DIARY FOR JULY.

1. SUN... *5th Sunday after Trinity.* Long Vacation com.
2. Mon ... Co. Court and Surrog. Court Term begins. Heir [and Devisee Sittings commence.
7. Satur. County Court and Surrogate Court Term ends.
8. SUN... *6th Sunday after Trinity.*
14. Satur. Last day for Judges of Co. Ct. to make return of
15 SUN... *7th Sunday after Trinity.* [ap. from assessm'ts.
17. Tues... Heir and Devisee Sittings end.
22. SUN... *8th Sunday after Trinity.*
25. Wed... *St. James.*
29. SUN... *9th Sunday after Trinity.*
31. Tues.. Last day for County Clerk to certify County rate [to municipalities in counties

The Local Courts'

AND

MUNICIPAL GAZETTE.

JULY, 1866.

CONVEYANCES TO MUNICIPAL CORPORATIONS.

Many of our non-professional readers may not be aware of the restrictions placed upon the holding of land by corporations, particularly ecclesiastical corporations, by the statutes of mortmain. By the Common Law it was incident to every corporation to have a capacity to purchase lands for themselves and successors. But as it was considered inexpedient by the Legislature that property should be held in what was termed a "dead hand," the possession of land by corporations was restricted by several statutes, the main provisions of which are still in force.

Of late years when there are so many corporations constituted for a variety of purposes, it has been almost universally found advisable to limit their powers with reference to the purchase of real estate. Thus banks are only allowed to purchase land for building purposes or for the purpose of securing a debt, and Municipal Councils may, by section 243 of the Municipal Institutions Act, pass by-laws for obtaining such real property as may be required for the use of the corporation and disposing of the same when no longer required. In fact every corporation is in general terms only empowered to deal in such matters as come within the legitimate limits of the purpose or purposes for which it was originated.

It was questioned in a late case to which we now desire to direct attention, whether a Municipal Corporation could take a mortgage to secure the payment of moneys due thereto. The case referred to is *The Corporation of Belleville* v. *Judd* (25 U. C. Q. B. 397.)

It was admitted that one Alexander Judd, before the 29th day of April, 1859, was the treasurer of this corporation, and was on that day indebted to it in the sum of £1,214 19s. 10d.; that the defendant was his surety to the plaintiffs for this money; that on the same day the plaintiffs recovered a judgment in the Court of Queen's Bench for Upper Canada against the defendant for this amount and for £112 6s. 9d. costs; that this judgment was registered against the lands of the defendant; that on the 5th July, 1849, the defendant requested time from ths plaintiffs to pay £500 of this amount, and, to secure its payment executed a mortgage on his lands; that this mortgage contained a covenant that the defendant would pay the plaintiffs the sum of £500, in manner and at the time therein mentioned, which was the covenant upon which the action was brought.

The defendant in answer to the action pleaded that the plaintiffs had no power to take the conveyance and that they could receive no benefit from the covenant therein contained. The mortgage was in law a conveyance of the land, though subject to an equity of redemption by the mortgagor, and it was contended that the corporation was not a trading corporation or entitled to hold land otherwise than for the use of the corporation, and that the corporation could not give time for the payment of the debt or take this mortgage as security.

The judgment of the court was in favour of the plaintiffs and is best given in its own words.

"That the indebtedness arose in the legitimate business of the corporation is clear. Their treasurer had made default; the defendant was his surety, against whom a judgment had been obtained. We think it was within the scope of the plaintiffs' authority to give day of payment, and if so to take a covenant to pay at the day given. When this day came, was it an answer for the defendant to say, 'You could not take my covenant that I would pay you the money which at my request, you gave me time to pay?

This is not a trading corporation: but it has powers to manage its own lawful affairs. If the defendant's contention were to prevail the plaintiffs would have no discretion respecting the enforcing of their debts. They would be bound to enforce their judgments without mercy, even if it resulted in a loss. In this very case, sup-

pose it had been doubtful whether this defendant's lands sold at a sheriff's sale would pay the debt, are we to declare that they cannot give time to their debtor, and so compel them against their own and their debtor's interest to sell his property?

We think here there was nothing to prevent this corporation from giving time, or from taking this covenant to protect its interests. The plea is no answer to the declaration, which disposes of both plea and replication."

DEBTOR AND CREDITOR.

The provisions of the proposed bankruptcy amendments in England have drawn forth considerable discussion as to the advisability or non-advisability of stringent provisions for the punishment of frauds and fraudulent concealment of property by debtors. We have often stated our opinion that some such enactment as that contained in what is popularly known as the "91st clause" is absolutely necessary for the proper and legitimate protection of the creditor, and when referring to the proposed alteration of the bankrupt laws in England, we noticed the apparent want of any sufficient means of punishing fraudulent and obstinate debtors.

Several of the leading English periodicals have taken the same view of the matter, and argue strongly in favor of the beneficial effect of some provision analogous to that which forms a part of our Division Court system. We publish in another place an article taken from a leading paper in England on this subject. It has the advantage of containing none of that clap-trap sentimentalism which has been too much the fashion of late years, and whilst it puts the case very strongly—much more so than we ever did—it cannot be denied that there are many truths contained in it, well worthy of consideration.

A certain class, or rather two classes of people in this country—one composed of honest and humane, but as we think one-idead and wrong-headed men, and the other of persons likely to be affected by the stringent provisions of the "91st clause"—by dint of much writing and talking, disproportioned to their actual numbers or intelligence, some years ago brought a considerable pressure to bear, by means of which an alteration was made in the then existing law. This was, as it appeared to us, an absurd alteration, and has been so far as we have been able to ascertain, a failure—and it would seem necessarily so, for it simply had the effect of throwing a stumbling-block in the way of the creditor (who surely has a right to recover his debt, if it can be recovered), without affecting materially the position of the willing but insolvent debtor, who is, we are willing to admit, *next to the creditor*, entitled to protection; whilst, at the same time, the alteration admits the justice and propriety of the former enactment. The principle was in fact admitted, but the machinery for carrying it into effect was made more cumbrous and less effective.

A bill has been introduced this session, which has a bearing on this subject, and which it may be useful to notice. It is proposed to repeal section 172 of the Division Courts Act, which provides that no protection of any insolvent act shall be available to discharge any defendant from any order of commitment under the sections already referred to. At first sight this might seem a reasonable amendment, in view of the changes effected by the Insolvent Act; but upon further consideration may it not be said that it is in effect doing away with the beneficial operation of the clauses of the act which we are upholding. We venture to say that not in one case out of a thousand has an honest, *bona fide* insolvent debtor been imprisoned under these clauses, whilst as a means of punishing recklessly-dishonest or fraudulent debtors, the powers given by them are most useful. To use a simile brought to our minds by these warlike times—will not the repeal of section 172 take, as it were, the ball from the cartridge and leave it *blank*.

PROPOSED LEGISLATION.

We copy, for the information of our readers, the following bills introduced during the present session.

The following bill is introduced by Mr. Morris. If there should be a full discussion and a careful consideration of its provisions it may assist the legislature in forming a correct opinion on the important subject involved at a future time, but at present we do not think that it has been sufficiently considered, even in England, where so much has been said and written on the subject, or that there is as yet sufficient data to act upon.

An Act to prevent the execution in public of the Sentence of Death.

1. All executions of the sentence of death

shall hereafter take place within the walls, of within the enclosed yard of the gaol of the district or county, or union of counties, as the case may be, and not in public view.

2. The sheriff shall, in all cases, require the presence thereat of as many as six (if so many there are) of the *employées* of such gaol, including among them the gaol surgeon or physician (if any) and the gaoler; and any such *employé* being so required and failing to attend, shall be discharged of his employment unless he gives a good excuse for his non-attendance.

3. The sheriff shall further invite, by written summons, the attendance thereat of twelve persons of respectability resident within the district, county, or union of counties, one of whom, at least, (if possible) shall be a surgeon or physician.

4. The sheriff shall permit the presence at the execution of such near relations of the criminal, and of such priests or ministers of religion as the criminal may desire, and of the criminal's counsel, if so desired by the criminal.

5. Should the criminal not have desired the attendance of any particular priest or minister of religion, the sheriff shall further invite the attendance of such one or more priests or ministers of religion as he, the sheriff, may select, in view of all the circumstances of the case.

6. Excepting the persons above enumerated and such other officers of the prison, sworn constables, assistants, and military guard, as the sheriff in his discretion may deem requisite no person shall be allowed to witness the execution; and in particular, no person under age, unless a near relation of the criminal, shall be allowed to witness the same.

7. The moment of the execution shall be publicly signified by the tolling of a bell on, or as near as may be to, the gaol buildings, and also by the hoisting of a black flag conspicuously thereon.

8. Immediately after the execution, the sheriff shall empanel a jury of not less than six nor more than twelve of the persons present thereat, who, upon their oaths, on view of the body, shall forthwith enquire and find whether the sentence was duly carried into execution; and no person present at the execution shall be exempt from service on such jury, or be allowed to leave the gaol premises until after verdict rendered by such jury; and for all purposes of such inquest and verdict, the sheriff shall have all the powers and functions of a coroner, and the jury those of a coroner's jury; and the verdict shall in all things be dealt with as the verdict of a coroner's jury.

9. The word "sheriff" in this Act shall be held to include any deputy or under sheriff, or other officer, who, in the absence of the sheriff may be charged with the duty of carrying out the execution.

