of dogs doing the injury, viz.:—the J. P. is to certify the facts, and upon this certificate being laid before the Clerk of the Municipality an order is issued to the Treasurer to pay the amount of the damages "from and out of the fund constituted by the 6th section,"—and a remedy ever is given to the Municipality.

Now the fund created by the 6th section is, *in respect to sheep*, &c., *killed or injured in* such Municipality; and I do not see what authority there would be in the Municipality in which the owner of the dog resided, to make payment. It would seem, therefore, that the certificate should be laid before, and payment made. by the Municipality in which the sheep were killed. "The Municipal Council" throughout the Act seems to refer only to the one Council, that in which the animals are killed.

BAILIFF'S SALES UNDER DIVISION COURT EXECUTIONS.

(Communicated.)

Questions are constantly arising in the country as to the power of bailiffs of Division Courts to sell certain kinds of property under executions in their hands, and as to the duties of bailiffs in holding over or renewing executions. For instance, under the first head it is common to sell growing crops, such as wheat in the ground, perhaps six or three months before harvest, and growing grass before it is harvested. Many bailiffs sell leasehold properties of long and short durations. It is said also, that they occasionally sell mortgages and chattels held by chattel mortgages; that is, the interest of the mortgagors. And under the second head, bailiffs are in the habit of selling, in some instances, goods seized in counties other than their own; of selling goods after their executions have expired, as though under writs of *venditioni exponas;* and of renewing executions from month to month without the plaintiff's order.

It may be interesting to enquire how far the law authorizes these officers in the premises.

The policy of the Division Courts Act in this Province, and of the County Courts Act in England, is to avoid the trial of any case where title to lands or incorporeal hereditaments comes in question. The cases in England have gone great lengths in this respect; and the same policy renders it impolitic and illegal for a Division Court bailiff to sell any interest or title in lands, easements in lands, or in corporeal hereditaments.

The case of *Duggan* v. *Kitson*, reported in 20 U. C. Q. B. 316, 7 U. C. L. J. 178, decided

that Division Court bailiffs cannot sell a leasehold interest in lands. Again, it is contended by some that green or growing crops cannot be sold under Division Court executions. The bailiff takes upon himself to sell a right of entry to some person, to go some months after his sale upon land, and there cut and harvest crops attached to the freehold, or grass that was not sown, but which is a part of the freehold. Would not a purchaser going on land by virtue of such a sale, and cutting crops so sold, be held to be a trespasser? Such things are not (until cut and harvested) strictly goods and chattels; and, besides, the execution at the time is spent; on the other hand, it is only in force 30 days, though it may be renewed. A *sheriff* may clearly sell under a *fi. fa.* against goods, growing crops.

The policy of the Division Courts Act, it may be argued, only intends that bailiffs should sell simple goods and chattels, such as may be handed by the officer selling *to the vendee at once:* (see *Duggan* v. *Kitson, ante.*) Bailiffs may sell promissory notes, bonds and specialties to secure money: see 22 Vic. c. 45, s. 13, p. 455, Con. Stat. Can.; but it is questionable if they could sell a mortgage secured on land, and which is in reality an interest in land, generally for large sums, and requiring registration to retain priority. They may sell the interest of a mortgagor in chattels mortgaged; such is the custom in England, and a clause in our statutes (see above act) authorizes sheriffs to sell such interests, and seemingly refers to bailiffs of Division Courts: see *Squair* v. *Fortune*, 18 U. C. Q. B. 547.

Bailiffs, in executing writs, cannot break an outer door; they must execute the writ within thirty days; must advertise eight *clear days;* must sell, it seems, (by a late decision, which has been referred to at length in this Journal,) within the division in which the goods are seized. But how can this be done where the suit has been brought in the nearest division, and the defendant lives, perhaps, in another county from that in which the court is held, and has his goods in the other county? Certainly, if the baliff can serve the summons, he ought to have the right to go and seize the goods under the writ issued on the judgment?

A bailiff has no right to remain on land (except a sufficient time to remove) and sell the goods thereon; he cannot sell them on the premises without the defendant's consent: *Blades* v. *Arundale*, 1 M. & S. 711.

A clerk or bailiff has no right to renew an execution without the plaintiff's consent, nor can the bailiff return "*goods on hand for want of buyers.*" There is no provision in the law allowing this, nor is there any provision allowing a bailiff to charge any other fees than those *specifically named in the tariff.*

An English act, 56 Geo. 3, chap. 50, sec. 1, authorizes sheriffs to sell in England, under certain circumstances, straw, chaff, turnips, manure, hay, grasses, roots, vegetables, in or upon lands. Usage in England and in Canada allows sheriffs to sell growing crops in the ground. And these cases in England seem to warrant him in so doing: (*Peacock* v. *Parsons*, 5 Moore, 79; 2 B. &. B. 362; 1 Salk. 268, and see Chitty's Arch. Prac. title Execution.) But the sheriff cannot sell growing grass: (*Scoval* v. *Boxall*, 1 Y. & J. 398; 9 Price, 287.)

These cases seem to look upon growing corn as "*goods and chattels.*" If they be strictly so, or goods and chattels within the meaning of the Division Courts Act, why should not bailiffs of Division Courts sell them? If it be said they cannot sell any interest in lands, as in *Duggan* v. *Kitson*, under their warrants, so too it may be said a sheriff under a *fi. fa.* against goods cannot sell any interest in lands. The statute 11 Geo. 2, chap. 19, sec. 8, allows landlords to distrain on and cut growing crops in the green, and to cut long after sale.

In England, under the County Courts Act (similar in many respects to our Division Courts Act), it has been held that even a lease for years may be sold by a bailiff of the County Court: *Hughes* v. *Jones*, 9 M. & W. 372; *Westmoreland* v. *Smith*, 1 M. & R. 137.

Money, or a watch, or any article on the person of a defendant, cannot be seized on a bailiff's execution: *Sunbolf* v. *Alfort*, 3 M. & W. 576.

Bailiffs frequently have great trouble under the exemption laws, thus:—suppose a threshing or wood sawing machine, or a horse, be seized, which is worth $100 or $200, and the execution be for $100, the law allows the debtor "*his implements of trade or chattels, ordinarily used in his calling or trade,*" to the value of $60. What is the bailiff to do? He may offer the chattel, and, if he cannot get more than $60, he may possibly sell it. But if more is offered, his duty is even less clear. Now there has been no express decision on this point, but the better opinion seems to be that if the article be really worth more than

$60 he can sell, and retain the whole proceeds.. There is no law compelling or authorizing him to pay back $60 to the debtor.

SELECTION.

COUNTRY SERVANTS AND THEIR MASTERS.

The supposed tyranny of masters over workmen, and of workmen, not only over their masters, but over each other, has attracted great and serious attention. We are so accustomed to regard men and things collectively and in the mass that it is the extent of area over which misery is spread rather than the intensity of individual suffering or injustice, that is apt to weigh most with us. Among agricultural labourers and country servants strikes and unions are things unheard of; these men are from the nature of their education and the force of surrounding circumstances, practically debarred from entering into or even forming them. Yet it has long been felt, not only by the more intelligent of country magistrates and solicitors, that the law which relates to employers and servants is, as it actually stands, unsound in principle and unjust in operation. And doubly unjust in this respect, that it only affects one half of those with whom it professes to deal, the men comprising the other half being able by their power and practice of combination fully to defend themselves. It was originally a piece of class legislation, always an objectionable thing, and has been suffered so to remain principally through an indolence and want of thought, but by means of it the employed and employers do not stand on equal ground. However it may be in large towns, this is certainly the case in the country, as every magistrate's clerk is well aware. The grievance lies here. The contract for service between masters and servants is a civil contract, and yet to control, regulate, and enforce this contract very stringent penal statutes are brought into operation. A glance at the statutes in question fully bears out this statement. To begin with that of 20 Geo. II., c. 19. By this a servant in husbandry or handicraftsman being guilty of misconduct in service or breach of contract is liable to imprisonment for a month, and also to be corrected, *i.e.* subject to corporal punishment, from which even garotters were exempt until a recent statute. If imprisonment and the lash are not awarded, the servant's wages may be abated, or he may be discharged from his service. The statute of 4 Geo. IV., c. 34, empowers the justices on complaint of the master to punish the offending servant by imprisonment for three months with hard labour, or to abate his wages *in toto* or in part, or to discharge him from his service. During the term of imprisonment the servant's wages are of course abated; but this double punishment does not void the contract, for when he is released from prison he is bound to return and complete his term. There is no appeal against conviction under either of these statutes, and so far do the pains and penalties to which the employed are subject extend. But should the master be guilty of any misusage of his servant all the remedy which the latter can claim is to proceed against his master under 20 Geo. II., c. 19, amended by 31 Geo. II., c. 11, by which the justices may on complaint discharge or release the servant from his contract.

