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DIARY FOR MARCH.

1. Thurs. *St. David.*
4. SUN... *3rd Sunday in Lent.*
5. Mon... Recorder's Court sits. Last day for notice of trial for County Courts.
11. SUN... *4th Sunday in Lent.*
12. Mon... Last day for service for York and Peel.
13. Tues... Qr. Sessions and Co. Court Sittings in each Co.
15. Thurs. Sittings Court of Error and Appeal.
17. Satur. *St. Patrick.*
18. SUN... *5th Sunday in Lent.*
22. Thurs. Declare for York and Peel.
25. SUN... *6th Sunday in Lent. Lady Day. Annun. V. M.*
30. Friday *Good Friday.*
31. Satur. Last day for notice of trial for York and Peel.

THE

Upper Canada Law Journal.

MARCH, 1866.

THE ATTORNEY GENERAL AND THE LAW SOCIETY.

Few men have done more in their generation towards the improvement and amelioration of the laws of a country than the Hon. John A. Macdonald, the present Attorney General for Upper Canada. No statesman in Canada has so largely contributed by real, practical and permanent measures of law reform to establish the law and its administration on a sound and safe basis. A very large portion of the whole body of our existing statute laws has been placed on the statute book by him, and happily he has been able by wise and well considered legislation to promote the public interests without injury to the body to which he belongs. His efforts, moreover, have always been directed towards securing the independence and elevating the tone of the profession of which he is one of the brightest ornaments. It was fitting then that the profession should in some way mark their appreciation of these services towards themselves and the country at large.

The feeling on this subject found vent in a manner which was as complimentary as it was spontaneous—complimentary inasmuch as it was, with the exception of the reception of the Prince of Wales by the Law Society, only the third occasion on which a similar mark of respect had, so far as we are aware, been paid to anyone—the first being the dinner to the late Sir James Macaulay, and the second that to our late lamented Chief Justice, Sir John Beverley Robinson—and spontaneous, for all who could, irrespective of party or politics, joined in doing him honor. On the eighth day of February last the Attorney General was entertained at a grand banquet given by the Law Society in the Library of Osgoode Hall. The profession were represented from all parts of the country—the judges of the Superior Courts of Law and Equity, (with the exception of a few unavoidably absent), heads of colleges and collegiate institutions, military commanders, managers of banks and other prominent citizens and members of Parliament were also present as invited guests.

During the course of his remarks, in answer to the able speech of the chairman proposing the toast of the evening, the Attorney general paid a fitting tribute to the memory of the late Sir James Macaulay, and acknowledged the great aid which the government had received at his hands in the amendment and improvement of the laws of the country. In equally complimentary terms he alluded to the assistance received from "the careful hand of that ablest, neatest and most correct of legal draftsmen Chief Justice Draper," in the preparation of the Common Law Procedure Act, and the adaptation of the experience of legal men and the common law of England to the wants, laws and institutions of Canada.

After enlarging upon the services of these eminent men — and of which it would be idle for us further to speak, for every one is more or less intimate with the labours of men, who occupy so conspicuous a figure in Canadian history—he paid perhaps the most graceful compliment of all, when he spoke of one, who, though not holding so high a position, and not so prominently before the public as either of those we have named, is we believe second to none in devotion to the duties of his office, and who, whilst discharging those duties with the utmost exactitude and with much ability, still finds time to add his quota to the cause which every lover of his country has at heart—the improvement of his country's laws. We quote the language of the Attorney General as reported in the columns of a city cotemporary:—

"There is one gentleman at this table to whom, next to Sir James Macaulay and Chief Justice Draper, I owe a debt of gratitude for assistance of this nature; and I am very happy to see him here because he is a judge, not of a superior court, but a judge who would adorn the highest

court in the land—I mean Judge Gowan of Simcoe. If you examine the act to which you have alluded respecting the Surrogate Courts, the laws respecting that portion of the Consolidated Statutes which refer to the County Courts, and the laws respecting the common school system, you will recognize the careful and legal mind and hand of my friend, Judge Gowan."

We are the more pleased to have an opportunity of recording this expression of opinion on the part of the Attorney-General, as we ourselves, as well as those who have preceded us in the management of this Journal, are under many obligations to Judge Gowan for most valuable information and assistance on a variety of subjects.

Mr. Macdonald also acknowledged the labours of the present Vice-Chancellor Mowat in the preparation of the act which was recently passed for quieting titles to real estate—a measure of great importance, already fully noticed in our columns, and which we shall again have occasion to speak of—and few will cavil at his just estimate of the talents of the Treasurer of the Law Society, when he said, addressing that gentleman, who presided upon the occasion,

"I have been indebted again and again to you for that marvellous perception which enables you in a moment as it were to clear up the most difficult legal problems; and the longer I have known you the more I have had cause to wonder at and admire that extraordinary clearsightedness with which you perform work in a few hours that would take other men days and even weeks to accomplish."

The occasion, though not one which called forth or exhibited the powers of the Attorney General in that remarkable manner that has so often delighted his hearers when defending a friend or demolishing a political opponent, will long be remembered by those who had the pleasure of being present. The arrangements for the entertainment itself, like the previous festive gatherings of the Society, were complete and satisfactory, whilst the enthusiasm that prevailed was a sufficient indication of the success of the undertaking, and of the feelings of admiration entertained for the Attorney General for Upper Canada by his professional brethren.

Mr. Alexander MacNabb, Barrister, has it is said been appointed Police Magistrate of this city, in the place of the late Mr. Boomer.

DEATH OF THE CLERK OF THE PROCESS.

We regret to record the sudden death of Mr. Robert Stanton, who expired at his residence on Saturday night, the 24th ultimo, at the age of 72 years.

Mr. Stanton was a native born Canadian and fought bravely in the war of 1812, by the side of his old friends, the late Chief Justice Robinson and Chief Justice McLean, and others, most of whom have now passed away. He distinguished himself at the battle of Queenston Heights, and was subsequently taken prisoner on the capture of York, now Toronto, by the forces under General Pike. At the time of the Rebellion of 1837, he again turned out in defence of his country.

He was much respected by his many friends. We, as well as others, will be sorry to miss his pleasant face and hearty greeting from his cosy little office in the north-east corner of Osgoode Hall.

MR. STANTON'S SUCCESSOR.

Mr. Allan Cameron, brother of the Hon. John Hillyard Cameron, has been appointed to the office rendered vacant by the death of Mr. Stanton.

The vacancy occurring at this time has had the effect of preventing many cases from being brought on at the Spring Assizes, inasmuch as the profession very properly doubted the validity of any writs issued from the office whilst there was in fact no Clerk of the Process to issue them.

We publish in another place an important decision of the Court of Common Pleas in a case of *Barnes et al.* v. *Cox*, on several points connected with writs of *certiorari;* and in connection with this, though out of its turn, we also give a report of a case of *Gallagher* v. *Bathie*, lately decided in Chambers by Mr. Justice Adam Wilson, which will also be read with interest. The former case was with reference to a *certiorari* to remove a cause from a County Court, the latter to remove one from a Division Court. The judgment in *Gallagher* v. *Bathie* follows the fair and liberal construction placed upon the Statute by the present Chief Justice of the Common Pleas, in *Black* v. *Wesley*, 8 U. C. L. J. 277.

LAW SOCIETY—HILARY TERM, 1866.

The following five gentlemen, in addition to those mentioned in our last issue as having passed the necessary examinations, were, on a subsequent day during the same term, declared qualified, and were called to the bar of Upper Canada:—Thomas Kearton Morgan, Barrie; F. D. Barwick, Toronto; J. E. Harding, St. Mary's; A. T. McPherson, Whitby; and G. O. Freeman, Hamilton.

JUDGMENTS.—HILARY TERM, 1866.

QUEEN'S BENCH.

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

Saturday, February 17, 1866.

Commercial Bank v. *Great Western Railway Company* —Rules *nisi* to rescind order made by a judge in chambers for inspection of documents discharged.

Commercial Bank v. *Great Western Railway Company.* — Rule *nisi* for trial at bar, discharged.

The Niagara Bridge Company v. *Great Western Railway Company* —Judgment to be entered for plaintiffs for $1,603.

Young v. *Elliott et al.*—Rule absolute for new trial without costs.

Brunskill v. *Wilson et al.*—Judgment for defendants on demurrer to declaration, with leave to plaintiff to apply to amend.

In re Kelgour and the Mayor of Cornwall.—Rule discharged with costs.

In re Allan and the Court of Revision at Cornwall.—Rule discharged.

In re Prince and the Corporation of the City of Toronto.—Rule discharged.

Clark v. *The Western Assurance Company* — Stands.

Flahaff v. *Coz.*—Stands.

RULES IN INSOLVENCY MATTERS.

We have received the following rules, issued on the 31st January last, by the Judge of the County Court of the County of Wentworth, for the guidance of officers and practitioners in insolvency matters in his county:—

"Until the Judges of the Superior Courts frame and promulgate rules of practice to be observed in proceedings in Insolvency, the following rules and regulations shall be in force in the County Court of the County of Wentworth:

1. The Clerk of the County Court shall attend, either in person or by deputy, all meetings of creditors, and other proceedings had before the Judge, for the purpose of keeping a record of the proceedings in each case, filing papers and cancelling stamps.