Our prognostications as to the introduction of a bill for reducing registrars' fees has been verified by a bill brought in by that most competent of legislators for such a task, Mr. "Cheap Law" Scatcherd. We must congratulate him upon having, at length, stumbled upon something in the shape of fees which requires reduction. As far as registrars are concerned, they will have, in a great measure, themselves to thank if this reduction in their fees takes place. We are only sorry that the genius of the introducer of this bill is confined to measures of this attenuative description, for the excessively ill-drawn Act of 1865 requires amendment in a variety of ways that are not thought of by the following bill:—

An Act to amend the Registration of Titles, (Upper Canada) Act.

Whereas it is desirable that the fees of registrars should be uniform, and it is expedient to amend the Act passed in the session of Parliament held in the twenty-ninth year of Her Majesty's reign, chapter twenty-four, intituled, "An Act respecting Registrars, Registry Offices, and the Registration of instruments relating to lands in Upper Canada:" Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The first sub-section of the sixty-eighth section of the said Act shall be and the same is hereby repealed, and the following sub-section is enacted and substituted therefor:

"1. For registering every instrument other than those hereinafter specially provided for, including all necessary entries and certificates, one dollar, but in case the same, exclusive of the necessary entries and certificates, exceed eight hundred words, then at the rate of ten cents for each additional hundred words, or the fractional part thereof, and if the memorial or other instrument embraces different lots or parcels of land situate in different localities in the same county, the registration and copying of such, including all necessary entries and certificates thereof, into the different registry books, shall be considered separate and distinct registrations of such instruments, but shall be charged for and paid at the rate of ten cents for every one hundred words, or the fractional part thereof."

2. The registrar or deputy registrar of the county in which the lands are situate shall, upon production to him, endorse the certificate required by the fifty-third section of the said Act, on the original instrument, and also on the duplicate or other original part thereof, without any charge.

3. This Act shall extend only to Upper Canada.

SELECTIONS.

DEBTOR AND CREDITOR.

We understand that a good deal of dissatisfaction exists in certain quarters at a defect in the new Bankruptcy Bill, which we have pointed out in our articles on the subject. We refer to the inadequacy of the means which it provides for the punishment of fraud, and to the dangers which are likely to arise from the abolition of imprisonment for debt if no remedy analogous in its character is provided. This ought to be a matter of the most serious consideration, for there can be no doubt that the new Bill as it stands is well calculated to encourage those relaxed notions of commercial morality which prevail so widely in the present day and which are the cause of such a vast amount of intricate and widely ramified misery. The new Bill is so limited, as we pointed out in our account of it, as to confine imprisonment for debt in future to the cases in which, as the law already stands, it is the act not of the party but of the court. The most important of these cases is the power given to the County Court judges to imprison for a term not exceeding six weeks persons whom they believe to be able to pay and to refuse out of mere contumacious obstinacy. The principle of the County Court Acts appears to us to be perfectly right, except that it does not go far enough, and we cannot see why it should not be extended to all courts whatever in which debts can be recovered or assets distributed. It is worth while to consider a little the way in which the system works, and the principles on which it depends. It may be a new reflection to some of our readers, but as a matter of fact great numbers of people in very different ranks of life are thoroughly well off and to all intents and purposes are rich people, and yet have hardly any money or any property of value in the whole world. A barrister or physician may be making an income counted by thousands a-year; but if he lives extravagantly, as many men in that position do, his actual realised property at a given moment may be worth nothing or next to it. The barrister, if a single man, may live in handsome furished lodgings and do his business in chambers the furniture of which would not sell for 100*l.*, and that 100*l*, and whatever balance he happened to have at his bankers might well be all the property he had in the world. Suppose the law of imprisonment for debt abolished, and suppose judgment recovered against him, what would his creditor be able to take? A certain number of law books, and a few tables and chairs, and perhaps a riding horse on which the livery-stable keeper would have a lien for keep. To attach such a man's fees as they came in would be almost impossible. Yet he could in all probability get almost unlimited credit from tradesmen who knew nothing of him except the fact that he was a barrister in large practice. This is no doubt an extreme case, and one which would not arise very often, but cases more or less resembling it might be found in almost every walk of life, down to the clever journeyman artisan who makes large wages, lives in lodgings, and spends his money as fast as he gets it. Such a man will often have a certain small amount of money stowed away somewhere where it is extremely difficult for his creditors to detect it. The mulish obstinacy with which he will sometimes defy the powers of the County Court, and refuse to pay, although he is perfectly well able to do so, would scarcely be believed by those who have not seen it. It is not worth while to make him a bankrupt, and go to the expense of having him examined and crossexamined and probed in all directions to find out what he has and where it is; but when the gaol doors are closed upon him, and he finds out that to protect his hoard he is foregoing wages of a greater amount and losing chances of employment which it may be very difficult to recover, he is pretty sure to pay if he possibly can. In short the plain truth is that the power of imprisonment for debt is a mild form of torture for the purpose of discovering concealed property. So long as the torture does not go beyond a reasonable and bearable degree, which must be assessed from time to time by the average feelings of the age in which it is permitted, it is not only a most efficient, but also a most proper and justifiable instrument to employ for the collection of debts. To rub red pepper into a man's eyes, or to apply red-hot plates to the soles of his feet and the calves of his legs for the purpose of making him pay what he owes, would no doubt cause many debts to be paid of the amount of which the creditors would otherwise be defrauded. These measures are identical in point of principle with the power of imprisonment which the County Court judges actually possess, and which we should wish to see extended to other judges. They are also not distinguishable in principle from pertinaceous dunning, but the difference in the degree of suffering inflicted makes all the difference in a moral point of view.

There are, however, several considerations which ought to be most carefully kept in view whenever this branch of the law is systematically regulated and set upon a solid foundation. In the first place, the power of inflicting imprisonment ought, as under the County Court Acts, to be vested in the judge, and not, as under the existing law, in the party; and in the second place the judge ought to be most careful to use it only against defaulters themselves, and not, as was so frequently the case under the old law, against solvent relations, who it is supposed will prefer paying their relation's debts to seeing him in gaol.

In the second place it ought not to be forgotten that imprisonment for debt ought to be made to serve two distinct purposes which should never be confounded. The first purpose is that of torture for the extraction of money from those who have it and will not

pay their debts with it, and whom it would be expensive or otherwise inconvenient to make bankrupts. For this purpose the judge ought to have the power of giving a moderate term of imprisonment, say three or six months terminable at once on payment of the debt. It ought, however, to be provided that the mere imprisonment should not operate as the execution of the old writ of *ca. sa.* operated—as a satisfaction of the demand. The creditor should still have the power of taking in execution any assets he could get at, or of making the debtor a bankrupt, in which case he would be liable to the penalties of the law of bankruptcy if he concealed any part of his property. The debt being satisfied by any means whatever, the imprisonment should cease at once. In order to guide the discretion of the judge to whom an application might be made for the exercise af this power, he ought to have the right of making all such inquiries as he might think expedient with respect to the position of the party, and to require him to answer upon oath all questions addressed to him with regard to his means of payment.

The second object to which imprisonment for debt ought to be applied is that of punishment, and there are many cases in which such a power would be most beneficial. There is a large class of civil actions in which frauds and other iniquitous proceedings on the part of defendants are judicially proved against them, which are far worse than the ordinary run of offences tried in the criminal courts, greater in their moral guilt beyond all comparison, and infinitely more dangerous in their consequences to society. This is the case in a large proportion of actions both for tort and upon contracts. It continually appears in actions for seduction, sometimes in actions for breach of promise of marriage, now and then in actions for assault, and frequently in actions for libel and slander, that the act complained of is one in which the public as well as the party has a strong interest, and which differs from ordinary crimes rather by the way in which the parties have chosen to treat it than by the character of the act itself. In such cases the damages form a civil debt, but they also partake of the nature of a fine, and are usually assessed by the jury on that principle. The law as it stands at present makes a distinction between a debt consisting in damages for certain actions of this class and other debts. This distinction is given up the new Bill. This, we think, is a matter of regret. There would be no difficulty in empowering the judge before whom such actions were tried to order immediate execution by *ca. sa.*, without prejudice to other remedies, and to order further that if the defendant became bankrupt he should not be discharged from custody under the *ca. sa.* till the expiration of a year or less after his arrest. This would give to quasi-crimes judicially proved a quasi-punishment, which at present they would escape, and which would be highly beneficial to the interest of good morals. It is a monstrous thing that a really bad case of seduction, or slander, or malicious prosecution should involve no other consquence than that of going through the process of becoming a bankrupt in the easy manner provided for by the new Bill. There is also a large class of cases of fraudulent misrepresentation and fraudulent breaches of contract to which the same measure might with great advantage be applied, but the cirumstances of particular cases vary so very much that it would be much harder to lay down a general rule with respect to them than with respect to the other classes of actions which we have already mentioned. We feel, however, that the abolition of imprisonment for debt will be by no means an unmixed good, until the rough and capricious remedy which it certainly did provide for a good many cases of this sort is brought into proper shape and applied to its legitimate purposes. To treat all debts as crimes is cruel. To provide that no debt shall be a crime or be visited with any more unpleasant consequences than compulsory payment is, we think, weak and foolish. The true problem is to distinguish debts which arise from honest misfortune or innocent mistake and those which are the results of fraud, wrong, or extravagance. Punish the one and compel payment of each. As to the mode compelling payment, if the debtor is really unable to pay there is no help for it; but if he is able to pay, torture him mildly, but firmly, till he does. This we apprehend, is in a compendious form the true theory of imprisonment for debt.