Here it is plain that two highly penal statutes are in force for the protection of the master to enable him to enforce fulfilment of contract, while the labourer or servant has no such remedy. Moreover, in inquiries touching disputes before justices, masters and servants are again on unequal terms. The master or complainant can give his own version of the terms of the contract, and his own account of the non-fulfilment of it. The defendant's mouth is closed so far as evidence is concerned. And he has to trust entirely to what he can elicit by cross-examination (a very unsatisfactory proceeding), and unless evidence can be obtained to support or justify the defendant's case, he stands helpless before the justices. Now it must be admitted that no other kind of civil contracts is ruled by such stringent and one-sided procedures as this. Further, although a servant who leaves his service before his contract is ended is liable to the punishments to which we have referred, and on summary conviction, yet a master who discharges his servant wrongfully is not amenable to the justices, and no order for wages can be made for the unexpired term; all the servant can do is to sue in the county court for damages by breach of contract. It may be urged that the statutes in question are, so to speak, statutes of policy, and that the requirements of trade and commerce, especially in agricultural and thinly peopled districts, render absolutely necessary more stringent measures for enforcing the fulfilment of the workman's contract than would be needful with regard to the masters. This may be admitted to a certain degree. The subject is not without difficulties, of which, perhaps, the chief is this: agricultural servants are commonly hired by the year, from Martinmas to Martinmas, and it is alleged that during the winter months, when days are short and work light and scarce, the men would stay by their masters, but that just before harvest time, when these conditions are reversed and wages are doubled, the men would abscond and hire themselves elsewhere for harvest work, and the master would be left without hands unless he consented to raise the original wages agreed on by both parties. But this objection loses much force when we remember that the master has even in such cases a very strong hold over his servant, because, in a large majority of instances, the wages are not paid until the completion of the term; and should the servant wilfully abscond, he would certainly be unable to recover any portion of the money

which he had already earned. But even in the case of monthly or weekly payments of wages, the habits and tendencies of agricultural labourers are such as to make it easy to trace these men. They have either fathers and mothers, or wives, families, or sweethearts. They almost always work round in districts, are in fact localized, and are sure to reappear sooner or later near their own neighbourhood and belongings. But supposing a man without incumbrances were to abscond entirely, leaving his contract unfulfilled, it would be at least as easy to follow him with a summons to appear before a civil tribunal, which he would disregard at his peril, as with a warrant on a criminal charge. It would not be difficult to make such an alteration as to secure a more equal justice to both parties affected by this law. Some civil process might be devised to enable the master to obtain from his defaulting workman compensation for loss sustained by the servant's wilful default, with full power to the court taking cognizance of the matter to secure the payment of such compensation, by compelling security to be given, or by awarding imprisonment if the damages ordered are not paid immediately on the sentence of the court being pronounced. Power might also advisably be conferred on the same jurisdiction for enforcing the fulfilment of the original contract. It is not creditable to us as a nation that we should continue to retain a statute by which a harsh or arbitrary master with the aid of an injudicious bench should be able to punish his servant for refusing or evading the performance of a civil contract—first, by imprisonment for three months; secondly, by corporal chastisement with the lash; thirdly, by fining him of his wages; and fourthly, by compelling him to fulfil his contract after having suffered his imprisonment, and all this by summary conviction and without appeal. To amend this law would be to redress a substantial grievance of the working classes; the alteration would, it is probable, be well received by the public, and it would certainly be accepted with satisfaction by those in whose hands the administration of the law is vested, and who now find themselves compelled, often unwillingly, to comply with provisions of unnecessary severity.—*Pall Mall Gazette.*

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

INSURANCE—POLICY AND APPLICATION—CONSTRUCTION OF.—Plaintiff insured with defendants $3,400, of which $1,000 was on his tannery and $500 on the machinery in it, on an application valuing the tannery and fixtures at $1,000, which was said to be the two-thirds of the actual value, but agreeing that in case of loss defendants should only be liable as if they had insured two-thirds of the actual cash value, anything in the policy or application notwithstanding. The application was referred to in the policy as forming part of it, and stated the promise to be to pay all losses or damage not exceeding the said sum of $3,400. The said losses or damage to be estimated according to the true and actual value of the property at the time the same should happen. The building and machinery having been destroyed by fire, the jury found the total cash value of the former to be $1,050, and of the latter $750.

Held, that the plaintiff was entitled to recover only two-thirds of these sums.—*Williamson* v. *The Gore District Mutual Fire Insurance Company.* 26 U. C. Q. B. 145.

INSURABLE INTEREST—C. S. U. C. CH. 93, SEC 53.—Plaintiffs insured with defendants a house in his possession, which he had purchased, with the land on which it stood, as part of lot A., but which was afterwards found to be upon the adjoining lot, B., having been built there in consequence of an unskilful survey. The house having been burned, it was objected that having no title to the land he had no insurable interest; but

Held, otherwise, for under C. S. U. C., ch. 93, sec. 53, he had a right either to the value of his improvements or to purchase at the value of the land.

Quære, whether an insurance company with whom the actual owner of a house, without fraud or wilful misrepresentation, effects an insurance thereon, can set up the legal title of a stranger to the land on which the house stands, as a defence against the claim of the assured.—*Stevenson* v. *The London and Lancashire Fire Insurance Company*, 26 U. C. Q. B. 148.

RAILWAYS.—In actions by passengers for personal injuries sustained by them, in consequence of the negligence of the passenger-carrier, plaintiffs are entitled to recover pecuniary compensation for pain suffered; and juries in assessing damages, may consider that as an element.

On the question, What damages should be given for physical pain suffered? the instruction to the jury that they must exercise their own discretion, governed by their sense of justice and right, taking care not to indulge in their imagination or sympathies, so as to be led into an unjust or oppressive assessment, was entirely proper.—*Pennsylvania Railway Co.* v. *Allen.*—*Pittsburgh* (U. S.) *Legal Journal*, Jan. 21, 1867.

It is no defence to an action by a passenger against a carrier to recover damages for an injury sustained through the carrier's negligence, that the negligence or trespass of a third party contributed to the injury, although such third party

acted entirely independently of the carrier.—*Eaton* v. *Bos. & Low. Railway Co.*, 11 Allen, U. S., 500.

Where a railway passenger, on arriving at his place of destination, takes his baggage into his own exclusive possession and control, but afterwards, for his own convenience, hands it to the baggage-master at the depôt to be kept until sent for, the company is not liable for the baggage as a common carrier, but is liable only for gross negligence, the bailment being gratuitous.—*Minor* v. *The Chi. & N. W. Railway*, 19 Wis., U. S, 40.

The conductor of a street railway car may exclude or expel therefrom a person whose conduct or condition, by reason of intoxication or otherwise, is such as to render acts of impropriety, rudeness, indecency or disturbance, either inevitable or probable, although he has not committed any act of offence or annoyance.—*Vinton* v. *Middlesex R. R. Co.*, 11 Allen, U. S., 304.

Principal and Agent.—An agent's authority to collect money for his principal, is not revoked by the mere appointment of another agent with like authority; and a payment by the debtor to the first agent, although after receiving notice of the appointment of the second, will discharge the debt, if there is no other evidence of a revocation of the first agent's authority—*Doval* v. *Quimby*, 11 Allen, U. S, 208.

Light—Prescription—Special user—Purposes of trade.—The plaintiffs, who had occupied their business premises in Crown-court, Old Broad-street, London, as silk merchants, for about fourteen years, sought to restrain the defendants from raising their house in the same court to a greater height than would permit of the free access of light to a window in the plaintiffs' premises in the same degree as the plaintiffs had theretofore enjoyed it. The defendants' building was completed before the hearing of the cause. The plaintiffs had used the room with the window in question, which faced to the west, as a sample room, and they maintained that, an even light being necessary for the purpose of inspecting samples of raw silk, the effect of the new building was, before mid-day, to diminish their light, and, in the afternoon, to cast upon their window an increased and reflected light, which was uneven, and unfit for the purposes of their trade.

Held, first, that, assuming the room in question to have been used for any purpose requiring an ordinary amount of light, the plaintiffs had failed to establish a case for the interference of the court; and, secondly, upon the question whether they were entitled to an injunction on account of the particular kind of light which they required for the special purposes of their trade, the plaintiffs had no case, inasmuch as they had not proved an open and uninterrupted enjoyment of their special user of light for a period of twenty years.—*Lanfranchi* v. *Mackenzie*, 16 L T.N.S. 114.

Negligence—Highway—Sewerage works—Contractor.—A contractor under the Metropolitan Board of Works having completed a sewer beneath a public highway, and filled up the excavation in a reasonably proper manner, a subsidence of the road took place two or three months afterwards, and caused a hole, into which the plaintiff's horse and cart ran in the night time, and suffered damage.

Held, that the contractor was not liable for the damage.—*Hyams* v. *Webster*, 16 L. T. N. S. 118.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

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

Kinghorn and the Corporation of the City of Kingston.

By-Law—Markets—C. S. U. C. ch. 54, sec. 294—Affidavit not entitled in any court—Verification of by-law.

A by-law prohibiting any person bringing produce, articles, commodities or things to a city market, from selling or offering the same for sale within the city limits, on their way to market, or without having paid market toll, and before offering such things for sale in the market—*Held*, illegal, and quashed, as beyond the power of the corporation.

An affidavit in support of the motion, not entitled in any court, but sworn before a commissioner styling himself "A Commissioner in B. R. and C. P." &c. *Held*, sufficient.

The copy of the by-law filed was under the seal of the municipality, and sworn to have been received from the clerk, and opposite the seal was the signature "M. Flanagan, City Clerk," with the words, "A true copy," above. *Held*, sufficiently verified.

Held, also, that on the affidavits, stated below, it sufficiently appeared that the applicant was a resident of the city of Kingston.

[M. T., 1866.]