2. All proceedings in Insolvency shall be regularly entered by the Clerk in a book to be kept by him for that purpose.

3. All petitions, claims, affidavits, notices and other papers in Insolvency (except proceedings for compulsory liquidation prior to the appointment of an official assignee), shall be entituled as follows:

'Insolvent Act of 1864.'

'County Court of the County of Wentworth: In the matter of A. B., an Insolvent.'

And no paper shall be received and filed unless the same is properly entituled.

4. Proof of the publication of all notices in the *Canada Gazette* and in local papers, and of the mailing of all notices required to be sent by mail to creditors, shall be by affidavit, and the affidavit shall state distinctly the dates of publication and mailing of notices.

5. In cases where notice is required to be given of any petition or application before hearing the same, the petition and affidavits, or affidavits on which the application is made, shall be filed and a summons to shew cause obtained from the Judge, and the affidavit or affidavits shall shew the residence of the party requiring to be notified, and the distance of such residence from the place of hearing.

6. The summons may be enlarged from time to time in the discretion of the Judge, and on such terms as he may think just.

7. Whenever any number of days is prescribed for the doing of any act in Insolvency, the first and last days are not included, and when the last day happens to fall on a Sunday or other legal holiday, the following day shall be considered the last of such days.

8. The affidavit of indebtedness made by a creditor in order to obtain an attachment for compulsory liquidation, shall set forth the particulars and nature of the debt, with the same degree of certainty and precision as is required in an affidavit to hold to bail.

9. In all appeals from the award of an assignee the matter in dispute shall be set forth in writing, in a clear, precise and intelligible manner, and it shall be accompanied by a copy of the evidence taken before him, and of such documents filed by him or in his possession, as relate to the subject matter of the dispute.

10. The appointment of an official assignee, and the discharge or confirmation of the discharge of any insolvent, shall be executed in duplicate, one of which duplicate parts shall be filed in court.

11. Before any application for the discharge, or the confirmation of the discharge of any Insolvent will be entertained, all deeds, documents, notices and other papers required by the act to be filed, shall be filed in Court.

12. Every assignee applying to be discharged from the office of assignee, shall pass and file in Court his final account, together with the bank certificate of deposit required by the act, if any money remains in his hands, and at the time of granting such discharge he shall deposit in Court all documents and papers in his hands belonging to the estate."

SELECTIONS.

TESTIMONY OF PARTIES IN CRIMINAL PROSECUTIONS.

Some eight years have elapsed since the writer published in these pages some reasons, which presented themselves to his mind, in favour of repealing the rule of evidence which prohibited parties to law suits from testifying in their own behalf. This was a subject then strongly agitating the mind of the legal profession in the State of New York, and in the spring of 1857, the contemplated change was effected, and ever since, parties to civil suits have stood on the footing of other witnesses in the courts of our State. It is confidently claimed that the change worked a great reform. Occasionally an ex-judge or lawyer of a very old school may be met, who, although he sees the manifest convenience and justice of the new enactment in every suit that he tries, yet is so wedded by habit and association to the old rule, that he experiences a pang at parting with it. He feels, at best, like an invalid who has obtained a release from a chronic tumor or wen—a strange sense of freedom, a constrained sort of relief. He misses the accustomed exercise of his ingenuity in the picking up of shreds of facts from those but remotely connected with the subject of the litigation, and having but an imperfect knowledge of it, and the dexterous weaving of a thousand threads together into a web, (how often "of the whole cloth,") while in the bosom of his client all the time rested the complete and perfect knowledge, which he was not permitted to disclose. He is terribly tried about "total depravity," and man's natural bent towards falsehood. And therefore he gravely shakes his head (not that there is anything in *that*, as an eminent British advocate once said of an antagonist who indulged in the like dumb show), and sighs—*acti temporis laudator*—for the good old times of chancery, common law pleading, and pay by the folio, and everybody as witnesses except those who knew *something about the subject-matter*;—the days when law was an expensive and narrow monopoly, rather than the great conservator of order and the champion of truth. He will not give you any reason for his faith: he has none. He simply runs into the formal rut of cant, and rehearses phrases to you such as the judges use when they decide without a reason: "the exercise of a sound discretion," "the danger of innovation," or, "man is *at best but a fallen and unreliable creature.*" There is not a great deal of this idolatry of the dead rule, for the public opinion is overwhelmingly in favour of the *present practice. It is seldom that an acting* judicial officer can be found who does not heartily approve the reform, and unhesitatingly avow that it has saved the time of the court and of the parties, has simplified the trial of causes, has discouraged dishonest litigation, and has promoted the elucidation of truth. And if a vote could be taken to-day *upon the subject, among our profession,* at least nine out of ten would hold up their hands for a continuance of the rule as now administered. Indeed, we doubt whether any sane man can be found in our State who would be willing to return to the old system.

But reform is progressive, and the active mind of the nineteenth century is already agitating the inquiry: "*If we make parties to* civil suits witnesses for themselves, why not permit the defendant in criminal proceedings to testify on his own behalf?"

There was some show of reason in a rule which enacted that *both* parties are disqualified from testifying on their own behalf; there was some faint sense of justice in it; it seemed at least impartial. But it must be remembered that in criminal actions only *one* of the parties is disqualified. The people may always be heard; *vox Populi vox Dei* in the courts of justice; but the defendant is infamous—let his mouth be closed. And so we see presented the extraordinary spectacle of an interested man testifying against his neighbour who cannot open his mouth in exculpation. Who can tell how often revenge or avarice may impel to perjury or prevarication, and the consequent punishment of innocent men? In every criminal proceeding the prisoner is set up as a mark for the arrows of the public prosecutor, with all his crowd of clients behind him, while the accused is compelled to be dumb.*

* A recent case in England having attracted much attention, we give a statement of it, condensed from the *Law Times* of September 30th, 1865, and subsequent numbers, as a strong illustration of the remarks in our text.

A Madame Valentin had lived for thirty years with a merchant of Bordeaux, who, on his death, gave her, as she alleged, certain railway shares of considerable value. His heir, one Madame Buillion, disputed the validity of this death-bed gift, charged Madame Valentin with obtaining the shares surreptitiously, prosecuted her before one of the tribunals at Paris, obtained a conviction and a sentence of six months imprisonment. The railway stock having been brought to England, the question was again raised there in the form of an action in the Court of Exchequer. The trial lasted five days, and Madame Valentin succeeded in practically reversing the decision of the Paris court and establishing the validity of the gift to herself. While these proceedings were pending Madame Valentin went to England for the purpose of selling a portion of the stock, accompanied by a man called Lafourcade. After a while she quarrelled with him, and he then allied himself with the other party. He made an affidavit alleging that Madame Valentin intended to leave England. She was arrested under the Absconding Debtors' Act, and not being able to find bail, was committed to prison, where she lay for five *months, until the trial by the Court of Exchequer* and the verdict in her favour discharged her. She then prosecuted Lafourcade for perjury in the affidavit that had obtained

Now is there not a manifest discrepancy between the theory and the practice of the law? The theory is, that every person accused of crime is to be presumed innocent until convicted. But the practice too often is to consider him both guilty and infamous until he shall satisfactorily establish his innocence. In pursuance of this corruption of the theory in many of our States (but not in our State, thank Heaven!) if one is accused of selling liquor without a license, or smuggling a few pounds of tobacco across the frontier, he is put in a pen surrounded by a spiked railing, and a sulky individual is stationed at its door, with a long pole, to frown upon his counsel when the accused whispers suggestions in his ear, and to say, in effect, to the public: "Look upon this malefactor." And yet, Law, in the person of the grave and learned judge upon the bench, will say, upon request of the prisoner's counsel: "Oh yes, to be sure; gentlemen of the jury, the burden is on the district attorney to prove the prisoner's guilt; the law presumes his innocence; you must have no reasonable doubt that he committed the crime;" and then the jury turn their eyes from his honour to the prisoner, and in his humiliating position they see a practical contradiction of the law's benignant theory. The writer never enters a country court-house and sees one of these detestable pens, without a strong desire to huddle our legislators into it, and try them for inconsistency, inhumanity, and indecency, without a presumption in their favour! And is not the rule we are considering just as effectual a contradiction of the theory of the law? They have come down to us together from darker ages, and they both deserve the name of of barbarisms.