If these principles had been adopted ten years ago, and consistency acted on ever since we should not now be witnessing the painful spectacle of men of perfect solvency who are unable to meet their engagements because of the extravagant overtrading of a set of gamblers who ought long since to have been viewed and treated as criminals.—*Pall Mall Gaz.*

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

INTERPLEADER—CLAIM BY GUARDIAN OF INSOLVENT'S ESTATE.—An execution was delivered to a sheriff against the goods of the defendant, upon which he seized certain goods. These goods were claimed by the guardian in insolvency of the estate of the defendant, against which defendant a writ of attachment under the Insolvent Act had also issued to the same sheriff. The sheriff applied for relief under the Interpleader Act.

Held, that under 28 Vic. cap. 19, sec. 2, he was entitled to protection, and an issue was directed.—*Burns* v. *Steel*, 2 U. C. L. J. N. S. 189.

CLERK OF THE PEACE—1 WILL. & MARY, c. 21, s. 6—MISDEMEANOUR — DECISION BY COURT OF COMPETENT JURISDICTION — INTERESTED PARTIES —COSTS INCURRED ON BEHALF OF COUNTY.—The plaintiff, who had been clerk of the peace in the county of Kent, England, refused to record certain proceedings which he was ordered to record by the Court of General Sessions. The matter was referred by that Court to a certain number of the justices, who formed the "Finance Committee." At their instigation certain charges were preferred against the plaintiff under 1 Will. & Mary, c. 21, s. 6. These charges were heard by the Court of General Sessions, at which several members of the Finance Committee were present. The Court of General Sessions decided that the charges were proved, and discharged the plaintiff.

Held, that the decision of the Court of General Sessions was conclusive, that being a court of competent jurisdiction, and the proceedings appearing good on the face of them.

Held further, that those justices who directed that the charges should be preferred against the plaintiff were not thereby rendered incompetent to sit in court when the charges were decided; and also that justices who give instructions for legal proceedings to be taken on behalf of the county are not personally liable for the costs thus incurred.—*Wildes* v. *Russell*, 14 W. R. 796.

CRIMINAL LAW — RAPE.—Although rape can only be accomplished by force, and with the utmost reluctance and resistance on the part of the woman, yet no more resistance can be required in any case than her condition will enable her to make; and if she be insensible or unconscious of the nature of the act, or for any reason not a willing participator, the slight degree of physical force necessary to accomplish carnal knowledge is sufficient to constitute the offence.

If the woman's consent is obtained by fraud, the nature of the act is the same as if consent had been extorted by threats or resistance overcome by force.

But where the carnal intercourse is not against the woman's desire, and no circumstance of force or fraud accompanies the act, the crime of rape is not committed, notwithstanding the woman was at the time not mentally competent to exercise an intelligent will.—*The People* v. *Cornwell*, 5 Am. Law Reg. 339.

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28 VIC. CH. 1 — RESTORATION OF PROPERTY SEIZED UNDER.—Under sec. 11 of 28 Vic. ch. 1, for preventing outrages on the frontier, the court can only order restoration of property seized when it appears that the seizure was not authorized by the act; and in this case, on the facts stated below, they refused to interfere, holding that the collector who seized had probable cause for believing that the vessel was intended to be employed in the manner pointed out by the ninth section.—*In re* "*Georgian*," 25 U. C. Q. B. 319.

SURVEY—TOWNSHIP OF SMITH—LOTS FRONTING ON A RIVER—C. S. U. C. CH. 93, SEC. 27.—The three easterly lots only of one concession in a township (Smith, in the county of Peterboro') were bounded in front by a river, and the line had been run in the original survey in front of such concession, up to though not past these lots, but the township itself fronted upon another township.

Held, clearly not a township bounded in front by a river, within the C. S. U. C. ch. 93, sec. 27, so that resort might be had to the posts in the concession in rear to determine the side lines of these three lots.

Quære, whether such a case is provided for by the statute.—*Johnson* v. *Hunter*, 25 U. C. Q. B. 348.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

ACTION AGAINST SHERIFF — DESTRUCTION OF GOODS BY FIRE.—Declaration, against a sheriff for not executing a *fi. fa.*, alleging that there were goods out of which he could have levied the money endorsed, but that he did not levy the same. *Plea*, that before he could by due diligence have levied the moneys the goods were destroyed by fire.

Held, on demurrer, plea bad, for levying includes seizure and sale, and consistently with the plea the goods might have been destroyed in defendant's custody after seizure, in which case he would be liable.—*Ross* v. *Grange*, 25 U. C. Q. B. 396.

BANKS—USURY—NOTE PAYABLE AT ANOTHER PLACE—EVIDENCE.—Under Con. Stats. C. c. 58, if the authorities of a bank being aware that a note would otherwise be made payable where it is offered for discount, procure it to be made payable elsewhere solely for the purpose of obtaining the rate allowed by sec. 5, for the expenses of collection, in addition to the seven per cent. interest, the transaction is usurious and void. They are not called upon, however, to inquire as to the reason for making a note thus payable, when the parties themselves have so chosen to draw it.

Evidence of a general agreement with the bank that all notes made by defendants should be drawn in that form, is admissible to support a plea of such an agreement as to the note sued on.

The maker and endorser of a note sued together are admissible witnesses for each other, though they have joined in pleading.

Remarks as to the practice in this country of taking notes for discount, not from the last endorser, but from the maker, who brings them endorsed—thus suggesting not a business transaction, but accommodation endorsements.—*Bank of Montreal* v. *Reynolds & Sprowl*, 25 U. C. Q. B. 352.

STATUTE OF LIMITATIONS — POSSESSION.—Where a person having in fact no title has occupied part of a lot of land for twenty years, and other parts for a less period, he is entitled only to the first mentioned portion as against the true owner, and it can make no difference that he acted under a belief of title honestly entertained.—*Young et al.* v. *James Elliott and Robert S. Misener*, 25 U. C. Q. B. 330.

INSURANCE — INTEREST — MORTGAGOR AND MORTGAGEE.—Declaration on a policy of insurance, effected by the plaintiff with the defendants, alleging that he sued on behalf of and as trustee or one D., to whom he had mortgaged the premises and assigned the policy. It was objected by the defendant that the plaintiff shows no interest in the premises, and having none cannot sue as trustee for another. *Held*, that the objections were clearly untenable.—*Richards* v. *L. and L. Fire Ins. Co.*, 25 U. C. Q. B. 400.

TRUST.—Where money has been paid in to the ordinary banking account of a company, not being in any way ear-marked, the company will not, on an allegation that the money is impressed with a trust, such allegation not being admitted by the company, be restrained, on motion, from dealing with the money.—*Bank of Turkey* v. *Ottoman Company*, 14 W. R. 819.

TRESPASS—NEGLIGENCE—ESCAPE OF WATER—CONSEQUENTIAL DAMAGE—LIABILITY OF OWNER OF DANGEROUS PROPERTY.—Land of the plaintiff was flooded with water which escaped from a reservoir constructed on the defendants' land by the defendants' order. In the construction of the reservoir persons employed by the defendants to make it became aware of certain ancient shafts filled up with soil, and which ancient shafts in fact communicated with old coal workings under the defendants' land. The defendants were ignorant of the existence of these old workings, and, but for their existence, no mischief would have been done to the plaintiff. When the reservoir was filled, the water burst into the ancient shafts, and flowed through them into the old workings, and thence into the plaintiff's mine, where the mischief complained of was done.

Held (reversing the judgment of the Court of Exchequer), that the duty which the law casts upon a person who, for his own purposes, brings on his land something which will naturally do mischief if it escapes, is an absolute duty to keep it in at his peril, and not merely a duty to take all reasonable precautions to keep it in; and that therefore the defendants were liable for the damage done to the plaintiff.—*Fletcher* v. *Rylands and another*, 14 W. R. 799.

UPPER CANADA REPORTS.

QUEEN'S BENCH.

(*Reported by* C. ROBINSON, ESQ., Q.C., *Reporter to the Court.*)

THE QUEEN v. THE MAYOR OF THE TOWN OF CORNWALL.

Municipal Corporations—Vacating seat by insolvency—Practice—C. S. U. C. ch. 54, secs. 121, 122.

On application for a *mandamus* to the mayor of a town to issue his warrant for a new election in place of one M., a member of the council, whose seat it was alleged had become vacant by his having applied for relief as an insolvent debtor—*Held*, that the vacancy must first be established by *quo warranto*, and that *mandamus* was not the proper remedy.

[Q. B., E. T., 1866.]

In Trinity term last *Kerr* obtained a rule *nisi*, calling upon George C. Wood, Mayor of the town of Cornwall, to shew cause why a writ of *mandamus* should not issue to compel the mayor to issue a warrant under his signature, requiring the returning officer appointed to hold the then last election for the centre ward of the town of Cornwall, or other the proper officer duly appointed, to hold a new election to fill the place of John S. McDougall, whose seat in the council had become vacant, the said McDougall having applied for relief as an insolvent debtor, and because he had assigned his property for the benefit of his creditors.

The affidavits on which the motion was founded set out that McDougall was elected a councillor for the centre ward of the town of Cornwall, in January, 1865: that he accepted the office and acted as such: that some time in May last McDougall called a meeting of creditors, under the Insolvent Act of 1864: that the notice calling such meeting was published in the "Canada Gazette," and that McDougall made an assignment of his estate and effects under the Insolvent Act to one Adams, and that Adams after the assignment was in possession of the goods of McDougall: that the relator was an inhabitant of and an elector of the town of Cornwall, and voted without objection at the then last election in the said centre ward: that no election had been held to supply the vacancy, if any, caused by the insolvency of the said McDougall.