Adam Crooks, Q. C., obtained a rule calling on the corporation of the city of Kingston to shew cause why section 48 of their by-law, passed on the 21st of June, 1864, entitled A By-law to regulate the public Market of the City of Kingston, should not be quashed with costs, on the following grounds: 1. That such section is in excess of any authority conferred by law on said corporation. 2. It is not within the powers conferred on such corporation by the 8th sub-sec. of section 294, of ch. 54 Consol. Stat. U. C., or any other clause or sub-section of that act. 3. Because it assumes to order that all produce, articles, commodities, and things brought to the market for sale, must, before being sold, be offered for sale at the proper market place And lastly, because it assumes that market toll must be paid on articles, commodities or things, before they are offered for sale in any of the public streets, houses, or within the limits of the city.

On the application he filed an affidavit of the applicant, who was styled in it as "of the city of Kingston, in the county of Frontenac, Esquire," and the first paragraph stated that he was "a resident in the city of Kingston," and that he obtained the by-law attached to his affidavit from Michael Flanagan, the city clerk of the said city of Kingston, and that the seal affixed thereto was the seal of such corporation of Kinsgton. The affidavit was sworn before C. F. Gildersleeve, "at the city of Kingston, in the county of Frontenac," who styled himself in the jurat "a Commissioner in B. R. and C. P., &c., for the said county." The by-law at the end was signed, "M. Flanagan, City Clerk," and opposite the name was the seal of the corporation, and above the signature of the clerk the words "A true copy."

The 48th section of the by-law was: "That the farmers or any other persons bringing produce, articles, commodities, or things, for sale to this market, if found or detected selling or offering for sale the same, or any part thereof, on any of the public streets, lanes, or within the city limits, to butchers, hucksters, vendors, or other persons, on their way to the market, or without having paid market toll, and before first offering said articles, commodities, or things, for sale at the proper market place, shall be deemed guilty of an infraction of this by-law, and shall be subject to the penalty in such case made and provided herein." And by the 60th clause of the by-law, any person guilty of an infraction of the by-law was liable to be fined not more than $50, nor less than 50 cents, and costs, to be levied, &c., and in default of payment to imprisonment for not more than twenty-one days.

Read, Q.C., shewed cause, and took several preliminary objections. 1. That the affidavit filed was not entitled in this court, and that the jurat did not shew it was sworn before a commissioner of this court. 2. That the copy of the by-law was not duly certified, the words "A true copy" being insufficient, without some form of certificate. 3. That it did not appear from the affidavit that the applicant was a resident of the city of Kingston. He cited *Hirons and the Municipal Council of Amherstburgh*, 11 U. C. Q. B. 458; *Babcock and the Municipal Council of Bedford*, 8 U. C. C. P. 527; *Bogart* v. *The Town Council of Belleville*, 6 U. C. C. P. 427; *Hodgson and the Municipal Council of York and Peel*, 13 U. C. Q. B. 268; *Osburn* v. *Tutum*, 1 B. & P. 271; *Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 492; *Baker* v *The Municipal Council of Paris*, 10 U. C. Q. B. 621.

Crooks, Q. C., supported the rule citing Lush's Practice, 875; *Perse* v. *Browning*, 1 M. & W. 362; *White* v. *Irving*, 2 M. & W. 127; *Frazer and the Municipal Council of Stormont*, 10 U. C. Q. B. 286; *Grierson and the Municipal Council of Ontario*, 9 U. C. Q. B. 623; *Scarlett and the Corporation of York*, 14 U. C. C. P. 161.

MORRISON, J., delivered the judgment of the Court.

As to the preliminary objections, the cases of *Frazer and the Municipal Council of Stormont* (10 U. C. Q. B. 286), and *Murphy* v. *Boulton* (3 U. C. Q. B. 177), dispose of the first.

As to the second, it is sworn that the printed copy of the by-law filed was received from the clerk of the corporation. Attached to it at the end is the seal of the municipality, which is also sworn to, and opposite to it is placed the signature of the city clerk, and his title of office, with the words, "A true copy." We think it is sufficiently verified, and, as said by Sir John Robinson in *Fisher* v. *The Municipal Council of Vaughan*, 10 U. C. Q. B. 495; "If this were not a true copy of the by-law, that could easily be shewn on the other side."

With respect to the third objection, it appears to us that the statement in the affidavit that the applicant is a resident of Kingston, coupled with the previous statement that he is of the city of Kingston, in the county of Frontenac, is quite sufficient.

Then as to the main question, we can have no doubt that the corporation has exceeded the powers given by the Municipal Institutions Act, in passing the 48th section of this by-law. In *Fennell and the Corporation of Guelph*, 24 U. C. Q. B. 241, which was not referred to in the argument, this court quashed so much of a by-law as restrained the sale of meat, fish, poultry, eggs, &c., within the town of Guelph, at any place but the public market, without first having paid the market fee thereon; and also because it prohibited the sale of poultry, eggs, cheese, &c., within the municipality at any other place but in the market, no power being given to regulate the place of sale of such articles.

The by-law now before us makes no distinction. It subjects to a penalty any person whatever selling or offering for sale to any other person any produce, articles, commodities or things, within the city limits, without having paid market toll, or before first offering them for sale at the proper market-place.

That part of sec. 294 of the Municipal Act which relates to markets, and under the provisions of which this corporation has assumed to act, gives by the 8th sub-section power for preventing or regulating the sale of certain specified articles by retail in the public streets, and by the 10th sub-section power for regulating the place and manner of selling and weighing other specified articles, and by the 9th sub-section for preventing or regulating the buying and selling of articles or animals exposed for sale or marketed in the open air.

The statute gives no authority for the passing of a by-law of so wide and general a character as the one now in question, or containing such conditions as it does. The provisions of the statute are specific and limited, and the by-law should be restricted in its operation to the purposes and articles mentioned in the different subsections, and by doing so the very proper object the municipality had in view would have been effected.

As it is, they have exceeded their powers, and the by-law must be quashed with costs.

Rule absolute.

REGINA V. ESMONDE.

Attempting to commit a felony—Aiding such attempt—27-28 Vic, c. 19, s. 9.

The prisoner was convicted of unlawfully attempting to steal the goods of one J. G. It appeared that he had gone out with one A. to Cooksville, and examined J. G.'s store, with a view of robbing it, and that afterwards A. and three others, having arranged the scheme with the prisoner, started from Toronto, and made the attempt, but were disturbed after one had got into the store through a panel

taken out by them. Prisoner saw them off from Toronto, but did not go himself.

Held, that as those actually engaged were guilty of the attempt to steal, the prisoner, under 27–28 Vic. ch. 19, sec. 9, was properly convicted.

[M. T., 1866.]

CRIMINAL CASE RESERVED.

The prisoner was indicted, for that he, on, &c., at, &c., together with three other persons named, did unlawfully attempt the money, goods and chattels of one J. G., then in the store of the said J. G., feloniously to steal, take, and carry away.

At the trial at Toronto, before John Wilson, J., evidence was given by an accomplice that the prisoner went with him to Cooksville to see a store: that the prisoner went in to buy something, to see how it could be got into; after he came out he told witness there would be no trouble in getting in, and that it would pay, that all the tools required were a bit and a jemmy, and told witness where they could be procured: that they discussed the matter several times, and arranged for a day to go from Toronto to Cooksville, and the means of conveyance, &c: that the witness and three companions started from Toronto in a buggy some days after; prisoner saw them off, but did not accompany them. The others went out, and at night made the attempt, taking out a panel of the door; one got in and took down the bars. It seemed the attack was expected, and as witness was striking a light a shot was fired from the inside, and they all ran off, and were arrested next day in Toronto. The subject of robbing a store in Cooksville was discussed between them before this night.

Witnesses were called for the defence, who admitted being concerned in and having been convicted of this attempt.

E. A. Harrison, for the prisoner, objected that an indictment would not lie for counselling a felony unless a felony was committed: that there was no evidence to connect the prisoner with the attempt; he was an accessory only, and was not so charged here; that the 27–28 Vic., ch. 19, sec. 9, was not applicable.

The prisoner was convicted, and the learned judge reserved the question whether the conviction could be sustained.

J. H. Cameron, Q. C., for the Crown.

Robert A. Harrison for the prisoner.

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

The act referred to at the trial and relied on by the Crown, 27–27 Vic., ch. 19, sec. 9, reads thus:

"Whosoever shall aid, abet, counsel or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law, or by virtue of any act, passed or to be passed, shall be liable to be tried, indicted and punished as a principal offender."

The evidence, believed as it was by the jury, would, we think, warrant the charge that the prisoner "aided, counselled, and procured," the doing of the act of attempting to steal the goods of J. G. in the store. Had the felony been completed, sec. 2 of the same act would have rendered the prisoner, as an accessory before the fact, liable to have been indicted as a principal felon

We have no doubt that there was evidence on which the jury could properly convict those actually engaged in effecting the entrance into the store with having done so with intent to steal; and that such attempt, with such intent, is a misdemeanor. The statute seems clear, that if the prisoner was accessory before the fact he could be indicted, as he has been, as if personally present.

No objection is taken to the sufficiency of the indictment, as charging an attempt to commit a felony.

Conviction affirmed.

ELECTION CASES.

(*Reported by* HENRY O'BRIEN, ESQ., *Barrister-at-Law and Reporter in Practice Court and Chambers.*)

THE QUEEN EX REL. MACK VS. MANNING.