It must be remembered that the writer is only appealing to those communities which have abrogated the common law rule in regard to parties in civil suits, for his remarks can have no application to those localities where the rule is unchanged. But in the former, is it not the topmost height of inconsistency to let John Doe testify in his own behalf, when sued by Richard Roe to recover the value of a pair of chickens sold and delivered, and yet prohibit him from testifying, when Richard Roe complains that he stole the aforesaid chickens? John may say anything he chooses to avoid paying a few paltry shillings, but when the charge is of larcency, and disgrace and dishonour are threatening him and his family, and the penitentiary stares him in the face, the tender and benignant law says:—"Oh no, John, that would never do. We cannot allow you to say that you were not there, or that you had bought the chickens, and merely went to fetch them away, or anything else tending to clear yourself; for you see, John, it would be against public policy, and the old and well-established rule of evidence, and would work great injury, and tend to promote perjury; for you, being complained of for stealing a pair of chickens, cannot be expected to speak the truth under oath, so great is the depravity of human nature. We are sorry for you; you are unfortunate; but the law is inexorable; and as for your family, if they shall become needy, we have in our tenderness provided an asylum for them in the almshouse." And so it goes—John to the jail, and his family to the poor-house:—and the judge pulls down his spectacles and calls the next case, with a severe dignity and an unimpassioned voice, apparently and really unconscious that he has been assisting in the perpetuation of a great error and accessory to a monstrous injustice. A judge of New York—no less an historical personage than he whom Irving has immortalized as the "great congressman"—was once called on, in the discharge of his official duties, to sentence a negro slave, owned by one of his neighbours and whom his honour had known from boyhood, for some trifling offence. "Stand up Zingo," said his honour; "what have you to say why the sentence of the law should not be pronounced upon you?" The criminal, frightened out of what little wit nature had given him, commenced stammering in a painfully confused manner, "Why—massa—massa—Knickerbocker—" "Not a word, Zingo!" interrupted his honour, "not a word!" and sentence was pronounced. And so it is every day. The law demands of us to prove our innocence, but shuts our mouth when we essay to speak it.

That which we here complain of is, that the law upon this point has not the merit of consistency. We are not now considering the question in the aspect of policy. The only theory upon which the testimony of a party to a civil action was excluded, was, that it was taken for granted that if he stated anything favourable to himself, it must necessarily be perjury; and that can be the only theory upon which to base the exclusion of his testimony in a criminal proceeding. There is no hesitation in courts in receiving admissions or confessions of persons charged with crime; we are always ready to accept a plea of guilty;

her arrest. He was convicted and sentenced to eighteen months imprisonment. Upon this the other party took the like proceedings against her, and prosecuted her for perjury for having, in her evidence, sworn that she had never threatened to leave England, as Lafourcade had alleged. She was in turn convicted, and thus was exhibited the extraordinary spectacle of two persons convicted and punished for perjury in a transaction in which it is quite certain that both could not be guilty. In the one case, the prosecutor being heard and the prisoner's lips sealed, the story of the former is believed. In the other they have changed places; the prosecutor is now the prisoner, and the prisoner is prosecutor; the story of the latter is heard but not that of the former, and again there is a conviction, although utterly inconsistent with the former conviction, when the position was reversed.

There being no court of appeal or other legal mode of righting such a case in England, resort was had to the clemency of the Crown, and Madame Valentin received not an acquittal, to which she was of natural right entitled, but a *pardon* for a crime of which nobody believed her guilty, and of which she, in all probability, would never have been convicted had she been allowed to be heard in her own defence.

we are never skeptical about a man's story when it bears against him; it is only when he tells us something which makes for him that we hesitate, and the reason can be no other than that which we have intimated. But having discarded the theory in the one case, we must also do it in the other, if we are to be called consistent. The reason of the exclusion having ceased any longer to commend itself to our minds in the former instance, we ought no longer to allow it to prevail in the latter.

But we assert that the law has never been consistent in its *administration* of the rule as to criminals, even if it be admitted that the rule is just and expedient. There *is* one instance in which the criminal is permitted to tell his own story, and that is before the examining and committing magistrate. "Zingo" may here say why sentence should not be pronounced upon him; but he must be careful, for the privilege is two-edged and cuts both ways, and oftener, in the hands of officials, is turned against him than against his accusers. Here, then, he may *state*—not *testify*, for his testimony, of course, would be a lie—but *state* whatever he has to say in exculpation. And what he says is gravely written down, and this statement may be read in evidence, upon the trial, *against him*, if the district attorney pleases; and as it contains all that he stated, some things favourable to himself, or intended by him to be so, must necessarily come out before the jury who sit to try him, and that without the sanction of an oath. So after all, the law does permit the prisoner, in this second-hand manner, to present his exculpatory statements to the jury upon his trial, and these exculpatory statements are received without possessing, even in form, the sacred character of statements under oath. Now, if the prisoner may be heard, unsworn, before the examining magistrate, why not before the jury, after having taken the oath? If he is to be in the least credited before one judge, will the presence of twelve additional judges corrupt him? Or is it the oath itself that inspires him with deceit and falsehood? If he is to be heard at all, why not at all times and places? If his statements are receivable to influence the magistrate in holding or releasing him, why should they not be received in the form of legal testimony to influence the jury in convicting or acquitting him? Is there any objection to the jury's judging for themselves from the bearing and demeanor of the accused, under oath, of the probable credit due to his statements before the magistrate? Can it be true that the real object of the law in permitting prisoners to make their statements before the magistrate, is to set a trap to catch unwary, unadvised, ignorant, or confused defendants, by giving the district attorney the right to use the statement on the trial, and not giving the same privilege to the accused? In any view, we urge that here is a great absurdity. The law sees the injustice of striking the accused utterly dumb, and therefore tolerates an exception to its rule. Precisely so did the law make many exceptions to the rule in civil suits from the necessity of things. And a rule to which so many and such important exceptions are necessary or expedient must itself be unnecessary and inexpedient.

But this is not the only practical inconsistency of which we have to complain in this regard. Let us remember that the object of the law is to develope truth, and that the reason assigned for the exclusion of the accused is, that the accusation itself renders the accused unworthy of credit. Now there happen to be two indicted for the commission of a joint offence. The public prosecutor finds it impossible to convict either of them by extraneous evidence, and therefore offers one, that if he will confess the crime and inculpate his accomplice, he shall go free and his accomplice alone shall pay the penalty. Here is a very strong temptation for an honest man, wrongfully accused, and what rogue could withstand it? Legal grace does its work, and the scoundrel of the spiked pen is translated to the witness-box, and we send his accomplice to prison on his testimony. Here the testimony of a man is received, not only when charged with crime, but when confessedly guilty. True, here and there the books say he must be corroborated, but in practice this is more matter of form than substance, and a jury seldom fails to convict on such evidence. Is the law quite as punctilious here as in the case under consideration? The object ought to be to ascertain the truth. But suppose the prisoner appealed to for "state's evidence" should offer to give a narrative consistent only with the innocence of himself and his fellow-prisoner; would the district attorney produce him, think you? Oh, no; the depravity of human nature then suggests itself to Mr. Attorney's mind, and he declines ministering to it. It will be noticed that the witness is depraved if he claims to be innocent, but pure if he confesses his guilt. The law will not listen to either of the accused as prisoners, because they are not to be believed; but it will select one of them and offer him a premium, if he is really innocent, to become a perjurer at the expense of his companion. In the one case, it perchance refuses to hear the truth; in the other it offers inducements to men, possibly honest, to degrade themselves.

The rule of which we are speaking sometimes produces in practice very ridiculous and amusing results. Noakes and Stiles have a quarrel in the street; they come to blows; each supposes his antagonist in fault; each starts instantly for the police justice, to prefer a complaint for assault and disorderly conduct; Noakes, having longer legs or better wind, arrives first and procures a warrant against his adversary, who comes panting into court, shortly after, just in season to find himself in the custody of the constable, an infamous man, and not allowed to raise his

voice in his own behalf; and so he is fined. Next day the parties meet again, and have a repetition of the quarrel, and each supposes the other to blame as before; again they start for the temple of justice, but this time Stiles, having improved by his training, or discovered some short cut, turns the tables on the agile Noakes, and renders *him* infamous and unworthy of credit; and therefore this time the fine is imposed on Noakes. Thus a man's credibility may sometimes depend upon the length of his legs or the soundness of his lungs. But let us suppose that in the case we have mentioned, Noakes now brings a civil action against Stiles for the same cause, even after his conviction; then both Noakes and Stiles are competent witnesses on their own behalf, and it is entirely competent for the civil tribunal to render a decision entirely at variance from that of the criminal tribunal. So, in the first instance, the law, refusing to hear Noakes on account of his infamy, punishes him on the testimony of Stiles; in the other, having heard both the parties, it refuses to punish him at all, but subjects Stiles to damages and costs for the very same transaction, and that after Noakes had been rendered "infamous and unworthy of belief," on account of the criminal proceedings, charge, and conviction.