The other was an affidavit of one Eligh, a constable, who swore that he did, on the 29th of July, 1865, serve Mr. Wood, the mayor, with a duplicate notice attached to his affidavit. The notice attached was signed by the relator as an elector, and addressed to G. C. Wood, Esquire, mayor, &c., as follows:

"Take notice, that John S. McDougall, formerly a councillor for the centre ward of the corporation of the town of Cornwall, has made an assignment under the Insolvent Act of 1864, whereby his seat in the council has become vacant; and take notice, that you are hereby required, under section 122 of chapter 54 of the Consolidated Statutes of Upper Canada, to issue a warrant for the holding of an election under the said section, to fill the vacancy; and that if you fail to do so, an application will be made to the Court of Queen's Bench for a writ of *mandamus* to compel you to do so, and that you will be compelled to pay the costs of such application.

"Dated the 18th of July, 1865."

In Michaelmas term last the mandamus *nisi*, with the return of Mr. Wood, the mayor, was filed, which was in substance as follows:

I cannot by warrant, &c., require the said returning officer, &c., to hold a new election to fill the place of John S. McDougall, whose office and seat as councillor is alleged to have become vacant, because the alleged vacancy is a disputed vacancy, the said McDougall having, since the alleged act of insolvency on the 1st of June, 1865, and since his alleged application for relief as an insolvent debtor, exercised the said office of councillor, by attending the meetings of the council, and no such vacancy having been declared to exist by the said council, or by court of competent authority. I further return that I have no authority as mayor to declare the seat of the said McDougall vacant, as I am not authorized by statute or otherwise to call evidence and to adjudicate as to the truth of the said alleged vacancy; and in the absence of any action on the part of the council declaring the seat vacant, I have no power; and I humbly submit that I should not be compelled by the order of this honorable court to require by my warrant as aforesaid the holding of a new election to fill the alleged vacancy until the fact of a vacancy is ascertained by proceedings in the nature of a *quo warranto*.

During the same term, on motion of Mr. *Kerr*, a rule was granted, calling on Mr. Wood, the mayor, to shew cause why his return to the writ should not be quashed, and a writ of *mandamus* absolute should not issue, upon several grounds —among others, that the vacancy was not a disputed one, by reason of McDougall's attending meetings of council or otherwise: that it was not necessary that the vacancy should be declared to exist by the council or any court, and that it was the duty of the mayor to have issued his warrant without waiting for the vacancy being ascertained by proceedings in the nature of a *quo warranto*.

C. S. Patterson and *Robert A. Harrison* shewed cause during that term, and took various exceptions to the writ, and contended, among other things, that the office was full, and that the proper remedy was by *quo warranto*.—They cited *The Queen* v. *Powell*, 1 Q. B. 352; *The Queen* v. *Mayor of New Windsor*, 7 Q. B. 908; *Mayor of London* v. *The Queen*, 13 Q. B. 41; *Frost* v. *The Mayor of Chester*, 5 E. & B. 531; *The Queen* v. *Phippen*, 7 A. & E. 966.

M. C. Cameron, Q. C., and *Kerr*, supported the rule citing, *Rex* v. *Robbison*, 1 Str. 555: *The Borough of Bossiny*, 2 Str. 1003; *Case of Aberystwith*, 2 Str. 1257; *Rex* v. *Mayor of Stafford*, 4 T. R. 690; *Rex* v. *Mayor of York*, 5 T. R. 47; *Rex* v. *St Catharine's Dock Co.*, 4 B. & Ad. 363; *Rex* v. *Parry*, 6 A. & E. 810; *The Queen* v. *Quayle*, 11 A. & E. 508; *Rex* v. *Overseers of Canton*, 1 Barnardiston, 299; Tapping on Mandamus, 288, 348, 371.

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

The main question that arises in this case is whether this application for a mandamus is the proper remedy.

It appears that Mr. McDougall was elected a councillor for the centre ward of the town of Cornwall at the usual annual election, and that he accepted the office and exercised it up to the time of the application. It is alleged that in the month of May last McDougall called a meeting of his creditors under the Insolvent Act of 1864, and made an assignment of his estates for their benefit; and it is contended, under the 121st clause of our Municipal Corporations Act—which enacts that in case a member of council applies for relief as an insolvent debtor, or assigns his property for the benefit of creditors, his seat in the council shall thereby become vacant—that Mr. McDougall's seat became vacant, and that it was the duty of the defendant, under the 122nd clause, without any further act or proceeding, to issue his warrant to fill such vacancy, notwithstanding that McDougall was still filling and exercising the office. The fact that McDougall was duly elected to the office, and was never removed or resigned his office, and was *de facto* exercising the office of councillor, *primâ facie* shews that the office is full; and whether McDougall applied for relief as an insolvent debtor, &c., are facts, the truth of which must be ascertained and brought under the notice of the head of the council in some way or other before he can issue his warrant.

The 52nd clause of the English Municipal Corporations Act, 5 & 6 Wm. IV., ch. 76, provides that if any person holding the office of councillor, &c., shall apply to take the benefit of an act for insolvent debtors, &c., such person shall thereupon become disqualified, and shall cease to hold the office of councillor, and the council shall thereupon declare the office to be void, and shall signify the same by notice in writing, &c., and the office shall thereupon become void. Under that clause it has been held that the office is not void until the vacancy is duly declared—*Regina* v. *Mayor, &c., of Leeds*, 7 A. & E. 963. Our statute is unfortunately silent as to the mode of declaring the vacancy.

In the same English act, sec. 54, which refers to bribery at elections, is in effect somewhat like our 121st clause. It enacts that any person committing the offence of bribery, and being lawfully convicted thereof, "shall be for ever disabled to hold, exercise, or enjoy any office or franchise to which he then shall, or at any time afterwards may, be entitled as a burgess of such borough, as if such person was *naturally dead*;"

and although there is no decided case under this clause, Mr. Grant, in his Treatise on Corporations, page 234, in commenting on this 54th section says: "The effect, therefore, of an adverse judgment in a prosecution under this enactment, is to strip the burgess *ipso facto* of his corporate character and rights; and it does not seem necessary, under the peculiarly strong terms used," (much stronger than our 121st clause) "that the corporation should go through the ceremony of removing him, but that they may fill up his place by a fresh election, as though he had terminated his natural life. But the proper course for the corporation to take, in case such person should persist in acting as a corporator, notwithstanding such judgment, is not to disfranchise, for that is not the correct course in cases of defective title, but to obtain an injunction in the nature of *quo warranto* to oust him. He might also, it is probable, be indicted as for a misdemeanor in acting in his place or office in contempt of an act of parliament." These remarks are equally applicable to the case before us.

In the case of *The Queen* v. *The Mayor of Cambridge*, 12 A. & E. 702, in which the effect of the Statute 9 Geo. IV. ch. 17, came in question—which statute enacted that any person who shall thereafter be elected, &c., to the office of Mayor, &c., shall within one calendar month next before or upon his admission into the office, make and subscribe the declaration therein set forth, and the 4th section of which provides that if any person elected, &c., into any of the offices mentioned, shall omit or neglect to make the declaration, such election, &c., shall be *void*, and it shall *not* be lawful for such person to do any act in the execution of the office.—Lord Denman, in giving judgment, says: "I decide, however, upon the ground that, notwithstanding the enactment in Statute 9 Geo. IV. ch. 17, which declares the election 'void,' it is clear that the party could not have been removed without a *quo warranto*. In the former acts similar words are used, to which effect could be given only by *quo warranto*. It could not be denied that a person disqualified under those acts was an officer until he was so removed."

These authorities go to shew that the relator has misconceived his remedy; but without them, the very nature of the case suggests that the remedy most expeditious and convenient, as well as consonant to the principles which guide us in other cases, is that by *quo warranto*. In that case the party himself is called upon to answer, and he must either admit or deny the alleged fact which would disqualify him or disentitle him to exercise the office. Under the rule in this case the party most interested is not before the court, although holding the office *de facto*.

Upon this ground alone we think the application must fail. In the case of *The King* v. *Bankes*, 3 Burr. 1452, 1 W. Bl. 445, it was held, upon precedents there cited, as upon the reason of the thing, that the rule could not proceed because the name of the acting Mayor was not in the rule, he being in the possession of the office, and materially interested in the event of the question: that he ought to be heard in defence of his right before the issuing of a mandamus to proceed to the election of another in his stead.

We are therefore of opinion that the rule should be discharged, and with costs.

The only affidavit filed by the relator in support of his application is the affidavit of Mr. Allen, a member of the council of this corporation. One would have thought that before he became a party to a proceeding of this kind, he would have first taken some step in the council for the amotion of Mr. McDougall, if he was of opinion that he retained his seat contrary to law, and so have avoided all this litigation. We also note that that gentleman, when referring in his affidavit to the alleged vacancy, qualifies it by the words "if any," evidently shewing that he had doubts on the subject.

Rule discharged, with costs.

In re Drope and the Corporation of the Township of Hamilton.

By-law—Delay in moving against.

The court refused a rule *nisi* to quash a by-law passed to stop up a road, where the relator was aware of the intention to pass it, and allowed two years and three months to elapse before moving—the objections urged being that there was no applicant for such by-law, and no sufficient notice of it published.

[Q. B., E. T., 1866.]

Hector Cameron moved for a rule calling on the corporation to shew cause why a by-law passed on the 3rd August, 1863, stopping up a road or highway opened by the authority of a by-law passed in 1854, should not be quashed, on the grounds: 1. That there was no applicant for such by-law, as required by the Municipal Institutions Act, Consol. Stat. U. C. ch. 54, sec. 321. 2. That there was no sufficient publication in the local newspaper of a notice of the intended by-law, and that the same was passed prematurely and within four weeks from the first publication of the notice, and that the Council allowed the relator no opportunity of opposing the by-law.