Municipal Act of 1867, *sec* 73—*Disqualification—Lessee of Corporation—Defendant having claim against Corporation assigned before election.*

Section 73 of 29, 30 Vic., cap. 51, came into force on the 1st January, 1867.

"Disqualification" is not included in this act in "Qualification."

Where a lease, which was for twenty-one years, was originally made to a third person for the benefit of the beneficial lessee, and afterwards, during the term, it was surrendered, and a new lease made directly to the beneficial lessee for the remainder of the term, which was for less than twenty-one years, it was held that, looking at the real nature of the transaction, the lessee was not disqualified from being a member of the Corporation.

A claim by the defendant against the Corporation, *bonâ fide* assigned to a third party, before the election, does not disqualify.

[Com. Law Chambers, March 16, 1867.]

J. A. Boyd obtained a writ in the nature of a *quo warranto* on the 1st February last, on the relation of William Mack, calling upon the defendant, Alexander Manning, to shew by what authority he claimed to exercise and enjoy the office of alderman of the ward of St. Lawrence, in the city of Toronto; the relator complaining that the defendant was disqualified to be elected at the election held in January last.

The grounds alleged against Mr. Manning were: 1st. That at the time of the said election he was a lessee of the Corporation of the city of Toronto for a term of 17 years, and for another term of 21 years, in certain leases of premises belonging to the said city. 2. That said Manning, at such time, had a claim against such Corporation for services rendered by him as arbitrator or valuator in their behalf.

It appeared from the affidavits filed, that the defendant was lessee of certain premises in the city of Toronto, of property belonging to the city, under a lease dated 26th January, 1864, made by the Corporation to the defendant for a term of 21 years, at a rental of $216 17, payable half-yearly.

It further appeared, that the defendant was also lessee of certain other property of the city, under a lease dated the 2nd April, 1861, made by the Corporation to the defendant. This lease was for a term of 17 years, from the 1st of October then last past (1860). This latter lease recited that by an indenture of lease, bearing date the 30th of January, 1857, the Corporation leased unto Ezekiel F. Whittemore, then deceased, the premises for the term of 21 years, at a rental of £75; that although the lease was made to Whittemore, the defendant was the beneficial lessee, and took possession of the premises, and

retained possession from the execution of the lease to Whittemore, and was then in possession, and that the defendant paid the rents and taxes, and expended very large sums in the erection and completion of several brick buildings thereon. That in the month of December, 1858, he, Whittemore, gave notice to the Corporation that the defendant, Manning, was the real and beneficial owner of the premises, and that he, Whittemore, held the lease from the first, for and on account of the defendant, and that he was desirous of assigning the lease to defendant, and that he, Whittemore, instructed the solicitor for the city to prepare an assignment of the lease to the defendant; that the assignment was endorsed on the lease and ready for execution, but that Whittemore suddenly died without executing it. It further recited, that the defendant requested the city to execute to him a new lease of the premises, as the beneficial owner thereof, which the Corporation were willing to do, provided they did not incur any liability to the defendant as against the estate of Whittemore, and that defendant covenanted and agreed to indemnify the Corporation against any claim of Whittemore's estate, in consequence of their executing the lease to defendant. The lease, as already stated, was for 17 years, from the 1st October, 1860, being the unexpired term of the 21 years granted by the recited lease to Whittemore; it contained the same covenants for renewals for further terms of 21 years, and the other usual covenants in leases of that nature.

It further appeared from the affidavit of Mr. Gamble, the solicitor of the city at the time these leases were made, that Whittemore was merely a trustee for Manning. and he corroborated the recitals mentioned in the second lease, that after the death of Whittemore, he drew the lease for 17 years, which he stated was only intended to confirm to Manning the term of 21 years, and rights of renewals.

Mr. Manning swore that the lease to Whittemore was made to Whittemore for his, the defendant's benefit, and that he was, from the first, the beneficial lessee for the term of 21 years, and that the lease to himself was made under the circumstances therein recited.

Robt. A. Harrison shewed cause.

The relator is not qualified as such. He qualifies on an Orange hall, of which he is merely care-taker and not a tenant, having such interest as would entitle him to vote, and the *locus standi* of the relator may be questioned in *quo warranto* proceedings: *Regina ex rel. Shaw* v. *McKenzie*, 2 U. C. Cham. Rep. 36, 44; Con. Stat. U. C., ch. 54, ss. 75, 76.

As to the first objection. The lease for 17 years is in substance and effect a lease for 21 years, and therefore within the spirit and intention of the act.

Under the late act the Corporation lessees were disqualified, but under the act of last session this disqualification, so far as relates to leases for 21 years and upwards, is removed.

Sec. 73 is in force. "Qualification" and "Disqualification" are under separate and distinct heads, and the clause of the act postponing the clause as to qualification does not affect that as to disqualification.

As to the third objection, Manning before the election assigned the amount due to him from the Corporation, and the Corporation accepted it, he had not therefore any interest in the amount, and this objection must fail.

If the construction of the statute be doubtful, the sitting member should not be unseated: *Regina ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244; *Regina ex rel. Ford* v. *Cottingham*, *Ib*, 214.

J. A. Boyd, for the relator.

Sec. 73 of the Municipal Act of last session will not come into force until the 1st day of September, 1867. That clause is headed, "Disqualification," and enacts, that certain persons holding certain official positions, &c., and that no person having by himself or his partner an interest in any contract, with or on behalf of the Corporation, shall be qualified to be a member of the Council of any Municipal Corporation; "*Provided always, that no person shall be held to be disqualified, &c., by having a lease of 21 years or upwards, of any property from the Corporation, but any such lease holder shall not vote in the Corporation on any question affecting any lease from the Corporation*"

This latter proviso is not found in the 73 sec. of the Municipal Act, 22 Vic., cap. 54, and before the passing of the act of last session, the defendant would no doubt have been disqualified, and if sec. 73 was not in force since the 1st of January last, he was ineligible as a candidate at the last election.

"Disqualification" is included in "qualification," and sec. 73 does not therefore, by sec. 427, come into force till next September.

If that section is in force, it only applies to leases for 21 years and upwards, and the lease for 17 years is not within the proviso, and that being the case, the defendant is within the disqualifying portion of the clause.

MORRISON, J.—The first point to be determined is, whether the 73rd section of the act of 1866 is in force, and I am of opinion it is. The 427th section of that act (as amended by ch. 52 of the same session) enacts, "That this act shall take effect on the 1st of January, 1867, save and except so much thereof as relates to the nominating of candidates for municipal offices, and the passing of by-laws for dividing a municipality, or any ward thereof into electoral divisions, and appointing returning officers therefor, which shall come into effect on the first day of November next; and *also, so much thereof as relates to the qualification of electors and candidates shall not take effect till the first day of September*, 1867. Sections 70, 71 & 72 are headed "Qualification of Mayors and Aldermen," &c. Section 73, the one in question, is headed, "Disqualification." I can well understand upon an examination of the old and new municipal acts why the coming into force of the 70, 71 & 72 secs. was postponed until the 1st September next, as it appears that in many cases the qualification of candidates are changed, partly arising from the new system of rating, established by the new assessment act of last session, to the provisions of which act the new municipal act conforms, and that consequently the Legislature, being aware that the assessment rolls in existence on the 1st of January last, and by which the qualification of candidates would be determined were made up in 1866: that they could not properly apply to the last elections, were the whole of the act to take effect

on the 1st of January, saw that it was necessary for the working of the new act, that the provisions relating to the qualification of candidates should not take effect until rolls were made up under the new mode of rating introduced by the acts of last session. But I see no like reason for postponing the operation of the 73rd section. On the other hand, if the Legislature deemed it right that the disability arising from the previous state of the law should be removed, were the words of the section not clear one way or the other, I would lean in favour of a liberal construction; but in my judgment the words of section 427 leave little doubt as to the intention and object of the Legislature, it being limited in precise words to so much as relates to the qualification of candidates. We find sections specially headed "Qualifications of Candidates," to which it does apply, but section 73 is headed, "Disqualification." Interpreting the section literally, it cannot apply to it, and I think I am warranted in assuming that it was not the intention of the Legislature that it should. Such being my judgment on this point, the next question to be determined is, whether the lease for 17 years is within the spirit and meaning of the 73rd section, and I think on this point the defendant is also entitled to my judgment. In considering this matter, I have to look to the object and purposes of the Legislature in adding the proviso to section 73, which refers to leases for 21 years and upwards. I think I may assume that the Legislature had in view the fact, that leases for terms of 21 years, similar to the one before me, were granted by corporations like the city of Toronto, and that it was expedient to render the holders of such leases eligible as candidates for the offices of aldermen, &c., no doubt thinking that the policy of the law, which excludes contractors from corporations, did not apply to persons who like this defendant were so much interested in the good government and welfare of the municipality. It is quite clear from the facts before me, that the premises in question were originally leased for a term of 21 years to Whittemore; that that gentleman took and held the lease as a trustee for the defendant; that before Mr. Whittemore died he was desirous of relieving himself of the trusteeship by assigning the lease to the defendant, his *cestui que trust*, and that he took steps towards that end, but unfortunately before completion, he, Whittemore, died; that under these circumstances, the defendant applied for and obtained the lease for 17 years in his own name, being the then unexpired term of the 21 years granted to his trustee, with similar covenants and conditions as those contained in the original lease, and as Mr. Gamble states, the lease for 17 years was intended to be a confirmation of the lease for 21 years; all these facts are also recited on the face of the lease. Under such circumstances, it would be hard to say that this defendant was not, in relation to the matter in queston, in reality a lessee of a term for 21 years, and as such entitled to be a person within the meaning of the proviso in that behalf mentioned in section 73.