But to take a more serious, but not more possible view, the practical working of this rule will be found equally objectionable, in a variety of instances, in regard to which there is hardly room for controversy. A case of very frequent occurrence in our courts is the accusation of rape. In many, and perhaps a majority of instances, the allegation is made by ignorant or obscure women against men of fair reputation, who, up to the hour of accusation, have stood as persons of probity and respectability. In this kind of proceedings there can generally be but one witness, and that the complainant, and as a general rule it may be said that there can ordinarily be but one question, and that of consent, for the accuser usually has the first necessary element to the offence substantially undisputed and acknowledged. But the question of consent is a close one, depending upon nice shades of action and meaning, and it behoves the law, where there is such an ample field for the operation of fraud and conspiracy, to exercise extraordinary caution. Here, then, it would seem, there is an example of great hardship in the enforcement of the exclusion. Can there be any doubt that in at least half these cases the statement of the accused would materially modify the narration of the prosecutrix and reasonably shake her credit in the minds of the jury? But it is not permitted, and the life or the liberty of the unfortunate accused is at the mercy of a designing, a revengeful, or a corrupt woman.

There is yet another class of cases in which it would seem eminently proper to admit the testimony of the accused, and that is when the *corpus delicti* depends upon the *animus* of the defendant, or rather upon his knowledge of extrinsic circumstances and the reasons that operated on his mind at the time of the transaction. Perjury sometimes presents an example of this description. Here the jury are often expected to peer into the mind of the accused, and form an opinion as to whether or not he knew the falsity of that which he averred under oath. What objection can be raised against allowing him to testify concerning his knowledge and his belief at the time of his original testimony, and subjecting him to a critical cross-examination upon the subject?

Again, in cases where the accusatory evidence is strictly circumstantial. It is an old dogma that "circumstances cannot lie," but experience has shown that they sometimes do "lie" as grossly as "figures." Although not an every-day occurrence, yet once in a while, an innocent and reputable man has been environed by a network of circumstances, apparently damning, and yet time has developed a theory entirely consistent with his innocence. We care not how seldom it occurs; it is sufficient if it can ever occur. The law ought to guard as far as practicable against the possibility of injustice. It is better that a thousand guilty should go unpunished than that one innocent man should suffer. If the testimony of such a man, under such circumstances, can throw any light upon the transaction, surely the jury ought to hear and judge of it.

We can imagine—many of us have seen—frequent instances in which court, jury, witnesses, officers, and spectators would unite in saying that the prisoner ought to be allowed to testify. If there is or can be one such instance, the exclusion should be done away in all. The law draws no distinction as to circumstances in this respect. The law "is no respector of persons." Its rules are for all men, in all places, and at all times, or ought so to be. The test should therefore be *credibility*. And the question of credibility should always be submitted to the jury. If the accused is unworthy of credit, they will not believe him; but if his testimony and bearing commend themselves to their belief and respect, they ought to and will believe him. And here let us add, that in our opinion, the cross-examination of an accused person would greatly tend to the development of the truth. If innocent, he will not be shaken or confused. If guilty, to use the expressive words of Chief Justice Appleton in speaking of this subject: "His truths and his falsehoods are alike perilous. He is pressed by question upon question. He evades or is silent. Evasion is suspicious. Silence is tantamount to confession." And thus, instead of promoting error, we enlist a new agent in the service of truth.

We are aware of the great prejudice in the minds of men on this subject. So great is

the prejudice that they are not disposed to give fair scope to the experiment. Thus in Connecticut, where the legislature, in enacting a law authorizing parties in civil actions to testify on their own behalf, inadvertently made the provision so broad as to cover criminal proceedings the legislature repealed the obnoxious portion of the enactment the very next year. And yet the member for Fairfield, while on his way to the station to take the cars for the capital, where he should in his seat vote for this repeal, might have seen the well-preserved whipping-post on Fairfield Common, directly in front of the ancient and honoured temple of justice, and drawn from the sight a useful lesson on reform. Then in our State, where the legislature last winter modified the pre existing law on this subject, which allowed parties to civil actions to be sworn, so that to day it clearly embraces criminal proceedings as well as civil suits, yet judges are found so timid as to reject the proffered testimony of the accused in criminal cases, and for no better reason than that the legislature "could not have intended to do such a dreadful thing."

In the State of Maine, where the sun rises, the law-makers, in 1859, passed an act enabling the respondent in any criminal prosecution for libel, nuisance, simple assault, or assault and battery, by offering himself as a witness, to testify; and in 1863, the provision was extended to all criminal proceedings whatsoever. This extension of the rule is a strong argument in its favour, derived from practical experience. And Chief Justice Appleton, in his admirable letter on this subject (published in these pages in August last), which deserves to be written in letters of gold, says of these changes: "So far as I can judge, they are favourable to the ascertainment of truth—the great end for which judicial proceedings are instituted. I anticipate from the change proposed a greater certainty of correct decisions in criminal proceedings. The guilty will be less likely to escape. The danger of the unjust conviction of the innocent will be diminished."

A great many other reasons might be advanced to show the expediency of establishing a new practice on this subject. But perhaps to adduce them would answer no useful purpose. And after all, we are advocating no new thing. It is a remarkable fact that argument on this topic is needed in no language save the English. In no civilized countries on the face of the globe save those where the English language is spoken, is a person accused of crime prohibited from testifying in his own behalf. In all countries, except those which boast the superior civilization and culture which have given the Anglo-Saxon his merited supremacy in the affairs of the world, the accused is allowed, and even required, to submit to the tribunal before which he stands for trial, his own version, explanation, or denial, and these are received and considered, and are awarded such credit as they are worth. How is this? Is the English tongue peculiarly "to falsehood framed?" Or is it because our law-reform has not kept pace with that of other countries? Have we not confined ourselves too closely to narrow reasonings upon human depravity, and the unreliability of human testimony, and lost sight of the fact that we have provided a competent tribunal to judge of its reliability? But it is not too late to reform our practice. Error is not any more respectable because it is hoary. "The eternal years of *God!*" belong to truth alone. It will not do to say that the men of the nineteenth century have no conscience. It now lies with the lawyers of our country to agitate and consummate this needed amelioration. They have always been the recognized champions of men's rights, and the redressers of their wrongs, and to them the world looks, and on them it calls, to establish just, consistent, and equal laws, to administer them faithfully and conscientiously, and ever to lend a willing ear to every suggestion of possible injustice and probable reform. It rests with our profession now to blot out this abuse from our statute books, and to make our laws, in this respect, equal in justice and policy, as we believe they are in most respects superior, to those of the others civilized nations of the earth.—*American Law Register.*

TRIAL BY JURY.

The unfitness of juries for the determination of disputes receives confirmation almost daily in every court for the trial of civil suits. The single argument advanced in favour of the unanimity of judges in criminal cases—that no man ought to be pronounced guilty of a crime unless it is so proved as to convince twelve men of average intelligence—is wholly inapplicable at Nisi Prius, where it is a question of balance of testimony and comparison of rights and wrongs. Here real unanimity is impossible, or nearly so, and if the jury is to be preserved as part of the system, the fiction of unanimity should be abolished, and the verdict should be determined avowedly, as it is usually in fact, by a majority. The more intelligent the jury, the more probable it is that they will differ in opinion; and the more honest they are, the more steadily will they refuse to sacrifice conscience to convenience, and assent, nominally, to a verdict from which their minds dissent.

The comical exhibition in the case of *Hill* v. *Finney* is another startling illustration of these truths. The defendant, a solicitor of the highest respectability, had advised the plaintiff, who was his client, not to go into the witness-box in a divorce suit, in the defence of which he was acting as his solicitor. A decree having gone against him, the defendant found it necessary to save his commission in the army by vindicating the character which the

proceedings in the Divorce Court had damaged. The solicitor, Mr. Finney, was accordingly made the unlucky scapegoat for this purpose, and the form in which it was attempted was that of an action against Mr. Finney for negligence as a solicitor in giving his client advice not to offer himself as a witness, which, as it was alleged, was the cause of the adverse issue of the suit. This, of course, reopened the whole question, and the proceedings in the Divorce Court were tried over again in the Queen's Bench. The Lord Chief Justice put strongly to the jury the point as to negligence by the defendant, and expressed his own opinion that it had not been proved. He then submitted certain questions to the jury, who retired, and after an absence of three hours returned and read from a paper the following finding:

1. That there was a defence as to the charges of cruelty.
2. That there was not a defence on the ground of the recriminatory charge of adultery.
3. That the plaintiff did not lose the benefit of his defence through the advice of the defendant, as alleged by the plaintiff.

This obviously amounted virtually to a verdict for the defendant, and was so understood, but the foreman was proceeding to say something about damages, when he was interrupted by the Lord Chief Justice, who said that, as the finding was substantially a verdict for the defendant, there could be no damages. The foreman said that the jury had so understood it. Then followed this dialogue:

Cockburn, C. J.—Why you see, gentlemen, the plaintiff must have a cause of action in order to recover damages, and, as I told you, he could only recover on the ground that the defendant gave him the alleged advice, which you have negatived, so that he cannot upon those findings be entitled to recover damages.

The foreman said he believed his brethren had agreed to their findings on the supposition that they would be enabled to award damages.

Cockburn, C. J.—That would not be so. The plaintiff's case consisted of two parts—that he had a defence, and that he lost it by the defendant's advice. You have negatived the latter, so that he cannot recover.