The affidavit on which it was moved stated affirmatively that there was no applicant for the passage of this by-law. It further set out a resolution passed by the township council on the 26th of May, 1863, that the clerk should give the necessary notice that the Council would after thirty days from publication pass a by-law closing up the road in question: that a notice dated 2nd July, 1863, was published in a local newspaper on the 8th, 15th, 22nd and 29th July, 1863; and that on the 3rd August, 1863, the relator wrote to the Clerk of the Court referring to this resolution, and objecting to the proposed by-law, and requesting "if any action is taken" that the clerk will please to record his objection. It was further sworn that an indictment was preferred (it was not stated at whose instance) against the Corporation for not keeping this road in repair, at the June Sessions, 1862, which, as the defendant did not appear, was removed into this court by certiorari, but was not tried until the last assizes for Northumberland and Durham.

Cur. Adv. Vult.

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

We are of opinion that upon the relator's own shewing there has been too great a delay to justify our summary interposition to quash this by-law. Our refusal to interfere in this way will not legalize it, nor will it prevent the assertion

of any right the relator may have to use this road. It is obvious his attention was drawn to this matter in August, 1863: that he was aware of the intended proceeding; and yet his first application to this Court is not made until more than two years and nine months afterwards. We think it right to follow the decision in the Court of Common Pleas, of *Hill* v. *The Municipality of Tecumseth*, 6 U. C. C. P. 297, and *Cotton* v. *The Municipality of Darlington*, 11 U. C. C. P. 265, which followed the first named decision.

We therefore refuse the rule.

Rule refused. (*a*)

SLAGHT v. WEST ET AL.

Trespass—Seizure under fi. fa.—Evidence to connect execution plaintiffs.

In trespass for seizing goods it appeared that the defendants who had a claim against one B., instructed their attorney to collect it, and that the attorney having issued execution handed it to the sheriff, informing him that B. lived at Paris, where he kept a fruit store. The deputy sheriff said it would be a good time "to make a haul" (being near Christmas), to which the attorney answered that it would; and the seizure was then made. The plaintiff having claimed the goods, the attorney told the sheriff to hold possession, as they wished to make enquiries, and the sheriff did so until an interpleader order issued.

Held, affirming the judgment of the county court, that the defendants were bound by the acts and directions of their attorney, and that there was sufficient evidence to go to the jury to connect them with the seizure.

[Q. B., E. T., 1866.]

Appeal from the County Court of Brant.

The point presented was whether there was any evidence for the jury, on a motion for a nonsuit, to connect the defendants with a trespass to the plaintiff's house and goods.

Defendants were plaintiffs in an execution against one Beare. Their attorney gave the writ to the sheriff, and, as he swore, directed him that Beare lived in Paris, and was carrying on business, selling goods or fruit. A seizure was afterwards mads at a shop in Paris where Beare was apparently carrying on business. The plaintiff claimed the shop and goods to be his, and notified the sheriff, who informed the attorneys, and asked should he withdraw, or would they indemnify. They wanted a few days to make enquiry. He let it stand a few days, and they were still unprepared to give definite instructions. The sheriff asked should he withdraw, and understood from them he should not, as they wished to enquire further. He then interpleaded.

The deputy sheriff swore the sheriff had referred him to the attorneys before executing the writ. One of the attorneys told him that Beare had a fruit store in Paris. Witness said it would be a good time to make a haul; the attorney said it would. Witness went to Paris that day, and found Beare at the store. He denied owning anything. Witness left a man in possession, returned, and told the attorney what had taken place. The attorneys told him to "hang on," and they would enquire about it. Witness did hold on till an interpleader order was obtained.

The learned judge held that there was evidence to go to the jury, it being objected that defendants, the execution creditors, were not connected with the trespass, and no ratification by them of it was shewn, nor authority from them to issue execution. Leave was reserved to move for a nonsuit. The attorney swore somewhat differently from the sheriff and deputy.

It was left to the jary to say if the seizure of the plaintiff's goods was made by direction of the attorneys of the execution plaintiffs; and they were directed that if so the plaintiff should recover: that if the attorneys were instructed to collect the debt, the clients would be bound by their acts in issuing a *fi. fa.* and the instructions therewith.

The jury found for the plaintiff.

In next term a motion for nonsuit was made, wholly on the objections taken at the trial, and after argument the rule was discharged, the following judgment being given in the court below:

Jones, Co. J.—An attorney's warrant to prosecute an action continues in force (unless countermanded by his death or the act of the principal) for a year and a day after the judgment, for the purpose of having execution. 1 Tidd's Prac. 9th ed. p. 93. In *Bevins* v. *Hulme*, 15 M. & W. 96, the court said that the original retainer is to be presumed *primâ facie* to continue after judgment, so as to warrant the attorney in issuing execution within a year and a day, or afterwards in continuation of a former writ of execution issued within that time, and also to warrant his receiving the damages without a writ of execution.

In *Sweetnam* v. *Lemon et al.*, 13 U. C. C. P. 534, the court said that the duty of an attorney on a retainer to collect a claim does not necessarily terminate with the entry of judgment, but continues afterwards for the purpose of issuing execution; and if he undertakes to collect his client's money for him, he ought to make the judgment available for that purpose if he can.

Darling v. *Weller*, 22 U. C. Q. B., 363, decides that the ordinary retainer of an attorney does not bind him to register a judgment, nor perhaps to take any collateral proceeding on the judgment, such as examining the defendants, or garnishing debts, unless specially retained for the purpose, but the courts expressly recognize the liability of the attorney on such a retainer to resort to "all the ordinary execution processes."

In *Jarmain* v. *Hooper*, 6 M. & G. 827, which was an action of trespass against the sheriff and A. for seizing the plaintiff's goods, it was held that A., who was the execution plaintiff, was liable although he had not interfered in any way beyond giving instructions to his attorney to sue the defendant in the original action. The court said "The direction given by the attorney to the sheriff to seize, is a direction given by an agent within the scope of his authority. * * The attorney has the general conduct of the cause; he is the only person with whom the sheriff has communication; and, in taking a step essentially necessary for the benefit of the client, that is, for the obtaining the fruit of his judgment, we think he cannot be held to have acted beyond his authority, though he has miscarried in its execution. * * The client must stand to the consequences if he act inadvertently or ignorantly." See also *Collett* v. *Foster*, 2 H. & N. 358.

(*a*) See also *Ianson and the Corporation of Reach*, 19 U.C. Q. B. 591; *Standley and the Corporation of Vespra and Sunnidale*, 17 U. C. Q. B. 69; *Sheley and the Corporation of Windsor*, 23 U. C. Q. B. 569.—*Rep. Note.*

The case of *Childers* v. *Wooler*, 2 E. & E. 286, is not, I think, in point, nor does it, as was argued here, at all shake the case of *Jarmain* v. *Hooper*.

The evidence given by Mr. J. B. McMahon was that his firm were employed in collecting claims for the defendants, and he presumed they were instructed to collect this debt. This was one of the questions left to the jury, and they would be justified on this evidence in finding that Mr. McMahon was so instructed. Then if instructed to collect the debt, the above decisions satisfy me that this was a sufficient authority from the defendants for them to issue the execution, and their acts after the execution was issued would be done as agents for the defendants. I think, therefore, that the defendants' rule fails as to the first and third grounds stated therein (*a*).

The second objection raised is that there was no ratification by the defendants or their attorneys of the seizure made by the sheriff. If the defendants or their attorneys did not authorize the sheriff to make the seizure, no subsequent ratification by them of this act would, I think, make them liable. See *Wilson* v. *Tumman*, 6 M. & G. 243, *Woollen* v. *Wright*, 1 H. & C. 534, and *Kennedy* v. *Patterson*, 22 U. C. Q. B. 556. But in the present case there was evidence in my opinion to go to the jury that the attorneys for the defendants directed the seizure to be made; and it must be remembered that this was a motion to enter a nonsuit, and if there is evidence to sustain the verdict the rule must be discharged, although the verdict might be against the weight of evidence. The deputy sheriff, C. E. Smith, who had the writ to execute, in his evidence stated as follows:—"I saw one of the Mr. McMahons at the sheriff's request, who had referred me to him for instructions (this subsequently appeared to have been Mr. H. McMahon). He told me the defendant William Beare had a fruit store in Paris. I said it would be a good time (near Christmas) to make a haul; he said, it would." The deputy sheriff then went up the same day, and levied on the goods in the fruit store, for which this action is brought. In my opinion this was evidence to go to the jury that the attorney directed these goods to be seized.

From this judgement the defendants appealed.

Moss, for the appellant, cited *Jarmain* v. *Hooper*, 6 M. & G. 827; *Sowell* v. *Champion*, 6 A. & E. 407; *Rowles* v. *Senior*, 8 Q. B. 677; *Collett* v. *Foster*, 2 H. & N. 356; *Childers* v. *Wooler*, 2 E. & E. 307, 313, 314; *Cronshaw* v. *Chayman*, 7 H. & N. 911; *Williams* v. *Smith*, 14 C. B. N. S. 596; *Kennedy* v. *Patterson*, 22 U. C. Q. B. 556; *Sweetnam* v. *Lemon et al.*, 13 U. C. C. P. 541; *Whitmore* v. *Green*, 13 M. & W. 109; *Woollen* v. *Wright*, 1 H. & C. 554.

Fitch contra, cited *Barker* v. *St. Quintin*, 12 M. & W. 441; *Wilson* v. *Tumman*, 6 M. & G. 241; *Radenhurst* v. *McLean*, 4 U. C. O. S. 281; *Cameron* v. *Lount*, 4 U. C. Q. B. 275; *Grant* v. *Wilson*, 17 U. C. Q. B. 148; *Gray* v. *Fortune et al.*, 18 U. C. Q. B. 253; *Walker* v. *Hunter*, 2 C. B. 323; *Tilt* v. *Jarvis*, 5 U. C. C. P. 486.