With respect to the second ground of complaint namely, that the defendant had a claim for $30 against the Corporation for services rendered to the city as an arbitrator, it appears from the affidavit of Mr. Boyd, that by a request of the standing committee on finance. &c, of the Corporation, "the committee recommended payment of Mr. Alexander Manning's (the defendant) account of thirty dollars for services as arbitrator, in determining the value of St. Andrew's market buildings, destroyed by fire in 1860." This report is dated December 14, 1866; and he states that he was informed by the chamberlain that the amount therein stated had not been paid; he further says, that on the day of the date of his affidavit he saw an order (with whom or where is not stated), signed by the defendant, dated the 5th of January last, as follows:—"The Corporation of the city of Toronto will pay to Mr. John Wilson, the amount allowed me by finance committee, for valuation of St. Andrew's market, destroyed by fire." Mr. Manning swears that he performed the services mentioned in the report of the finance committee, and that he omitted to collect the amount; that on the 5th of January last (the election being held on the 7th), he assigned all his interest in the $30, by the order in writing mentioned in Mr. Boyd's affidavit, which order he states was accepted by the city chamberlain, and that he, Manning, ceased on the 5th day of January to have any interest in the sum of money referred to, and that he had no interest whatever in it at the time of his election; it was not suggested that the assignment or order for the money was not made in good faith. The defendant's object may have been to divest himself of all interest (as he swears he did), for the purpose of avoiding any doubt as to his eligibility as a candidate, and enabling himself to be elected to the office of alderman. If *bonâ fide* done, upon the principle acted upon in *Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60, although done on the eve of the election, I think there would be no valid objection to his doing so; it would indeed be hard were it otherwise. The object and spirit of the law was to prevent persons being elected members of a corporation who had any interest in a contract with the municipality, because it might possibly influence their conduct in the council. On the whole, my judgment is in favour of the defendant, as I am of opinion no case is made out for unseating him, and the application must be discharged with costs.

Judgment for defendant with costs.

THE QUEEN EX REL. PIDDINGTON V. RIDDELL.

Disqualification of candidate—Contract with Corporation—Costs—Oral examination.

Where a member of the Corporation, being a baker, supplied bread to fulfil a gaol contract held by another person in his own name and for his own benefit, the member of the Corporation was held not to be disqualified.

As the case presented very strong presumptions against defendant in the absence of explanation, costs were not given.

Oral examination of parties refused.

[Com. Law Chambers, March 16, 1867.]

A summons in the nature of a quo warranto was issued on the 18th February last, on the relation of Alfred Piddington, calling upon the defendant Riddell to shew by what authority he claimed to use, exercise or enjoy the office of alderman for St. John's Ward in the City of Toronto, the relator complaining that the defendant was disqualified to be elected at the election held in January last.

The ground alleged against Mr. Riddell was that at the time of the said election he had by

himself, and by his servants and agent, a partner, one Charles E. Clinkinbroomer, an interest in a contract with the Corporation of the City of Toronto, and with the Gaol Committee appointed by the Council of said Corporation, which was then existing and unsettled.

In support of the application the affidavit of one Samuel Reeves was filed, who swore that he had been in the employment of the defendant as foreman in his bake-house from August, 1864, until some time in March, 1866; that Clinkinbroomer above referred to was also in defendants employment as an outside man, attending to the driving of the bread cart, and not as a baker; and also that he kept the defendant's books, receiving the same wages as he, Clinkinbroomer, told him that defendant paid his bakers; that when he, Reeves, went into defendant's employment, the defendant then supplied the City Gaol with bread in his own name; that before the time when defendant became a member of the City Council in the year 1866, he heard defendant say, in the beginning of 1865, that he would have to get the gaol contract in another name, or else he would not be able to run for the Council, or words to that effect; and that he heard him shortly afterwards say that Clinkinbroomer had got the contract for the supply of bread for the gaol; and that he understood from the defendant, as well as Clinkinbroomer, that the latter tendered for the supply of bread for the gaol from March, 1865, to March, 1866, and that before he left defendant's employment he also heard from both of them that Clinkinbroomer tendered for and obtained the contract for the supply of bread to the new City Gaol from March, 1866, to the month of March of this year. Reeves also swears that it was well understood among all defendant's workmen that these contracts for supply of bread to the City Gaol were in reality the defendant's contracts, and that during the whole period Reeves was in defendant's employment Clinkinbroomer was regarded as a fellow workman; that all the bread made during that time, and which was sent to the gaol, was baked and made in the same manner, and by the same workmen, as bread which was sent to defendant's customers, and the bread for the gaol was drawn to the gaol by defendant's horses and bread carts, and sometimes driven by Clinkinbroomer and at other times by other drivers; that no difference or change took place in the management of defendant's business after the contracts were made in Clinkinbroomer's name, he, defendant, being sole proprietor thereof.

There was also an affidavit of Mr. Boyd filed, verifying an advertisement for tenders issued by the Board of Gaol Inspectors asking for tenders for, among other things, "bread per loaf," dated 27th February, 1866; also copy of a tender signed by Clinkinbroomer, as follows:

Toronto, March 15, 1866.

To the Board of Gaol Inspectors.

I hereby tender to supply the Toronto Gaol with the best wheaten bread at 9¼ cents per 4 lb. loaf, in such shapes and forms, and at such times as the Governor of the Gaol may require.

(Signed) C. E. Clinkinbroomer.

My sureties:
James Spence,
Allen Bryan.

The Board of Jail Inspectors consisted of aldermen and councillors of the City Council. The affidavit of one White was also filed, stating that he was well acquainted with defendant and Clinkinbroomer; that Riddell carried on the business of a baker in the premises in which he lives, and has done so for some time; that Clinkinbroomer has been in his employment for two years; that when he went to defendant's he had no means of his own; that his name has not appeared as owner of the business; and that he verily believes that Clinkinbroomer has no means of livelihood except from his occupation in defendant's business, and that the bread that goes to the gaol is delivered from the defendant's carts.

Robt. A. Harrison, for the defendant, filed the affidavit of Clinkinbroomer, in which he stated that he had read the affidavits of Boyd, Piddington, Reeves, and White; that the defendant had no interest, and never had any, in his contract in the affidavits mentioned; that he tendered for the supply of bread referred to solely on his own account, and for his own benefit, and that since his tender was accepted he had received and still receives all profits from the contract for his own use and benefit; and that he alone would sustain the loss, if any, on such contract; that from time to time he buys bread from the defendant as he would from any other baker; and that when he buys in large quantities for the purposes of the gaol, defendant delivers it free of charge for conveyance; and he swears further that he never at any time made any statement to Reeves or to any other person at variance with his affidavit.

The affidavit of the defendant stated that he, defendant, had read the affidavits filed on the application, and that he had no partner in business; that he had no interest, and never had any, either by himself or partner, in the contract of Clinkinbroomer in the affidavit mentioned; that Clinkinbroomer tendered for the supply of bread solely on his own account and for his own benefit; that the latter received all the profits and will sustain any loss that may take place; that he supplied bread to Clinkinbroomer as he would to any other customer, and delivers it free of charge for conveyance; and he further stated that Clinkinbroomer had never been paid by him any wages whatever as mentioned in the affidavit; and that he had never at any time made any statement to Reeves or other person at variance with his affidavit.

He also filed affidavits of five persons in the employment of the defendant for the year 1865, four of them bakers and one a driver, and they all severally swore that they always understood that the defendant had no interest in the contract of Clinkinbroomer for the supply of bread to the gaol, and never knew at any time either the defendant or Clinkinbroomer to make any statement to the contrary; and that they knew that the defendant sold bread to Clinkinbroomer as he would to any other customer, and when in large quantities delivered the same free of charge for carriage.

Mr. Harrison contended that the case must be within language as well as mischief of Statute (*Barber* v. *Waite*, 1 A. & E. 514); and that the word *interest* used in the Statute means *legal* interest, not merely a *sub-contract*. *Reg. ex rel.*

Bugg v. *Smith*, 1 U. C. L. J., N. S. 129. He distinguished this Act from 3 Geo. IV., ch. 126, s. 125, and cited *Towsey* v. *White*, 5 B. & C. 125, and *Barber* v, *Waite*, *ante*.