The sapient jury again retired. During their absence council submitted that, the finding being a verdict for the defendant, there was nothing for the jury to consider. The Judge being of that opinion, the jury were sent for:

Cockburn, C. J., addressed them in these terms: Gentlemen, it has occurred to me that I should not be discharging my duty either to the parties or to you if I allowed you to retire to reconsider your verdict without giving you a word of warning. You have, after several hours' consideration, solemnly recorded your deliberate verdict that, in your judgment, the defendant did not give the advice complained of, and which forms the ground of the action. It seems, however, that some of you, having found the other issue in favor of the plaintiff, desire to give him damages; but that you cannot do. You cannot give damages against the defendant when you have acquitted him of that which was the cause of action. You have come to a conclusion in favour of the defendant. You cannot, because you are disappointed in your intention of giving damages to the plaintiff, swerve from the verdict you have already deliberately adopted and deliberately returned.

The jury, the majority of whom appeared by their gestures to assent to what was thus said, consulted among themselves, when one of them said something about an inconsistency between their findings.

Cockburn, C. J.—There is no inconsistency at all, gentlemen. Your findings are perfectly clear and consistent. You have found that the plaintiff had a defence, but that he did not lose it by the defendant's fault. But the ground of action against the defendant rests partly upon the latter part of the case, which you have negatived; and as you have negatived an essential part of his case, you cannot give him damages.

Again they retired, and after an absence of half an hour returned with a verdict for the plaintiff, damages one farthing, to the mingled amazement and amusement of the whole court.

The report continues:

Cockburn, C. J., after a silence of several moments, said:—I am afraid that will be an abortive result. You find for the plaintiff, and you give a farthing damages.

The Foreman said that was so—that was their verdict.

Cockburn, C. J. (after another pause)—Then do I understand that you now find the defendant did give the advice alleged?

The Foreman.—We do. We find that it was given.

Cockburn, C. J. (in a tone somewhat contemptuous)—Why that is inconsistent with your former finding!

The foreman said that was their finding.

Cockburn, C. J.—You think that the plaintiff is entitled to a verdict but not to damages; that he has lost his defence through the defendant's fault, but that he has suffered no loss?

The Foreman.—Yes; but we desire to give him another start in life; a new trial in the world, so to speak.

Cockburn, C. J.—I understand you. It is evidently the result of a compromise, and may make worthless this ten days' trial. Your former findings satisfied, I think, the justice of the case. However such is your verdict.

Here we have an absurd verdict, and a solicitor, who is found by the jury, to have been guilty of no negligence, and in no way in fault, is mulcted in heavy costs, because some of the jury, with more of heart than brain, wanted to do a good turn to the plaintiff on a matter not on issue before them. What better proof could there be than this of the folly of requiring unanimity in civil causes?

The Profession will sincerely sympathise with Mr. Finney. He can certainly obtain a new trial, but will not the first loss be the best? The verdict has relieved his professional reputation from the imputation sought to be cast upon it by his unworthy client.—*Law Times.*

LAW REPORTERS.

One of these was Sir Cresswell Cresswell, whose last judicial labours as Judge Ordinary of the newly-established Divorce and Probate Court were of signal service to the country, and who had previously, as a judge of the court of Common Pleas, commanded the respect and admiration of the public and the profession. Sir Edward Hall Alderson was also a Queen's Bench reporter from 1817 to 1822. On the Northern Circuit Alderson was one of the most esteemed and efficient juniors of his day; and who that remembers him on the bench will forget his ready wit, his apt illustrations, and profound knowledge? A judge who but the other day was followed to the grave by his brethren with unusual marks of respect, was also a distinguished reporter. Sir Charles Crompton—to whom we refer—was associated in the Exchequer reports, first with Mr. Meeson, and then with Mr. Meeson and Mr. Roscoe. Lord Chief Justice Jervis, one of the acutest lawyers of his day was also, when at the bar, for some time a reporter. Another Chief Justice, when "plain John Campbell," reported the Nisi Prius rulings of the great Ellenborough. In after years Campbell could, with pardonable vanity, refer to his reports as enhancing the reputation of Lord Ellenborough as well as his own. "When I was a Nisi Prius reporter," he writes, in the "Lives of the Lord Chancellors," "I had a drawer marked 'Bad law,' into which I threw all the cases which seemed to me improperly ruled. I was flattered to hear Sir James Mansfield, C. J., say, 'Whoever reads Campbell's Reports must be astonished to find how uniformly Lord Ellenborough's decisions were right.' My rejected cases, which I had kept as a curiosity, not maliciously, were all burnt in the great fire in the Temple, when I was Attorney-General." —*The Reader.*

UPPER CANADA REPORTS.

QUEEN'S BENCH.

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

MILLER v. THE CORPORATION OF THE TOWNSHIP OF NORTH FREDERICKSBURGH.

C. S. U. C. ch. 54, sec. 337—Limitation of actions.

The Municipal Act, sec. 337, provides that actions against a municipal corporation for not repairing highways must be brought "within three months after the damages have been sustained."

The plaintiff's mare fell through a bridge, and died four months after from the injuries received. *Held*, that the statute began to run from the occurrence of the accident, not from the death.

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

Appeal from the County Court of Lennox and Addington.

This action was brought on the 6th of May, 1865, against the Municipality of North Fredericksburgh, for the loss of the plaintiff's mare, which fell through a hole in a bridge on the Mohawk Bay road, on the 27th of November, 1864, and died on the 23rd of March, 1865, from the injuries received.

It was objected at the trial that the action was not brought within three months after the damages had been sustained, according to section 337 of the Municipal Act, Con. Stats. U. C. ch. 54.

The learned judge held at the trial, and afterwards in term, that the three months began to run from the death of the mare and not from the occurrence of the injury, and that her value was to be considered at the time of her death, horses having risen considerably in market value in the interval; and a rule *nisi* obtained to enter a nonsuit was discharged.

On these points the defendants appealed.

Moss, for the appellants, cited *Patterson* v. *The Great Western R. W. Co.* 8 U. C. C. P. 89; *Turner* v *The Corporation of Brantford*, 13 U. C. C. P. 109; *Snure* v. *The Great Western R. W. Co.* 13 U. C. Q. B. 376; *Moison* v. *The Great Western R. W. Co.* 14 U. C. Q. B. 109; *Vanhorn* v. *The Grand Trunk R. W. Co.* 18 U. C. Q. B. 356; *Brown* v. *The Brockville and Ottawa R. W. Co.* 20 U. C. Q. B. 202; *Whitehouse* v. *Fellowes*, 10 C. B. N. S. 784; Con. Stats. C. ch. 66, sec. 83.

Gwynne, Q. C., contra.—The statute expressly makes defendants responsible for "*all* damages" sustained, and this is not carried into effect, if the action must be brought before the whole extent of the injury is known or has been suffered, as the appellants contend for. He cited *Roberts* v. *Read*, 16 East. 215; *Gilton* v. *Boddington*, Ry. & Moo. 161, S. C. 1 C. & P. 541; Mayne on Damages, 37.

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

The words of the section are. "and the corporation shall be civilly responsible for all damages sustained by any person by reason of such default," (*i. e.*, default in repairing), "but the action must be brought within three months after the damages have been sustained."

The case of *Bonomi* v. *Backhouse*, E. B. & E. 622, relied on in the court below, established, in the words of the judgment of the Exchequer Chamber, that "no cause of action accrued from the mere excavation by the defendant in his own land, so long as it caused no damage to the plaintiff; and that the cause of action did accrue when the actual damage first occurred." E. B. & E. 659; and in the House of Lords, 1 B. & S. Am. Ed. 970, 9 H. L. Cas. 503.

In such a case we think the same rule would apply, whether the words creating the limitation were "from the accruing of the action," or, as in the case in appeal, "after the damages have been sustained." No wrongful act was in fact done till the damage accrued.

In the case before us, defendants were answerable in damages to parties injured by their neglect to perform a statutable duty, namely, the keeping in repair of a bridge. No cause of action vests in any person against them for damages till an injury is sustained by their default. As soon as the mare was injured by falling or stepping into the hole in the bridge, the plaintiff's cause of action was complete. His

damages were then sustained, in the words of the statute. The subsequent death of his mare was merely an additional evidence of the extent of his damages, and in our judgment cannot be held "a sustaining of damage" in the view of the statute.

Mr. Gwynne, in his ingenious argument, admitted that an action might be brought immediately after the accident, and that a recovery would be a bar to all future actions, even if it were erroneously thought that the mare would completely recover, and her subsequent death would give no additional claim.

In a case like this, there is no question of what is called "continuing damage," as in the case of a nuisance, or the diversion of a stream or penning back of water, which from day to day is occasioning injury, and for which a fresh action may be daily instituted. Here all connection between the cause and the injury, all injurious action by defendants against the plaintiff, ceases from the happening of the accident. The plaintiff has sustained the whole of his damages; his mare is fatally injured. The damage is not the less because he does not know its full extent, or because (if he sue before her death) his witnesses may not speak with certainty as to the fatal character of the injury, or because other witnesses for defendants may declare that she will recover, and regain all her former vigour and usefulness.