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

It is unnecessary to discuss any view of the law not expressly arising on this motion. Unless the judge should have nonsuited, the appeal fails.

It seems to us that the learned judge decided correctly, and that he was bound to leave the case to the jury, and we are satisfied with his reasons in his carefully prepared judgment.

Some points urged by Mr. Moss and naturally suggested by the cases cited, were not raised below; for example, whether any subsequent ratification of a wrongful act of this kind is available. We are also not called on to decide a point noticed in *Childers* v. *Wooler*, 2 E & E. 316, as to the liability ceasing from the time that the sheriff became aware that he was acting illegally. We only mention these to remark that the form of appeal does not render their decision necessary.

It was proved that this plaintiff, Slaght, had rented the shop, in which fruit was sold, and the suit is for breaking and entering and selling the goods. Beare swore he was there merely as the plaintiff's agent. If the jury believed that the attorneys instructed the sheriff, as was sworn, that Beare kept a fruit store in Paris, and that it would be a good time to make a haul, that, coupled with the other evidence, seems necessarily proper to submit to a jury on the question whether the defendants through their attorneys joined in or caused the trespass on the shop, where, in our view of the evidence, the plaintiff, and not Beare, kept a fruit store, &c. *Kennedy* v. *Patterson*, in this court, 22 U. C. Q. B. 563, is in point.

There is a wide distinction between this and one or two of the cases cited by Mr. Moss, where the sherif sued the attorney for an alleged false representation or direction as to the ownership of goods, on which the sheriff acted, and had to pay damages to the true owner.

The case of *Walker* v. *Olding* (1 H. & C. 621, 9 Jur. N. S. 55, in 1862), seems to assume the execution plaintiffs' liability in trespass on a direction given by their attorney. That defendants are answerable for the acts of their attorneys in the ordinary enforcement of execution process and directions as to action thereon, seems to be reasonably clear. See *Jarmain* v. *Hooper*, 6 M. & G. 827, where the law is reviewed by *Tindal*, C. J.

At present we are not prepared to say that there was no evidence proper to be submitted to the jury, and therefore we dismiss the appeal with costs.

Appeal dismissed, with costs.

(*a*) These grounds were, that the evidence did not connect defendants with the seizure, and that there was no evidence of authority from defendants to their attorney to issue the *fi. fa.*

DONNELLY ET AL. V. STEWART.

Held,—affirming the judgment of the County Court, and following *McPherson* v. *Forrester*, 11 U. C. Q. B. 362—that an action would not lie in a County Court upon a Division Court judgment.

[Q. B., E. T., 1866.]

APPEAL from the County Court of the County of Hastings.

This was an action brought on a judgment recovered in the ninth Division Court of the County of Hastings.

At the trial it was objected that the action would not lie, and upon this objection the learned judge made a rule absolute in term to enter a nonsuit, holding the case to be governed by *McPherson* v. *Forrester*, 11 U. C. Q. B. 362.

The plaintiff thereupon appealed.

Ponton, for the appellant, cited *Williams* v. *Jones*, 13 M. & W. 628; *Reynolds* v. *Talmon*, 2 Q. B 644; *Adams* v. *Ready*, 6 H. & N. 264; *Slater* v. *McKay*, 8 C. B. 556; *Albon* v. *Pyke*, 4 M. & G. 421; *Cates qui tam* v. *Knight*, 3 T. R. 442

Hector Cameron, contra, relied on *McPherson* v. *Forrester*, 11 U. C. Q. B. 362; and *Berkeley* v. *Elderkin*, 1 E. & B. 806.

HAGARTY, J, delivered the judgment of the court.

The chief point raised on this appeal is whether an action can be brought in the County Court on a Division Court judgment. This court, in *McPherson* v. *Forrester*, 11 U. C. Q. B. 362, decided in 1853, on demurrer, that an action would not lie on a Division Court judgment, and the language equally points to any higher court (as *e. g.* the County Court,) as to the superior courts.

This case was not appealed, and has apparently remained unquestioned thirteen years. As our decision in this appeal is final, we may not be necessarily bound by the case cited, but we should not depart from it except on the strongest grounds. There it was held that the provisions of the Division Court Acts for enforcing judgment would be interfered with if the plaintiff there could at once go into a higher court and sue on the judgment. The court relied much on the decision in *Berkeley* v. *Elderkin*, 1 E. & B. 808. Some of the reasons there given may not exactly apply to our execution process against goods in Upper Canada; but Lord *Campbell* points out one ground common to both systems: "Section 100," (like our section 170, Consol. Stat. U. C., ch. 19), "enacts 'that it shall be lawful for the judge, &c., if he thinks fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him, for payment by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt, or damages and costs, forthwith, or by any instalments, or in any other manner, as such judge may think reasonable and just.' This shews," he says, "that there is nothing in the nature of a final judgment in the County" (Division) "Court. The judge has still jurisdiction over this very judgment on which this action is brought. He might now rescind or alter it, and make a new order to pay by instalments, or at any other time. That power given to the judge would be defeated if this action lay. * * I rejoice that we are able to come to this conclusion by the established rules of law; for there can be no doubt that it is most desirable that such actions should not lie. * * Where new rights are given with specific remedies, the remedy is confined to those specifically given."

Another section of our act, 108, allows the judges in case of sickness or other sufficient cause to suspend or stay a judgment.

There seems no doubt that a defendant sued in the higher court, would lose several important advantages allowed him in the Division Courts. We are not prepared to dissent from the reasoning of this English case, followed as it was by his court; and we dismiss the appeal with costs.

Appeal dismissed, with costs.

COMMON PLEAS.

(*Reported by* S. J. VANKOUGHNET, Esq., M.A., *Barrister-at-Law, Reporter to the Court.*)

BRASH, QUI TAM v. TAGGART.

Action against Justice of Peace for a penalty—Con. Stats. U. C. ch. 124, sec. 2—County Court jurisdiction to try.

The County Courts have now jurisdiction (under Con. Stats. U. C ch. 124, sec. 2) to try an action for a penalty against a Justice of the Peace, where the penalty claimed does not exceed $80.

[C. P., E. T., 1866.]

Appeal from the County Court of the County of Frontenac.

The action was *qui tam* against a Justice of the Peace for not returning a conviction, claiming the penalty of $80, under Con. Stats. U. C. ch. 124.

The defendant pleaded, Never indebted by statute, on which issue was joined.

At the close of the plaintiff's case the defendant's counsel moved for a nonsuit on the ground, among others, that the County Court had no jurisdiction to try a *qui tam* action under the above statute.

The learned judge overruled the objection, and the jury found a verdict in favour of the plaintiff for the amount claimed.

Against this verdict the defendant moved in the following term, on the same ground as that taken at the trial, and the learned judge, feeling himself bound by the decision of *O'Reilly qui tam* v. *Allan*, though in fact dissenting from it, made absolute the rule *nisi* to enter a nonsuit.

From this judgment the plaintiff appealed.

Robert A. Harrison, for the appeal, cited *Lawford* v. *Partridge*, 1 H. & N. 621; *Powley* v. *Whitehead*, 16 U. C. Q. B. 589; *Campbell* v. *Davidson*, 19 U. C. Q. B. 222; Con. Stats. U. C. ch. 124, sec. 2; ch. 15, sec. 1; Con. Stats. C. ch. 5, sec. 6, sub-sec. 17; *O'Reilly q. t.* v. *Allan*, 11 U.C. Q.B. 411; *Haight* v. *McInnis*, 11 U.C. C. P. 518.

John Patterson, contra, referred to Espinasse on Penal Actions, and Con. Stats. U. C. ch. 15, sec. 16, sub-sec. 5.

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

Since the decision of the case of *O'Reilly qui tam* v. *Allan*, 11 U. C. Q. B. 411, the statute for recovering penalties similar to those which this action was brought to recover has been somewhat changed in the consolidation, and in looking at the change and considering it in connection with that case, and the case of *Medcalfe* v. *Widdefield*, 12 U. C. C. P. 411, we think we may properly hold that County Courts have jurisdiction in Upper Canada to try actions for penalties under the Con. Stats. (22 Vic. ch. 124.)

The statute 4 & 5 Vic. ch. 12, sec. 2, after declaring that under certain circumstances justices shall forfeit and pay the sum of twenty pounds, together with full costs of suit, proceeds as follows, "to be recovered by any person or persons, who sue for the same by *bill, plaint* or *information*, in any Court of Record in Canada West."

The portion of the Consolidated Act referring to the same proceeding reads thus: "To be recovered by any person, who sues for the same, by action of debt or information, in any Court of Record in Upper Canada.

Under section 81 of the Law regulating Elections for Members of Parliament (Con. Stats. C. ch. 6) a penalty of $100 is imposed upon the keeper of a public-house who neglects to close it as required by that section; and section 87 of the same statute enacts that all "penalties imposed by this act shall be recoverable with full costs of suit by any person, who will sue for the same, by action of *debt* or *information* in any of Her Majesty's courts in this Province having competent jurisdiction.

At the time *O'Reilly qui tam* v. *Allen* was decided, the jurisdiction of the County Court, was not precisely as it is now. Then the jurisdiction was confined to debt, covenant or contract, to the amount of £50, and to debt or contract, when the amount was ascertained by the signature of the defendant, to £100; and also in all matters of tort relating to personal chattels, where the damage should not exceed £30, and where the title to land should not be brought in question.