J. A. Boyd, contra.

MORRISON, J.—Upon a careful examination of the affidavits filed on both sides, I am of opinion that all the material facts and circumstances relied upon by the relator as raising the presumption that the defendant used the name of Clinkinbroomer as a cloak or contrivance to conceal the fact that he, the defendant, was the real contractor, or that he was a partner with Clinkinbroomer for providing the gaol with bread, are substantially met by the affidavits filed on the part of the defendant. The circumstances upon which the relator's case rest, standing alone, are exceedingly strong against the defendant, and, unexplained or unaccounted for, are well calculated to give rise to the gravest suspicions. I refer more particularly to the fact, that previous to the defendant becoming a member of the City Council, he had the contract for supplying the gaol; that after being elected a member of the corporation, when tenders for the contract in question were again advertised for, Clinkinbroomer, who at the time was in his employment as stated, tendered and obtained the contract, and that the defendant supplied Clinkinbroomer with bread from his bakery to carry out his contract, and the vehicles of the defendant were used for the carriage of the bread to the gaol. However, all these very suspicious circumstances are, as I say, met and accounted for by the positive affidavits of the defendant and Clinkinbroomer. Besides, the allegation that it was understood by the defendant's workmen that the defendant was in truth the contractor, is denied on oath by five of the workmen employed during the period of the contract, who assert they understood the contrary, and they further say the defendant sold the bread to Clinkinbroomer as he did to any other customer. The facts sworn to by Clinkinbroomer and defendant are peculiarly within their own knowledge, and not resting on conjecture or surmises, as do the material points in the affidavits upon which the application is founded. I may also remark that the defendant is not shewn to have interfered directly with the matter relating to the contract, or that any of the moneys paid under it passed into his hands.

It would have been much better if the defendant, considering that he was a member of the corporation, had no such business connection with his former hired man. On the argument I was pressed by counsel for the relator to order further proceedings with a view to the oral examination of the parties, and the production of their books for the purpose of impeaching the facts sworn to by Clinkinbroomer and the defendant. I could only be warranted in doing so upon the ground that I considered the facts sworn to, to be untrue. I see no reason for my thinking so. Their statements, although open to observation, are not inconsistent with the truth of the material facts alleged on the part of the relator: they only explain and account for the suspicious circumstances alluded to. On the whole case I must give judgment in favor of the defendant. With respect to costs, as the case presented a very strong presumption against the defendant in the absence of explanation, and as I have no reason to doubt that the relator acted in good faith in making this application, neither party will have costs.

CHANCERY.

(*Reported by* ALEX. GRANT, Esq., *Reporter to the Court.*)

CHRISTIE v. JOHNSTON.

Sale for taxes—Assessment of several lots in bulk.

Where three separate and distinct lots were rated in bulk by the assessor, and were sold for arrears of taxes, the sale was not set aside; and the purchaser, having stated at the sale that his object in buying was to secure the property for the person entitled, and afterwards claimed to hold the lands for his own benefit, he was ordered to pay the costs of the suit.

Where assessors or officers of municipaliti-s omit to follow the plain directions in Acts of Parliament, and any loss thereby arises to the municipality, it would seem that the party causing such loss would be answerable therefor to the municipality.

[Chan. Rep. 1866.]

This was a suit by the trustees of the estate of the late Wm. McKinlay, seeking to set aside a sale of certain lots in the town of Goderich, which had been sold for taxes in the month of November, 1861.

It appeared that the plaintiffs were interested as mortgagees of the premises; the defendant, Haldane, being entitled to the equity of redemption, but he disclaimed all interest therein by his answer.

The cause came on for the examination of witnesses and hearing, at the sittings of the court, held in Goderich, in October, 1866.

The principal facts established in evidence appear in the judgment.

Blake, Q. C., for the plaintiffs.

Toms for defendants.

VANKOUGHNET, C.—In this case the sale for taxes is impeached for illegality on several grounds. The first is, that the three town lots sold were well known as separate lots in the town of Goderich by their respective numbers of 291, 340, and 341; and yet that they were assessed in bulk for one common use.

2. That the Treasurer assumed to correct this mode of assessment by subdividing the sum among the three lots, and had no power so to do.

3. That the lands were described in the Treasurer's warrant as "patented," when the statute requires him to state whether they were granted in fee or on lease; and that the word "patent" is as applicable to a lease from the Crown which passes under the great seal, as to a grant in fee, and *Hill* v. *Hall*, 2 U. C. Appeal Rep., is relied on.

I think the sale bad on the first ground. These lots were well known to the assessors and collectors as separate lots, though they were all adjacent, and at times but not always, and not during the whole period in which the arrears of taxes for which they were sold accrued, occupied as one premise. They were entered in the town and county books as separate lots. One, 291, was much more valuable than the others, as on it were erected a house and out-houses. The other lots were occupied sometimes as a garden. The owner might be willing to redeem one or other of the lots, but not the three. For the taxes in one year, the land was assessed in the name of

the occupant; for the other four years as non-resident lands. Section 19 of the Consolidated Statutes of Upper Canada, chapter 55, provides that in column three of the roll the assessor shall insert the number of the lot, house, &c, and in column five the rental of each separate parcel; and in column six, the yearly value when rental not assessed. Section 31 provides as to lands of non-residents, that if the assessors can obtain "correct information of the sub-divisions they shall put down on the roll, and in a first column all the unoccupied lots, by their numbers and names alone, &c., and in the second column, and opposite each lot, the quantity of land therein liable to taxation, and in a third column, 'and opposite to the quantity, the value of such quantity." Now, the assessors, while they set down the numbers of the lots, thus shewing clearly that they knew them, did not observe any of the other directions of the statute. The treasurer endeavoured to correct the blunders of the assessors by acting upon and applying section 113 of the statute, and subdividing the taxes among the lots. It appears to me that this section of the statute does not apply to the case of town lots well known by, and returned to the treasurer by their number and local description; the assessment was therefore invalid, and the sale consequently illegal. It is not necessary to consider the other legal objections. It is most provoking that the officers charged with the execution of the law in these cases, will not observe the plain directions of the statute, but pursue, at least, a most careless practice, by which they may on some occasion suffer. It will be well for them to consider whether they may not be liable for any loss which the municipality may sustain in consequence of their blunders; or at all events, whether they may not lose all compensation for their services, as well as any expenses they may have incurred.

Another branch of the case is that the defendant Johnson purchased the property in for the mortgagor or the mortgagee, or the person bound to pay the taxes. I think this part of the case established, and that if the sale were valid, I should be compelled to treat Johnson as having by his conduct at the sale placed himself in the position of a trustee for such peron. It is, I think, plain that he intended to save the property for the owner; or spoke or acted in such a way as to lead the audience at the sale, and the officers conducting it, to understand that such was his intention. The sheriff's deed must be got rid of as it is on registry and creates a difficulty in the title. Johnson must therefore release all interest in the land to the benefit of the mortgagee, the mortgagor having disclaimed all interest in it, unless a registration of the decree will serve the purpose Johnson to pay plaintiff's costs, and also the costs of Haldane who disclaims. The plaintiffs offer to pay the taxes paid by Johnson and the interest. Johnson may desire an account of repairs, &c., and will in that case be charged with the rents and profits.

As to the 3rd ground of objection, his lordship referred to his views enunciated in *Brooke* v. *Campbell*, ante page 526.

QUARTER SESSIONS CASE.

In the Court of General Quarter Sessions of the Peace, County of Oxford.

BIRD, APPELLANT v. BRIAN, RESPONDENT.

Conviction under 28 Vic., Cap. 22—Application to amend conviction under 29 and 30 Vic., Cap. 50.

A conviction under 28 Vic., Cap. 22, for selling liquor without a license, omitted to state that defendant had been convicted of selling "by retail." *Held*, on appeal to Quarter Sessions, that the offence was not sufficiently stated in the conviction, which was accordingly quashed. *Held*, also, that the proper time for applying to amend the conviction under 29 and 30 Vic., Cap., 50, was at the trial, and that it could not afterwards be amended under the provisions of that act.

[Woodstock, December, 1866.]

This was an appeal from the conviction of a Justice, tried at the last sittings of this Court. The conviction, it was alleged and admitted, was framed under the act, 28 Vic. Cap. 22, entitled,

An Act for the punishment of persons selling liquor without a license," and for other purposes therein mentioned. The conviction was in these words:

"For that the said Robert Bird, on the eighteenth day of May last past, at the Town of Woodstock, in the County of Oxford, did, without license duly issued by competent authority, sell beer to one Daniel Appleton, to be drunk in the shop of him, the said Robert Bird, situate in the Town of Woodstock, aforesaid, against the form of the Statute made and provided."

At the request of the Respondent's Counsel, a jury was empannelled to try the matter on which this conviction was founded.

Beard, for the appellant, at the trial took the following objections to the conviction:—

1st. That the conviction does not charge the selling of liquor by retail.

2nd. That the adjudication is bad.

3rd. That he is not stated to be convicted on the oath of any credible witness.

The court reserved judgment on these objections, and left the case to the jury upon the evidence. A verdict was returned affirming the conviction.

MCQUEEN, Co. J.—I was under the impression at the time of the trial, an impression since confirmed by a consideration of the point, that the first objection is entitled to prevail.

The offence intended to be charged is not sufficiently described in this conviction.—*Wilson* v. *Grabiel*, 5 U. C. Q. B. 227.

It is a well established rule of law that everything necessary to show that an offence has been committed, must be stated in the conviction.—Paley on Con. 144.

It is no offence to sell beer by wholesale to be drunk in a shop, the Act in question only making it an offence "to sell by retail any such liquors in any shop, store, or place other than an inn, alehouse, beerhouse, or other house or place of public entertainment."

If the charge intended to be made was for selling beer by retail to be drunk in a shop, and the conviction had contained such a statement of the offence, then we think without doubt there was abundant evidence to support a conviction, had it been thus framed and the finding of the jury sustaining it.