It seems to us a misconception to speak of the death of the mare, at an interval of three, six, or nine months after the accident, as the "sustaining of the damage" mentioned in the act.

It is quite true that requiring the action to be brought within three months from the cause of action may create more difficulty in duly proving the proper measure of damage. This cannot be avoided. It is a difficulty occurring in numerous cases; for assault and battery, injuries (not fatal) in public conveyances, &c. Contradictory testimony is frequently adduced as to the temporary or permanent character of the alleged injury; but the damage, be it small or great, has been sustained by the plaintiff as against the defendants by the occurrence of the unlawful act of commission or omission. However difficult to prove, it has been sustained; the effects of the injury may be developing themselves very slowly, and perhaps obscurely.

If the view of the court below be law, it will deprive municipalities of the special protection given them by the statute, and extend the period of limitation indefinitely until three months after, not the default causing the injury, but the ultimate development of its effects by the death of the person or animal the subject of such injury.

We think the appeal must be allowed, and the rule to enter a nonsuit, on the leave reserved, be made absolute.

It is not necessary to discuss the question of value.

Appeal allowed.

COMMON PLEAS.

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

Barnes et al. v. Cox.

Certiorari—Issue, but non-delivery before judgment entered—Procedendo—Practice.

A *certiorari* must not, merely have been issued, but *delivered* to the proper officer, before the entry of final judgment, or, after interlocutory judgment, before the jury have been sworn on the assessment of damages; otherwise, a *procedendo* will be ordered to issue; and that, too, though the record has been returned and filed in the court above.

In this case the *certiorari*, which had been *issued* several days *before*, was not *delivered* to the judge of the County Court until *the day after* the entry of final judgment and issue of *fi. fa.* thereunder:

Held, that the writ, in obedience to which the proceedings had been returned and filed in this court, was *functus* in its execution, and a *procedendo* was thereupon ordered to issue.

An application made to the judge of the court below to set aside the final judgment on the ground that the claim was *unliquidated* in its nature, had been refused because, having complied with the *certiorari*, he had no longer jurisdiction in the cause:

Held, on a similar contention here, and that the judgment, though signed as a final judgment, ought to have been interlocutory only, and that the *certiorari* had, therefore, been served in time, that this question could not be enquired into on the application before the court, and that the subject matter of the suit being within the jurisdiction of the judge of the court below, his judgment could not be reviewed on the proceeding before this court; but,

Semble, that if it appeared on the face of the record that the judgment was final when it ought to have been interlocutory merely, this might be taken advantage of by writ of error.

Semble, that any proceedings in the court below after removal of the cause into this court could not be sustained, the effect of the *certiorari* being to suspend all proceedings there.

Held, also, that after the return of the record, &c., under the *procedendo*, to the court below, the judge there had power to set aside the judgment and let defendant in, upon terms, to plead

Semble, that the more satisfactory course for the judge in the court below to have pursued would have been, instead of striking out defendant's pleas as inapplicable to the declaration, to have allowed plaintiffs to demur, and thus have given defendant an opportunity of appealing to this court in case of a decision in favour of the demurrer.

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

In Trinity Term last, *C. S. Patterson*, on behalf of defendant Cox, moved for a rule for a writ of prohibition, to be addressed to the Judge of the County Court of the county of Wentworth, to prohibit the further prosecution in that court of a suit wherein Barnes and Wilson were plaintiffs and Cox defendant, and the further proceeding upon an execution issued in said suit, on the ground that the said suit had been removed by *certiorari* into this court. The rule was moved on reading the affidavits and papers filed in chambers and re-filed on this application.

At the same time, *R. Martin*, for the plaintiffs Barnes and Wilson, moved a rule to quash the *certiorari* issued, and for a writ of *procedendo*, addressed to the County Court Judge of the county of Wentworth, commanding the judge and court to proceed in the suit of Barnes et al. against Cox, wherein the judgment and proceedings had been under said writ removed from such court to this court.

From the affidavits and papers filed it appeared, that the suit had been commenced on January 12th, 1865, by plaintiffs issuing a writ out of the County Court of the county of Wentworth against defendant, who entered an appearance thereto by M. C. Cameron, of Goderich, as his attorney; that on the 23rd day of the said month of Janu-

ary a declaration had been filed and served on defendant's attorney in the cause, and that the defendant had duly filed and served certain pleas to this declaralion.

On application to the judge of the County Court of the county of Wentworth these pleas were, on the 17th of February, 1865, ordered to be struck out, on the ground that the pleas were not applicable to the cause of action set out in the declaration.

On the 23rd of February the defendant obtained a writ of *certiorari* addressed to the judge of the County Court to return the proceedings in the cause into the Court of Common Pleas.

On the 27th February the plaintiffs signed judgment against defendant for $202 71 damages, and $12 92 costs, and thereupon issued execution for damages and costs, and placed the same in the hands of the Sheriff of Huron and Bruce. This writ was subsequently returned, and a writ against lands placed in the sheriff's hands, where it still remains.

When the pleas were set aside defendant was allowed six days further time to plead before plaintiffs should be at liberty to sign judgment.

The writ of *certiorari* was delivered to the County Judge of the county of Wentworth, on the 28th February, and he returned the proceedings into this court on the 8th March following.

On the 10th March the defendant applied for a summons in the County Court to set aside the judgment, execution and all subsequent proceedings with costs, on the ground that the judgment was signed after the issue of the *certiorari* removing the cause; and that a final judgment could not have been properly signed in the cause, as it was signed as if the demand of plaintiffs had been for liquidated damages, whereas the claim was an unliquidated one, and final judgment could be signed thereon; or, why proceedings should not be stayed until term; or, why such other relief should not be granted as to the judge might seem meet.

The judge refused to grant this summons on the ground that he had returned the papers in the original cause into this court, and had no further jurisdiction over the same.

The plaintiff's attorney stated that the 17th of August was the first day on which he had received intimation or notice that any proceedings had been taken to remove the cause from the County Court into this court.

The parties were heard on both motions in the first instance.

R. Martin, for plaintiffs.—The proceedings in the court below were quite regular and proper. The *certiorari*, not having been delivered until after judgment entered and execution issued in the court below, proceedings under it were irregular and inoperative, and the writ ought not to have been obeyed. The plaintiff's attorney had no notice of the writ, and proceeeed in good faith and took further proceedings in ignorance of what the defendant was doing in this respect. The defendant was guilty of *laches* with respect to the *certiorari*, as well as in not taking steps to put in his defence in the court below within the time given him for that purpose: *Rex* v. *Seton*, 7 Term Reports, 373. The proceedings taken by defendant are in effect asking the court to reverse the judgment of the judge in the County Court, without appealing from such judgment or bringing a writ of error. There is no doubt that the County Court had jurisdiction in the matter, and even if the judge was wrong in any decision he had made, the court would not grant a prohibition: it is only in cases where it clearly appears the inferior courts have no jurisdiction the prohibition will go: *Kemp* v. *Balne*, 8 Jur. 619, S. C. 1 D. & L. 885; *Fox* v. *Veale*, 8 M. & W. 126; *Toft* v. *Rayner*, 5 C. B. 162; *Thomas* v. *Ingham*, 14 Q. B. 710. He also cited, *Re Bowen*, 21 L. J., Q. B. 10; *Hollis* v. *Palmer*, 2 Bing. N. C. 713; *Hodgins* v. *Hancock*, 14 M. & W. 120; *Chapple* v. *Durston*, 1 C. & J. 1; *Joseph* v. *Henry*, 119 L. J. Q. B. 369; *Siddall* v. *Gibson*, 17 U. C. Q. B. 98; *Ellis* v. *Webb*, 8 C. B. 614.

C. Patterson, contra.—The writ of *certiorari* was issued before judgment was signed in the court below, and the judge having returned the record and proceedings in the court below, no further proceedings could properly be taken in that court. The judgment signed in the court below is really an interlocutory judgment, though entered as a final judgment, and therefore the *certiorari* was served before final judgment in the court below. The judgment in the court below ought to be treated here as an interlocutory judgment only.

The court may order a *certiorari* after judgment: *Grocnvelt* v. *Burwell*, 1 Salk. 263; *Benn* v. *Greatwood*, 6 Scott, 891; Ch. Pr. 10 ed. 942; Tidd's Pr. 8 ed. 401.

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

The 43rd of Elizabeth, cap. 5, seems to have been framed for the purpose of preventing delay by the issuing of the *certiorari;* also to prevent defendants, having learned the evidence against them, from providing themselves with false witnesses to rebut it. By that statute the judge or other officer of the inferior court, to whom the writ is delivered, is to proceed to try the cause, unless the writ be delivered before the jury, which is to try the cause, have appeared, and one of them has been sworn.

The statute of 21 James I., cap. 23, seems to have been passed for furthering the object of the statute of Elizabeth, and is entitled, "An Act for avoiding of vexatious delays caused by removing actions and suits out of inferior courts." The second section provides that the judge, to whom the writ is directed, shall proceed with the cause as though no such writ was sued forth or delivered to him unless the writ was delivered before issue or demurrer joined, so as the said issue or demurrer be not joined within six weeks next after the arrest or appearance of the defendant to the action.