Under the County Court Act now in force, subject to certain exceptions, (such as actions when the title to land is brought in question, or in which the validity of any demise, bequest, &c., under any will or settlement is disputed, or for libel or slander, or for criminal conversation or seduction, or an action against a Justice of the Peace for anything done by him in the execution of his office, if he objects thereto), the County Courts have jurisdiction in all personal actions where the debt or damages claimed does not exceed the sum of $200; in all causes or suits relating to debt, covenant and contract, to $400, when the amount is liquidated or ascertained by the act of the parties, or by the signature of the defendant; with certain provisions relating to bail-bonds and recognizances of bail, &c.; and in all cases unprovided for, the general practice and proceedings in those courts is to be the same as in the Superior Courts of Common Law.

The Interpretation Act (Con. Stats. C. ch. 5, sec. 6, sub-sec. 7) provides, that when no other jurisdiction is given or furnished for the recovery of pecuniary penalties, they shall "be recoverable, without costs, &c., before any court having jurisdiction to the amount of the penalty in cases of simple contract."

The authorities referred to in the case of *O'Reilly qui tam* v. *Allan* seems to sustain the conclusion arrived at by the court. The learned chief justice, in concluding his judgment, makes special reference to the proceedings mentioned in the *then* County Court Act, being by "bill, plaint or information," none of which were the ordinary and appropriate methods of proceeding in the County Court.

The case of the *Apothecaries Company* v. *Burt*, 5 Ex. 363, was not referred to in that judgment. That was an action to recover a penalty of £20, and under the statute all penalties and forfeitures exceeding £5 could be recovered in any of His Majesty's Courts of Record in England and Wales. The action was brought in the County Court, which was authorised to hold "all pleas of personal actions when the damage claimed was not more than £20, whether on balance of account or otherwise." The Court or Exchequer refused a prohibition. The ground of want of jurisdiction to try it as a personal action was not raised, the ground on which the prohibition was sought being, that the action was brought in such a form that four penalties of £20 each might be claimed.

Looking at the change in the language of the Consolidated Statute (22 Vic. ch. 124) from that used in 4 & 5 Vic. ch. 12, the proceeding now being by action of "*debt* or information in any Court of Record in Upper Canada," instead of by "*bill*, plaint or information," as the former act stood; and looking at the changes in the jurisdiction of the County Court, as well as the decision of this court, in *Medcalfe* v. *Widdefield*, sustained by the case in 5 Ex., we ought, in my judgment, to hold that this action was well brought in the County Court. In doing this we do not necessarily overrule the case of *O'Reilly qui tam* v. *Allan*, there having been some, as to this point, not unimportant changes made in the words of the statute by the consolidation of it.

I think we may infer that this change was intentionally made; the giving the action of debt by express words, when the proceeding in *debt* was one which could be readily taken in the County Court, whilst the proceeding by bill or plaint that had previously existed was not one which was at all appropriate to that court. This would, also, harmonise with the provisions of the Consolidated Statute of Canada, authorising certain suits for pecuniary penalties to be recovered "in any court having jurisdiction to the amount of the penalty in cases of simple contract."

It certainly would seem absurd to maintain the distinction contended for in proceeding to recover penalties under this particular statute, when other penalties of a much greater amount could be sued for in the County Court, and (in determining the latter) points of quite as much difficulty would arise as in disposing of the question likely to occur under this statute.

The County Courts have now such extended jurisdiction, compared with what they formerly possessed, that I do not think it unreasonable that the legislature, when the statutes were consolidated, should consider that they might safely be entrusted with the disposal of this kind of penal action, when $80 was the sum involved, and that the change made in the law at that time was with a view of putting the matter beyond reasonable doubt, and establishing something like a uniform rule in relation to these actions.

The only point argued before us on this appeal was whether the County Court had jurisdiction, and as we are in favour of the plaintiff on that ground we shall allow the appeal without costs, and direct that the rule *nisi* to enter a nonsuit in the court below be discharged.

Appeal allowed.

ENGLISH REPORTS.

MASTER OF THE ROLLS.

A—— v. B——.

Letters written during engagement to marry—Threat to publish—Injunction.

[14 W. R., M. R., April 25]

This was a motion to restrain the publication of letters written by the plaintiff, a young lady under age, to a gentleman, during the period in which such lady and and gentleman were affianced to one another.

The bill alleged that the plaintiff was eighteen years of age; that she formed an acquaintance with the defendant, and that clandestine meetings took place between them, out of which an engagement to marry had arisen; and that the plaintiff had become aware of circumstances connected with the defendant, which rendered the marriage an undesirable one.

The bill then set forth the letter of the plaintiff putting an end to the engagement on the grounds stated, and that the defendant, after angrily remonstrating with the father of the plaintiff, wrote a letter, set forth in the bill, saying in effect that, if a complete retraction were not made of the insinuation contained in the plaintiffs' letter, her letters written to the defendant would be published and circulated in the neigbourhood

Jessel, Q.C. and *Woodroffe*, for the plaintiff.

Selwyn, Q.C. and *Roxburgh*, for the defendant, opposed the motion, claiming a right to get from the plaintiff a statement upon oath of her reasons for terminating the engagement, or to publish the letters.

Lord Romilly. M.R.—Because a young lady breaks off an engagement, she is not to be forced by a threat of publishing the letters written by her during its continuance, to state upon oath the reasons that induced her to terminate such engagement. The defendant will not be permitted, because the young lady happens to have made an affidavit (which in my opinion was unnecessary and might just as well, or even more properly, have been made by her father, or any other person acquainted with the facts) to obtain a mere conditional restraint against the publication of the letters. The injunction must be granted. Any cross-examination of the young lady that may take place is to be held before me.

REVIEW.

The Division Courts Act, Rules and Forms, with numerous Practical and Explanatory Notes, together with all other Acts and portions of Acts affecting proceedings in Division Courts, and many new and useful forms, and a Table shewing all the Division Courts in Upper Canada, their several limits and names of officers, with a complete Index. By Henry O'Brien, Esq., Barrister-at-Law, joint compiler of Harrison & O'Brien's Digest, and one of the Editors of the *Upper Canada Law Journal* and *Local Courts' Gazette*. Toronto: W. C. Chewett & Co. 1866. Price, $2.

The object which the Editor of this most useful work had in view was to annotate the Division Courts Act and Rules by notes explanatory of the text, as well as practically useful to professional men and others, and particularly to the officers concerned in the administration of the courts.

The Editor has thoroughly attained his object. His notes are not merely explanatory of the text, but so practical as to be of great value to the profession and all others who in any way may find it necessary to consult the Division Courts Act. The notes are couched in language terse and to the point, and yet so free from technicality as to be intelligible to all men who can read and understand the English language. Knowing the industry and ability of the Editor, we had formed high expectations as to his projected work, and we confess that high as were our expectations they have not been disappointed.

The Division Courts have now become local institutions of the country, presided over by the same judges who preside over our County Courts or inferior courts of record. The amount of business disposed of in the Division Courts is greater than many imagine, and so great as in several counties severely to tax the knowledge and patience of the judge, and occasionally such as to make it worth the while of professional men of good standing to appear in the courts. If some provision were made for the allowance of moderate counsel fees, we venture to believe that the judges of Division Courts would, in a short time, have, in all cases of intricacy the assistance to be derived from the ability of learned and trained counsel. This would not merely be a great aid to judges who, without such assistance, are frequently called upon to determine questions of much nicety without the benefit of proper legal discussion, but tend to raise the courts in the estimation of the profession and the public.

As it is, no professional man whose practice is at all extensive is free from the necessity of understanding the Division Courts Act. Questions of jurisdiction as between the several courts of inferior jurisdiction daily present themselves to his consideration. Applications for writs of *certiorari* are of frequent occurrence. The proper scale of costs to be followed in a particular case, as between the Division Court and the County Court, is at times a matter of considerable difficulty. Suits on Division Court bonds and covenants are often instituted, and in their disposal generally demand an accurate knowledge of Division Court jurisdiction and practice. Actions against Division Court bailiffs for things done by them in the execution of their office, and the appropriate remedies therefor, are as often subjects for consideration. Criminal prosecutions, under special provisions contained in the Division Courts Act, are not of unfrequent occurrence. — On all these and similar points, valuable information is to be found in Mr. O'Brien's work.

To clerks, bailiffs, agents, and others whose calling requires an intimate knowledge of the working of Division Courts, the book will be of incalculable value. Indeed we feel certain that as soon as its usefulness is known, no clerk, bailiff, or agent will venture to be without this book one day that can be avoided. It is not merely a guide, but a safe guide to all who stand in need of a guide. All may profit by the learning and care here bestowed; and all who become purchasers of the work and open it must profit by the use of it. The collection of decided cases is most complete and reliable. This we have tested with care,

and have been well satisfied with the result of our test.

In order that an example may be given to the reader of the learning evinced in the preparation of the work, we transcribe, from page 31, part of the note on writs of *certiorari*:—

"A *certiorari* is an original writ issuing out of Chancery or the King's Bench [but is under this section confined to the Superior Courts of Common Law], directed in the King's name to the judges or officers of inferior courts, commanding them to return the records of a cause pending before them, to the end the party may have the more sure and speedy justice before him, or such other justices as he shall assign to determine the cause. (Bacon's abr.)

The application should be made to a judge in Chambers and not to the full court. (*Re Bowen* v. *Evans*, 18 L. J., Ex. 38; *Soloman* v. *London C. & D. R. W. Co.*, 10 W. R., Ex. 59).