It has been suggested that the conviction may now be amended under the authority of an act of last session, 29, 30 Vic., Cap. 50—a law not

known to have been in force at the time of the trial; but we are of opinion, there having been no application to the Court to amend at the trial, that it is now too late to amend—the first section of the act cited only, authorizing the amendment of convictions by the Court and at the court at which the trial takes place. *Rex* v. *Beltan*, 11 Ad. & El.

The conviction therefore being bad in substance, and incurable according to our view of the law upon the objections raised, must be quashed."

Quashed, with costs to be paid by the respondent.

ENGLISH REPORTS.

Tidswell v. Whitworth.

Lease—Covenant by lessee to pay "taxes, rates, assessments and impositions," payable in respect of the demised premises—Manchester Improvement Act, 1851 (14 & 15 *Vic. c.*, cxix.)

The plaintiff demised to the defendant premises at the clear yearly rent of £90; the defendant covenanted to pay the rent, and also to "pay and discharge all taxes, rates, assessments, and impositions whatsoever (except property or income tax) which, during the term, should become payable in respect of the demised premises.

The Corporation of Manchester, acting under the Manchester Improvement Act, 1851, called upon the plaintiff to sewer, etc., the street in which the demised premises were situated, and, upon his failing to do so, they caused the work to be done, and charged him, under section 17, with the expense so incurred.

The plaintiff thereupon sued the defendant upon his covenant to recover the expense so incurred, and obtained a verdict. On a rule *nisi* to set aside this verdict.

Held, that the expense of these improvements, was, by the Act of Parliament, thrown upon the owner, and, that the words of the covenant were not sufficiently wide to relieve him from liability.

C. P., Jan '22.

The declaration was upon a covenant contained in a lease of premises let by the plaintiff to the defendant, under which the defendant was bound to pay all "taxes, rates, assessments, and impositions" in respect of the demised premises.

The cause was tried before Martin, B., at the last summer assizes at Manchester, when it appeared that the plaintiff was the owner of a house and some premises in Manchester, which he let to the defendant under a lease, dated July 13, 1863, for seven years from the 29th September, 1863. "Yielding and paying therefore unto" the plaintiff, "his heirs or assigns, on the 29th September next, in respect of the use and occupation of the said premises up to that time, the clear yearly rent or sum of £11 5s., and thenceforth yearly, during the said term of seven years, the clear rent of £90 by equal quarterly payments on [the usual quarter days]."

The lease also contained a covenant by the defendant "that [the defendant] his executors and administrators or assigns will from time to time and at all times during the said term, duly pay the said rent hereby reserved at the times and in the manner aforesaid, and also will pay and discharge all taxes, rates, assessements, and impositions whatsoever (except property or income tax in respect of the said rent) which, from and after the 24th day of June last, and during the said term, shall become payable in respect of the said demised premises.

The Manchester General Improvement Act (14 & 15 Vic. c. cxix) was passed "for paving, lighting, cleansing and otherwise improving the several townships and places in the borough of Manchester, it provided (*inter alia*) by sections—

15. "That if any street or part of a street (not being a highway repairable by the inhabitants at large) which now is, or shall at any time hereafter be, formed or set out within the borough shall not be sufficiently sewered and drained, levelled and flagged and paved, to the satisfaction of the council, it shall be lawful for the council at any time, and from time to time, after the passing of this Act, by any writing under the hand of the town clerk, to order that any such street, or part thereof, shall be freed from obstruction, and sewered and drained, levelled, flagged, and paved, or otherwise completed, in such manner and in such time as the council may order and direct, and thereupon the respective owners of the houses and ground lying alongside or adjoining to the said, street notwithstanding any parts of such street include, pass over, lie opposite to, or be adjacent to any cross or other street, or any part thereof, shall within such time and in such manner as shall be expressed in such order, at their respective charges and expenses, remove all obstructions, and well and sufficiently sewer and drain, level, flag, and pave, or otherwise complete such streets respectively."

17. "That if any such owner shall neglect or omit to remove the obstructions, and sewer, drain, level, flag, and pave, or otherwise complete such street, or any part of any such street, within such time and in such manner as expressed in the said order, it shall then be lawful for the council to remove all obstructions, and to sewer, drain, level, flag, and pave, or otherwise to complete, as they shall think fit, the said street, or such part thereof as shall not have been done pursuant to the said order, and to charge such respective owners with their several proportionate parts of the charges and expenses thereof, or which are incidental thereto, according to the extent of their respective houses and grounds lying alongside or adjoining to the said street, such share and proportion to be ascertained and settled by or under the direction of the said council; and all charges and expenses which the council shall thereby sustain, incur, or pay, and shall so charge upon such owners respectively, shall, on demand, be forthwith paid and refunded to the council by such owners respectively, and together with interest from and after the expiration of three calendar months from the date when the completion of the street shall, as hereinafter provided, be certified by the council, shall be recoverable by action of debt in any court of competent jurisdiction."

18. "That by way of additional remedy it shall be lawful for the council, whether any such demand shall have been made upon such owner or not, to require the payment of all or any part of such charge and expenses from the person who shall then, or at any time thereafter, occupy any such houses or ground, and in default of payment thereof by such occupier, on demand by the council, the same may be levied by distress, and any justice may issue his warrant accordingly, and the owner shall allow every such occupier to deduct all such sums of money which he shall so pay or which shall be levied by distress out of the rent from time to time becoming due in re-

spect of the said houses or ground, as if the same had been actually paid to such owners as part of such rent."

19. "That in no case, except as hereinafter mentioned, shall any occupier be liable to pay more money in respect of such charges and expenses as aforesaid than the amount of rent due from him at the time of the demand made upon him for such charges and expenses, in case he shall pay the same or any part thereof, on demand, or at the time of the issuing of the warrant of distress, or the levying thereof in case such charges and expenses, or any part thereof, shall be levied by distress, &c."

Certain improvements were undertaken under the powers of this Act in the sewerage, etc., of the street in which the house let by the plaintiff to the defendant was situated, and the plaintiff having failed to perfom the required work under section 15, the work was done under the orders of the council, and the expense charged upon the plaintiff under section 17.

The plaintiff brought this action against the defendant in order to recover under the covenant in the lease above set out the expenses so incurred.

At the trial a verdict was found for the plaintiff with leave reserved. A rule was subsequently obtained to show cause why the verdict should not be set aside and a verdict entered for the defendant or a nonsuit, on the ground that there was no breach of the covenant declared on.

Quinn, Q.C., and *R. G. Williams*, now showed cause.—The defendant was clearly bound under the covenant to pay the expense incurred in improving the street, although the landlord might be liable under the Act of Parliament, still the payment fell within the words, rate, assessment, or imposition in the covenant, and as between the landlord and tenant, the tenant was liable; *Sweet* v. *Seagar*, 5 W. R. 560. 2 C. B. N. S. 119. [BOVILL, C.J.—If your client had done the work under section 16 how could he have recovered]. That would have been an imposition, and he could have recovered under the covenant; *Giles* v. *Hooper*, Carthew, 135; *Brewster* v. *Kitchell*, 1 Salk. 197; *Payne* v. *Burridge*, 12 M. & W. 727; *Waller* v. *Andrews*, 3 M. & W. 312 [WILLES, J.—There the imposition fell within the precise words of the covenant]; Callis on Sewers, p. 144, 4th ed. (note). Under section 15 this is a charge imposed upon the premises which the defendant is bound to pay.

Holker and *Butt* in support of the rule.—The words of the covenant do not extend to such a payment as this. To fall within the covenant the imposition must be one payable in respect of the demised premises, whereas this is made in respect of the street, and the word imposition must be construed to mean some charge *ejusdem generis* with rates and taxes, and therefore would not include this. 2. The duty of draining, etc., the road is thrown upon the landlord, and the landlord, cannot, by ommiting to perform that duty, cast the expense upon the tenant. In some cases it would be impossible to have recourse to the tenant; if the works were done when the lease had only half a year's rent from the tenant which would probably be insufficient. The landlord is the owner of the street *ad medium filum*, and it is reasonable that he should bear the expenses of improving his own property. The cases cited are inapplicable, in *Sweet* v *Seagar* the words were wider, in *Waller* v. *Andrews* the covenant was to pay scot, and the work done was expressly for the benefit of the demised premises; and in the case of *Payne* v. *Burridge* no liability was thrown on the landlord to do the work.