There have been many decisions as to the practice to be pursued in relation to the removal of suits pending in inferior courts in England, and the result of these decisions seems to be that, in all cases where it is intended to have the subject matter of the suit disposed of in the court above, it is necessary that the writ should be delivered to the judge of the inferior court before the judgment is entered in that court, and, when interlocutory judgment has been signed and the jury sworn, if the writ has not been delivered to the officer before the jury is sworn, a *procedendo* is awarded.

In Patterson's Practice, (page 1185) it is stated, in relation to the *certiorari*, "It must be issued before judgment and delivered to the judge before any of the jury are sworn in the cause. * * * * If delivered after the time a *procedendo* will issue, although the record has been filed in the court above. * * * In case of a judgment by default, if the writ is not delivered until after the jury have assessed the damages on the writ of enquiry, the court will award a *procedendo*." The cases referred to as authority for these propositions are, *Fox* v. *Seton*, 7 T. R. 373; *Laverack* v. *Bean*, 3 M. & W. 62; *Smith* v. *Sterling*, 3 Dowl. 609.

In Chitty's Archibold's Practice (ii. 8 ed. p. 1153) it is laid down to the same effect.

In *Fox* v. *Veale*, 9 M. & W. p. 129, Baron Parke said: The general rule is, that proceedings in inferior courts cannot be removed by *certiorari* after judgment, * * * for suppose the record removed, what is the court above to do with it, further than for the purpose of execution: there is no power reserved to them by this act to alter the judgment."

In *Lawes* v. *Hutchison*, 3 Dowl. Prac. Cases, 506, the same learned judge, Baron Barke, at p. 508, said: "The act (21 Jac. I.) restricts the removal of a cause to any time before judgment. After judgment it can only be removed by writ of error. We have no power, therefore, except for the purpose of enforcing execution under the act, to remove the proceedings after judgment, except by *certiorari* with a writ of error."

In *Kemp* v. *Balne*, 1 D. & L. 885, and reported more at length in 8 Jurist, 619, many of the decided cases were referred to; and Williams, J., in giving judgment, said: I am, however, not satisfied that there is authority to recognize the power to issue a *certiorari* after judgment for the purpose of removing the record of an inferior court into this; and I find a judge of profound legal learning, extensive knowledge, judicial mind, and habitual caution, Mr. Justice Holroyd, in the case of *Walker* v. *Gann*, 7 D. & R. 769, using these words: 'I think it a sound and general rule, that a cause shall not be removed from an inferior jurisdiction, after judgment has been signed there;' and I have no reason to dissent from that exposition of the general rule. If it were otherwise, it would be a compendious mode of re-trying proceedings in the court below, a new receipt for sitting in judgment on the decisions of a court of competent jurisdiction over the subject matter. The suit was plainly *coram judice* there. * * * It appers to me, therefore, in a matter of acknowledged jurisdiction in an inferior court, that, unless we wish to establish a precedent to examine the regularity of proceedings below, and to overturn the ancient and wholesome rule, the *certiorari* cannot issue.'

In *Laverack* v. *Bean*, 3 M. & W. 62, the marginal note states, "If the judge of an inferior Court of Record receives a *certiorari* after the time limited by 21 Jac. I. ch. 23, sec. 2, a *procedendo* will issue, and that, although in the meantime the record has been filed in the court above."

In giving judgment, Baron Parke said: "The record under the circumstances of the case was irregularly on the file, and may therefore go down again to the inferior court. As to the other point, this is clearly a case falling precisely within the words of the 21 Jac. I., and the officer having been a wrong doer in receiving a writ is now to be corrected by the court. He would otherwise have it in his power to neutralize the statute altogether."

In the argument an attempt was made to distinguish this from the decided cases, on the ground that the *certiorari* was issued before the judgment was *entered* in the court below, through the writ was not served on or delivered to the judge until after such entry. This distinction appears to be untenable, for the judge of the court below would be compelled to return the record as it stood in his court when the writ was delivered to him, and a defendant might obtain a writ at a time when it could properly issue, and then purposely delay serving it until he should see whether the judgment of the court below satisfied him or not. The reasoning in all the cases seems to apply to the time the writ is delivered to the judge of the court below, and as the judgment was signed in this case before the writ was delivered, the cases are against the record being retained in this court.

Another ground taken on the argument was, that although the judgment entered in the court below is entered as a final judgment, it is properly only an interlocutory judgment. If on the face of the record this is shown, it perhaps may be taken advantage of by a writ of error; but this is not the proceeding now before us. The whole subject matter of the plaintiffs' claim in the suit is clearly within the jurisdiction of the County Court, and if the learned judge of that court has decided wrong in the matter, as to which we are at present in no position to express an opinion, his judgment cannot be reviewed here on these proceedings.

We are, therefore, of opinion that the record should be returned to the court below, and that a *procedendo* should issue.

As to the proceeding, if any, in the court below, after the record, &c., were transmitted here, it seems difficult to sustain them, because when the writ lies, it has the effect of suspending all proceedings in the action in the court below. If the judge of that court received the writ and transmitted the record to this court, I do not see how proceedings in that court subsequent thereto can properly be recognized there.

After the record goes back to the court below I think the judge has the power of setting aside the proceedings, and letting the defendant in to plead upon terms.

The peculiar manner in which the plaintiffs framed their declaration was undoubtedly calculated to lead the defendant into the difficulty which arose in relation to the pleas which he filed, and without expressing any decided opinion on the views entertained on the subject by the learned judge of the County Court, I think the most satisfactory course would have been to have allowed the plaintiffs to have demurred to the pleas rather than to have struck them out.

If the demurrer had been decided in favour of the plaintiffs, then, the defendant could have appealed; but in striking out the pleas there was no mode of correcting the decision of the learned judge if it was erroneous, but by taking the case into the superior court.

The learned judge, who in chambers ordered the *certiorari*, probably thought, under the facts, that the case would be more satisfactorily disposed of in the superior court; but inasmuch as there was delay in not delivering the writ in due time, we think, as already stated, the case is not properly before us.

On an application to the court below the defendant may shew circumstances to satisfy the judge why the delivery of the writ was delayed, and may account for any other seeming *laches* In that event, the judge, I have no doubt, can set aside the judgment and all subsequent proceedings thereto, and let the party in to defend on such terms as he may consider just.

Rule accordingly.

COMMON LAW CHAMBERS.

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

Patterson v. McCollum et al.

Irregularity—Moving against declaration filed or served—Practice—Delay.

On an application to set aside the service of a declaration on the ground that no copy of the writ of summons had been served on defendant, it was *held* that the application was wrong, as it should have been to set aside the declaration *filed*, for this is the first proceeding, and that being set aside the service falls with it.

Quære, as to delay in making the application.

[Chambers, Oct. 23rd, 1865.]

This was an application to set aside the service of a declaration on Robert Mercer, one of the defendants, because no copy of the writ of summons or any process in the cause had been served on him or had come to his knowledge.

J. B. Read shewed cause, and said if even the facts were so, the irregularity was not in the service of the declaration, but in the filing of it, and that the first proceeding in such a case should be attacked, but as it had not been, the summons should be discharged.

Carroll supported the summons.

Adam Wilson, J.—By the Common Law Procedure Act, s. 56, the plaintiff must *file* a declaration with a notice to plead in eight days. By s. 61 the *service* of all papers and proceedings subsequent to the writ must be made upon the defendant or his attorney according to the established practice.

The established practice by our Rules of Court (and see also s. 91 of the Common Law Procedure Act) is that a copy of every declaration shall be served upon the opposite party.

The really objectionable proceeding taken here is that the plaintiff has filed a declaration without having first served the defendant with a copy of the writ of summons upon which the declaration is founded.

The defendant should therefore have applied to set aside the declaration *filed*, and not merely the service of it, for whilst the original one which is filed remains, another copy of it may be served, whereas if the one served be set aside, the service falls with it. It is very likely also that when the declaration was served on this defendant on the 12th of October, and the judge's summons to set aside the proceedings was sued out on the 17th of this month, but not served until the 20th, that the delay has been rather too long. The summons was granted in Toronto, and was served here, why then should the delay before the service was made have taken place? Was it made within a reasonable time? The time for pleading had expired on the 19th, the day before the summons was served.

Summons discharged, with costs.

In the Matter of B. C. Davy, Gent., One, &c.

Taxation of attorney's bill—One-sixth of amount struck off partly composed of sheriff's and witness fees which have been paid by the client—Costs of taxation.

In a bill rendered by an attorney and referred to the Master for taxation, he is not to take into consideration—in determining whether one-sixth has been taxed off the bill so as to make the attorney pay the costs of the reference—items which are not properly taxable items, such as sheriff's fees and witness fees, &c., not actually to be repaid to the attorney nor a part of his claim.

[Chambers, Oct. 4th, 1865.]