To entitle a suitor to this writ it must be shewn that,

1. The amount claimed is $40 and upwards.

2. That the cause is a fit one to be tried in one of the Superior Courts, that it will, in all probability, bring up difficult points of law at the trial, or that it presents some other circumstance which would render a trial in the court above advisable, and,

3. The leave of a judge must be obtained.

As a general rule a *certiorari* only lies before judgment with a view to a trial of the cause in a Superior Court (*Siddall* v. *Gibson*, 17 U. C. Q. B 98); and *Robinson*, C. J., in *McKenzie* v. *Keene*. 5 U. C. L. J. 225, refused an order after judgment and execution regularly issued and money made and paid over, although a new trial was subsequently granted by the county judge. But generally when a new trial has been ordered, and the case is again coming on for trial, a writ may issue. (See *Help* v. *Lucas*, 8 U. C. L. J. 184; *Corley* v. *Roblin*, 5 U. C. L. J. 225.)

The 43 Eliz. cap. 5, provides that no such writ shall be received or allowed by the judge except it be delivered to him, before the jury, which is to try the question, has been sworn. 'The mischief,' said *Richards*, C. J., in *Black* v. *Wesley*, 8 U. C. L. J. 277, 'intended to be cured by the statute arises when the cause is gone into before the judge alone, as before a jury; for it enables the defendant, in the language of the statute, to 'know what proofs the plaintiffs can make for proving their issue, whereby the defendants that sued forth the writ may have longer time to furnish themselves with some false witnesses to impugn these proofs, which the plaintiffs have openly made by their witnesses, which is a great cause of perjury and subornation of perjury.' I think the act in spirit applies to cases where plaintiff's witnesses are sworn although no jury is called.'

The removal of a cause under this section is entirely in the discretion of the judge to whom the application is made, upon its being shewn to him that difficult questions of law are likely to arise, and he may impose such terms as he thinks fit. Each case must therefore depend on its own merits, and the circumstances attending it. With reference to the English cases as to the *discretion* of the judge, it is to be noticed that the wording of the analogous sections of the English act is different from that before us," &c.

The above is only a part of a very full and complete note on the subject, which we cannot give at length, but which, though interesting and instructive to all, shews more particularly the value of the work to lawyers; while the following, which we take at random, will testify its value to practitioners in, and particularly to the officers of Division Courts. And first we copy the note to the latter part of Rule No. 48:—

"Sec. 36 authorises the clerk to 'tax costs subject to the revision of the judge.'

Any person giving evidence before the judge is entitled to his witness fees, whether attending under a subpœna or not. And if in the opinion of the judge, a witness is material, he would, if attending on a subpœna, be entitled to be paid even though it should not be found necessary to call him.

The latter part of the rule gives the clerk a *quasi* judicial position, and requires that he should act with judgment and caution. He must be satisfied,—

1st. That the witness for whom fees are claimed has actually been paid, not that he *is* to be paid.

2nd. That he actually attended and was present in court when the case was under investigation, and ready to be examined if called, though he might not have been actually examined.

3rd. That he was a material and necessary witness, of which the fact of his being examined before the judge would be sufficient evidence, unless the judge should state that what he had to testify had nothing to do with the case, or, for any other reason order, that he should not be allowed witness fees. If the witness were not examined, and no order made by the judge on the subject, it would devolve upon the clerk to exercise his judgment as to whether the evidence of the person could be considered material or necessary. To satisfy himself on this point it would generally be necessary for him to have before him the statement on oath of the plaintiff or defendant, and such other evidence and explanations as could be adduced.

4th. That he attended only in the one case in which fees are claimed, for if he was a witness in more than one, the fees paid to him should be apportioned amongst the different suits.

5th. That the sums paid are within the scale allowed in the schedule (form 14), or in the Superior Court tariff, as the case may be, or are in accordance with the terms of any special order that the judge might make.

If the witness travelled by rail or other public conveyance, the judge would probably order that he should only be allowed his actual travelling expenses, if such sum were less than the 6*d.* a mile *one* way, allowed by the tariff.

In nearly every case the clerk will find it to his advantage, both for his information and as a protection against fraud to insist upon the production of an affidavit of disbursements by the plaintiff or defendant claiming witness fees. Such affidavit may be in the form 14 (a) given in the schedule."

And again, note (*c*) to section 175, respecting interpleaders,—

"An interpleader issue is not strictly a suit or action, it is in fact an interlocutory proceeding in another suit, wherein the court is subsequently

to act in disposing of the rights of parties. The parties concerned are, the claimant, who is deemed the plaintiff, and the execution creditor, who is deemed the defendant (see rule 53), in the issue that is to be tried for the purpose of ascertaining which of them—claimaut or judgment creditor—is entitled to the goods under seizure.

The provisions of this section are intended solely for the protection of bailiffs, though the bailiff is not bound to take advantage of them, and in many cases when he finds upon enquiry that the claim set up is clearly fraudulent, or without a shadow of right, he would not do so; and in such a case he might safely take a sufficient indemnity from the plaintiff and proceed to sell. If, however, he finds it necessary for his protection to take out an interpleader summons, he should be prompt in making his application. The provisions do not apply to conflicting executions. it being the duty of the bailiff to pay the first execution creditor. See *Bragg* v. *Hopkins*, 2 Dow. 151.

The rule has, however, been altered as far as the Superior Courts are concerned, by the late act of 28 Vic. cap. 19.

Where an execution plaintiff directs goods to be seized, or persists in opposing the claimants title to them after they have been seized, and the issue is decided in favour of the latter, he has a good right of action against the former for damages sustained by the seizure; and the result of the issue is conclusive as to the claimant's right to the goods, *Harmer* v. *Gouinlock*, 21 U. C. Q. B. 260; *May et al.* v. *Howland et al.*, 19 U. C. Q. B. 66.

It has been decided, that in *interpleader* issues, contrary to general rule, the judge of a Division Court may try the question of property in goods, even though the inquiry may involve the title to land, *Munsie* v. *McKinley*, 15 U. C. C. P. 50; 1 L. C. G. 8.

The disposition of the goods seized is, during the pendency of the interpleader issue, in the absence of any special order by the judge, left to the discretion of the bailiff. It is very common for him to take a bond for the production of them, but this course, though advantageous to the person who shall eventually prove to be the owner, is not without risk to the officer. His safest course is to sell the goods and pay the proceeds into court; or else, if the articles are not perishable, nor likely to deteriorate rapidly in value, nor be expensive to keep, he might deposit them in a safe place under his own control. The character of the parties and the nature of the goods will generally be a guide to him.

In *Harmer* v. *Cowan*, 23 U. C. Q. B. 479, the defendant, a bailiff, seized certain goods under an execution, which were claimed by the plaintiff. The bailiff intending to apply for an interpleader summons, sold the goods subject to the claim. The price of the goods was not paid to the bailiff, and they were to remain in his custody until judgment should be given on an intended interpleader application, which was subsequently adjudicated upon. *Hagarty*, J., said, 'However we may be inclined to agree with the plaintiff that a bailiff cannot make a conditional sale, we do not see how we can therefore turn his objectionable proceedings into an absolute sale, vesting the property in his vendee. We incline to consider the sale wholly nugatory, and that the execution was not executed, and the goods still remained in the words of the act, 'taken in execution.'"

Had we space, we could reproduce many notes of equal learning and equal value from this inestimable little book. In form and size it is just what it ought to be. The mechanical execution of the book is all that can be desired, and reflects great credit on the well known publishers, Messrs. W. C. Chewett & Co.

The additions of "all other acts and portions of acts affecting proceedings in Division Courts," and the Table "shewing all the Division Courts in Upper Canada, their several limits and names of officers," are valuable adjuncts to the work. The former renders the book still more complete in the hands of the professional man, clerk, bailiff, or Division Court agent. The latter recommends the book to the patronage of all merchants and others whose dealings are extensive, and who, in consequence, must need information as to the limits of the numerous Division Courts in Upper Canada and the names of their officers, in order to the speedy and satisfactory collection of debts in the proper Courts.

The Index to the work is both full and complete. Without it the usefulness of the book would be impaired: with it every page is available to the inquirer without loss of time. Some authors imagine that their work is done when the last line is written, and that they need not at all concern themselves about the "mere mechanical preparation of an index." Were an author to write merely for himself we should not quarrel with this idea. But as we know that most authors write for public patronage, it is their duty to do all that is necessary to make their books as widely useful as possible. Nothing to this end is more necessary in the case of a legal work than a full index. Mr. O'Brien, mindful of all that was necessary to the completeness of his work, has not forgotten this desideratum.

ROBT. A. HARRISON.

APPOINTMENTS TO OFFICE.

CORONERS.

WILLIAM ROBERTSON, of the village of Lanark, Esquire, to be an Associate Coroner for the United Counties of Lanark and Renfrew.

THOMAS P. ECKHARDT, of the township of Markham, Esquire, M.D., and WILLIAM LAPSLEY, of the township of Scarborough, Esq., M.D., to be Associate Coroners for the United Counttes of York and Peel.

ALEXANDER THOMPSON, of Blyth, Esquire, M.D., to be an Associate Coroner for the United Counties of Huron and Bruce. (Gazetted June 16, 1866.)

DEPUTY JUDGES.

EPHRAIM JONES PARKE, of Osgoode Hall, Esquire Barrister at-Law, to be Deputy Judge of the County Court in and for the county of Middlesex. (Gazetted June 9, 1866.)

ISAAC FRANCIS TOMS, of Osgoode Hall, Esquire, Barrister at-Law, to be Deputy Judge of the County Court, in and for the United Counties of Huron and Bruce. (Gazetted June 16, 1866.)

CLERK OF COUNTY COURT.

JAMES MACFADDEN, of St. Mary's, Esquire, to be Clerk of the County Court, in and for the county of Perth.