BOVILL, C.J.—This question arises on the construction of a covenant in a lease. [His Lordship here read the covenant] It is contended by the landlord that the covenant by the tenant to pay all impositions includes payments which have to be made in order to defray the expenses of paving, sewering, etc., the street. This lease was made after the passing of the Act, but that is immaterial. It is material to consider what the provisions of the Act are. It is clear that by section 15 the burden of making these improvements is in the first place thrown upon the landlord; but I cannot at all accede to Mr. Holker's argument, that there is anything in the Act which prohibits the tenant from undertaking the duties which are in the first instance cast upon the landlord; it is, however, unnecessary to decide that, as we are prepared to give judgment in favor of the defendant upon other grounds. If the duty imposed on the landlord by section 15 be performed, no burden is cast upon the tenant, but section 18 gives a power to levy charges on the occupier as an "additional remedy," but at the same time authorises the occupier to deduct such charges from his rent; so that when the landlord fails to perform his duty no burden is cast upon the occupier. I think that the "impositions" mentioned in the covenant must be taken to refer to money payments, and cannot have reference to an undertaking to indemnify the landlord from the duties imposed upon him by the Act. Then it is urged that if the landlord fails to perform the works himself, a money payment is due from him, and that that payment may be recovered from the tenant under this covenant. The covenant speaks of "taxes, rates, and impositions," and I am clearly of opinion that the word "impositions" must be held to apply to payments of the same character as rates and taxes, and that, therefore, a payment of this description would not be included. I should have no difficulty in deciding this case if it were not for the previous decisions; those decisions go very near this case but do not touch it; they are all distinguishable. In the case of *Waller* v. *Andrews* the covenant was to pay and discharge all out-goings whatsoever, rates, taxes, scots, etc.; and the payment sought to be recovered in that case was a "scot," and therefore within the very words of the covenant. That case therefore is distinguishable. In the case of *Sweet* v. *Seagar* the widest possible expressions were employed; the yearly rent was to be paid "without any deduction whatsoever in respect of any taxes, rates, assessments, impositions, or any other matter or thing whatsoever then already or thereafter to be taxed, assessed and imposed, upon or in respect of the said premises, or any part thereof by authority of Parliament or otherwise," and the respondent covenanted to discharge "all such Parliamentary, parochial, county district, and occasional levies, rates, assessments, taxes, charges, impositions, contributions, burthens, duties, and services whatsoever, as during the said term should be taxed, assessed, or imposed upon, or in respect of the said premises

thereby demised, or any part thereof." It is difficult to conceive words with a larger import than this; I quite agree with the judgment pronounced upon that covenant; Creswell, J., lays great stress upon the fact that it was the intention of the parties that the lessor should receive a certain sum, wholly independant of any taxes or assessments of any description, or upon any account. The case of *Payne* v. *Burridge* is also distinguishable; there the covenant was "to pay the rent without any deduction whatsoever," and "to pay and discharge all taxes, rates, duties, levies, assessments, and payments whatsoever which might be rated, levied, assessed, or imposed upon, or payable in respect of" the demised premises. I think all the cases are distinguishable, and that this rule should be made absolute.

WILLES, J.—I am of the same opinion. If the case had to be decided without reference to the previous cases, I could not resist the defendants argument; but this is a covenant to pay all such rates, taxes, and impositions as might be laid upon the premises; such, for example, as a sewers rate, which is deducted from the landlords rent, there is a covenant by the tenant to pay it; so, too, if a duty was imposed by the act on the tenant, and he failed to perform it, whereby charges were cast upon the landlord, such charges would be recoverable. In the case of *Sweet* v. *Seagar*, the tenant was not only bound to make payments, but certain duties were imposed upon him, although the Metropolis Local Management Act cast the duty upon the land lord in the first first instance. In the case before us, not only is there a duty cast upon the landlord, but under section 17 an action of debt lies against him, if he fails to perform that duty; and the tenant is not to be assessed in respect of the premises, but only in respect of the landlord not having performed his duty. Although I have felt doubt, I now feel satisfied that the present case is distinguishable from the decided case.

KEATING, J.—I am of the same opinion. The question is, what was the intention of these parties? The landlord not having himself performed the works, has been obliged to pay the charges incurred by the council in performing them, and seeks to recover the sum so spent, under the covenant. For this purpose he relies upon the word, "imposition," and contends that that word includes expenses such as those he has incurred. I consider that that word must be construed with reference to the words with which it is found, and cannot receive the extended construction of which it would be capable if it stood alone; it must have reference to payments of the same character as rates and taxes. If it had not been for the former cases, I should have felt no difficulty in coming to a conclusion; but I quite agree with the Lord Chief Justice in thinking that all the other cases vary, and are distinguishable from the present. I am not sorry that the Court has been able to come to the conclusion at which we have arrived.

SMITH, J.—I have felt some difficulty in arriving at our present conclusion, not as regards the construction of the covenant, but I feared that our judgment might not be consistent with some of the previous cases; but I think that this case is distinguishable from all the former cases; I think that the covenant must be taken to have reference to money payments made in respect of the premises. It is a far-fetched construction to hold that a duty imposed on a landlord is an imposition in respect of the premises. The landlord is personally responsible for the performance of that duty, and if the Commissioners are compelled to do it, they may sue him for the expenses so incurred. The tenant is only to be resorted to by way of an additional remedy, and that remedy may be employed not only against the present but against subsequent tenants. The cases referred to differ both as to the language and in some respects as to the nature of the charges imposed. I think those decisions have gone quite far enough, and are not prepared to extend the principle they involve.

Rule absolute to enter the verdict for the defendant.

CORRESPONDENCE.

Masters and Servants.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—A young man in this locality, whom we will call A, made an agreement with a farmer, whom we will call B, to work for him for six or eight months, and to commence the work at a certain day. Some little time after making the agreement, and before the time expired, A went to another farmer, whom we will call C, and offered to hire with him. Farmer C, having heard of his previous engagement with B, said to him, "You cannot hire with me, for the reason that you are already engaged to work for B." To which A replied, "I am not going to work for B; so if you don't hire me some one else will." After some little further conversation a bargain was made between A and C, for six months, and C gave A twenty-five cents to bind the bargain,—A to commence work at a certain day named, as in agreement with B. Before A had commenced to work for C, B paid A a visit, and prevailed on him to commence work on his first agreement, viz., with B. Farmer C, hearing of this, felt himself aggrieved, and went to a magistrate, to enter a complaint against A for not coming to work for him according to agreement. The magistrate, however, refused to interfere, for the following reasons, viz., that A, after engaging with B, could not enter into another engagement with C; and C, knowing that A was previously hired to work for B, should not have made any bargain with him, and in so doing acted illegally; that A was wrong in offering to hire with C, after hiring with B; and C, knowing, that A was hired to B, was equally wrong, and consequently had no just cause of complaint.

Please state in the next number of the *Gazette* whether the magistrate's opinion of the case was correct or not.

By so doing you will much oblige

A SUBSCRIBER.

Beverley, April 13, 1867.

[We think that in the main the magistrate took a proper view of the case. It is a pity, however, that A should get off so easily.—EDS. *L. C. G.*]

Act for Protection of Sheep.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—The Act respecting the Protection of Sheep does not seem to me to be very clear upon the following points:—

A has a dog, which killed the sheep of B. A lives in a municipality adjoining to the municipality in which B lives. A has no goods upon which the damages can be levied. Can the Justices certify the facts to the Clerk of the Municipality in which A lives, so as to make that municipality pay the damages? Or, shall the municipality in which B lives, which is the municipality wherein the sheep were killed, be made to pay the damages?

A. J. P.

Amherstberg, March 18, 1867.

[See Editorial remarks on page 49.]

Municipal law—Stabling for taverns.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—Various opinions having been expressed as to the terms on which licenses may be granted under 30 Vic. cap. 51, sec. 249, sub-secs. 2 and 5, will you please give, in the next issue of the *Gazette*, answers to the following:—

1st. Is it necessary, in cities and incorporated towns, that there shall be attached to taverns proper stabling for at least six horses?

2nd. If not necessary under the Act, can a municipality pass a by-law requiring taverns to have stabling for a certain number of horses?

3rd. Under sub-sec. 5, can parties be exempted from having the whole of the accommodation required by the preceding sub-secs., or must they have some portion of it?

Yours, &c.,

STUDENT-AT-LAW.

March 20, 1867.

REVIEW.

THE MUNICIPAL MANUAL FOR UPPER CANADA. By Robert A. Harrison, Esq., Barrister-at-Law, D.C.L., 1867. W. C. Chewett & Co., Toronto.

This valuable book, the first part of which was noticed some time ago, is now complete and ready for delivery, and is, we understand, being eagerly sought after by those interested in Municipal and Assessment matter. The delay in its issue, the Editor tells us in his preface, has been occasioned by a desire to make it as complete as possible. This, so far as a cursory glance will tell us, has been done, and we are glad to see that it is supplemented by a full and carefully prepared index. Want of space, however, forbids our giving any further review of the Manual in this issue.

W. D. A.

THE AMERICAN REVIEW. Boston: Little, Brown & Co., 1867.

The second and third numbers have been received. This Review is establishing a reputation for itself, its articles being of a most interesting character. The Digest of American cases keeps us *au courant* with the American decisions. The digest of English reports we have used largely in preparing the digest of those cases of which we commenced the publication this year, whilst the concluding parts of each number, containing book notices, list of new law books, and summary of events, form an interesting record of legal matters on both sides of the water.

GODEY'S LADY'S BOOK. Philadelphia, 1867.

The numbers of this enterprising and popular Magazine are duly received and fully appreciated by those who know more about its worth than we do. We are content, however, to take their word for it, and recommend it accordingly.

APPOINTMENTS TO OFFICE.

CORONERS.

ALEXANDER McKAY, of the Village of Beaverton, Esquire, M.D., to be an Associate Coroner for the County of Ontario. (Gazetted, March 30, 1867.)

WILLIAM WADE, of Cobourg, Esquire, M.D., to be an Associate Coroner for the United Counties of Northumberland and Durham. (Gazetted, March 30, 1867.)

HENRY YEAGHLEY, of the Town of Berlin, Esquire, M.D., to be an Associate Coroner for the County of Waterloo. (Gazetted, March 30, 1867.)

GEORGE WILLIAM SANDERSON, of Orillia, Esquire, M.D., to be an Associate Coroner for the County of Simcoe. (Gazetted, March 30, 1867.)