A summons was obtained by Mr. Davy, an attorney of the Court, on the 24th of August last, calling on John Foulds and Jonathan Hodgson to shew cause why the taxation of the bills of costs in this matter should not be revised and the Master directed not to take into consideration the sheriff's fees and witnesses' fees in the said bills charged in calculating whether or not one-sixth has been taken off the bills, on the grounds—

1. That the amount of the sheriff's fees and witnesses fees are not taxable items, and should have been struck out of the bills instead of being taxed off.

2. That if the items are taxable they should have been allowed in the bills, and credit should have been given for them instead of taxing them off.

3. That if the items were taxable and were properly taxed off they should not have been taken into consideration in ascertaining whether or not one-sixth was taken off.

And why the sum of $75, the amount of the bill of costs filed by the said Davy, being the amount paid by him to Mr. Draper as Commissioner's fees, should not be set off and deducted from the amount found due to Foulds and Hodgson by the Master in his report.

There were several suits, and a bill of costs in each suit was made up and taxed. The total amount made up by the attorney on all the bills and claimed apparently by him was... $1069 80
The amount allowed on taxation by the Master was..... ..... 778 90

Making a deduction of $290 90

Or more than one-sixth of the apparent amount claimed.

J. B. Read shewed cause.

John Patterson contra.

Adam Wilson, J.—Mr. Davy represented, and it is not disputed, that in making up these bills he included in each one the total of the gross costs, which was payable by the defendant or debtor—that is, witnesses fees, sheriff's charges, and his own personal claim as attorney—and that his intention was to shew to his clients how the matter actually stood, and not to make the amount of these items any portion of his demand.

The witnesses' fees so included amounted to $56 34, the sheriff's fees on executions to $62 35, and the sheriff's fees on attachments to $57

30. The first two of these items were, while charged as it were on one side of the account, counterbalanced by credits on the other side, so that they did not influence the balance or real amount claimed in any way whatever.

The last item of $57 30 had not been so credited, but as Mr. Davy says this arose purely from mistake.

The sheriff had in fact deducted his own fees when he paid money to Mr. Davy on the writs for his client, and the clients themselves had paid the witnesses' fees. If these items, amounting to $175 99, be struck out from the attorney's nominal claim of $1069 80, there will remain $893 81 as the attorney's proper *demand*.

Then if the amount allowed to the attorney of $778 90 be deducted, there will remain the sum of $114 91 as the fair and proper deduction from the attorney's proper demand.

But this demand is not so much as the one-sixth of the attorney's bill, and therefore he ought not to pay the costs of the reference, if these three items were not properly taxable items, and if they should have been struck out of the bill altogether, and not have been taxed off and computed as a part of the sixth against the attorney. And I think they were not a charge to be made against the client or against any one. They were not, as Bayley, B., said in *Woollison* v. *Hodgson*, 2 Dowl. 361, "part of the bill with the view of ascertaining what is due on taxation."

The attorney would certainly not have been allowed to add the amount of the sheriff's fees for the purpose of increasing the amount of his bill, and so to require a higher sum for a sixth than it would be if the bill were without such items, though he probably might have included the amount paid to him by his client for witnesses' fees, but certainly not the sheriff's fees, which had never passed through his hands at all. The case of *Hays* v. *Trotter*, 5 B. & Ad. 1106 shews this, and if he would not have been allowed to have added them to his bill as taxable items, they should not have been treated as taxable items as against himself, particularly under the circumstances which have been explained.

The order will therefore be that the Master shall not compute the above items for sheriff's and witnesses fees as any portion of the deductions made on taxation, but that these items shall be entirely struck out of the bill, and that the item of $75 shall be allowed to be added to the plaintiff's bill subject to taxation by the Master.

Order accordingly.

Buchanan v. Bettes et al.

Ejectment—Notice limiting defence—Time for making up issue—Amending issue book served—Using papers filed on former application.

Held, 1. Following *Grimshawe* v. *White*, 12 U. C. C. P. 521, that when defendant enters an appearance, whereupon plaintiff makes up and serves his issue book and notice of trial, but defendant, within four days, limits his defence to part of lands, the notice of trial is irregular, and that the issue book cannot be amended by adding the limited defence, without prejudice to the notice of trial.

2. When a summons is drawn up on reading papers filed, papers which are filed on a former application and re-filed on the subsequent application may be read, though not referred to as papers filed on former application.

[Chambers, Oct. 6th, 1865.]

This was an action of ejectment, to which the defendants entered an appearance on the 21st of September. Afterwards, on the 29th of September, the defendants served a notice limiting their defence to a part of the premises, and served the plaintiff's attorney with such notice on the same day.

In the meantime, however, on the 27th of September, the plaintiff's attorney made up and delivered the issue, and served notice of trial on the defendant's attorney. The plaintiff's attorney finding that after he had made up and delivered the issue book and served the notice of trial, the defendants had limited their defence by a service of notice to that effect, applied for and obtained a judge's summons calling upon the defendants to shew cause why he should not be at liberty to amend the issue delivered, by adding to it the defendants' notice limiting their defence, and why such amendment should not be allowed without prejudice to the notice of trial which had been served.

There was some misunderstanding on the return of the summons on the part of the attorneys: the defendants' attorney did not see the plaintiff's attorney in chambers, and he left the summons with a gentleman in chambers to have it enlarged; and the plaintiff's attorney not finding the defendant's attorney present, moved for the order and obtained it.

The agent of the defendants' attorney now moved to rescind the order so made on several grounds, but chiefly because it could not or should not have been made to confirm a proceeding—the issue delivered—which had been delivered before the four days had expired which are allowed to the defendants after their appearance within which to limit their defence, and before the defence was afterwards duly limited had been actually served; and if the order be not rescinded, then to postpone the trial in consequence of the absence of a material witness.

J. A. Boyd shewed cause.—He took several objections; but as to the principal part, the propriety and regularity of the order which had been made, he referred to Cole on Ejectment, 134, and *Grimshawe* v. *White*, 12 U.C.C.P. 521.

James Beaty contra, referred to the same authorities, and to secs. 16 & 29 of the Ejectment Act.

Adam Wilson, J.—It is certainly laid down in Cole on Ejectment that the issue may be made up and delivered and notice of trial served without waiting for the notice limiting the defence or for the expiry of the four days allowed for the service of such notice, and that the judge will allow the issue afterwards to be amended by adding the limited defence, when it is served without prejudice to the notice of trial which has been given. *Grimshawe* v. *White* is precisely in point, and decides that the course is irregular, and it contains all that can be said on the question.

In the 11th Ed. Chit. Prac. 1028, that is also said to be the practice, and there can be no doubt that it is in accordance with the spirit of the act that the issue shall not be made up until the issue be complete.

The practice referred to in Cole on Ejectment, though referred to in *Grimshawe* v. *White*, is not

adopted as containing a correct exposition of the practice.

I think, when a summons is drawn up on reading papers filed, that papers which were filed on a former application and have been filed again on the new application, may be read as papers filed on the application, although they are not referred to as papers which were used or filed on the former application; and I think the former order must be set aside as having been granted (the same having been opposed as before mentioned) contrary to law and the practice of this court.

Order accordingly, but, under the circumstances, without costs.

Montgomery v. Brown et al.

Ejectment—Judgment signed too soon—Computation of time

In computing the sixteen days allowed to a defendant to appear to a writ of ejectment the day of service is to be excluded. Where, therefore, a writ was served on the 14th of September, and judgment was signed for non-appearance on the 30th following, the judgment was set aside with costs—the judgment having been signed in the face of *Scott* v. *Dickson*, 1 Pr. Rep. 366, which was followed in this case and approved of.

[Chambers, Oct. 10th, 1865.]

The defendants obtained a summons calling on the plaintiff to show cause why the judgment in this action (of ejectment), so far as it relates to Joseph Parr, one of the defendants, should not be set aside with costs, on the ground that it is irregular and void, and was signed before the time allowed for entering an appearance had expired.

Robert A. Harrison shewed cause.—The service of the writ of summons was made on the 14th, and the judgment was signed on the 30th of September. The question, therefore, is, whether the defendant had or had not the whole of the 30th on which to enter his appearance. If he had, the judgment was signed too soon; if he had not that day, the judgment is regular. The statute does not provide how the sixteen days after service of the writ are to be computed. One day should, therefore, be inclusive and the other exclusive: the defendant should not have both days reckoned exclusively: Eject. Act, sec. 2; form of writ, p. 319 of the Con. Statutes U. C.; C. L. P. Act, sec. 342; Harr. C. L. P. Act, 665; *Ridout* v. *Orr*, 4 U. C. L. J. 87; *Cameron* v. *Cameron*, 4 U. C. L. J. 114; *Moore* v. *Grand Trunk Railway Co.* 4 U. C. L. J. 20; *Scott* v. *Dickson*, 1 Pr. Rep. 366; *Rowberry* v. *Morgan*, 9 Exch. 730; *Young* v. *Higgon*, 6 M. & W. 49; *Castle* v. *Burditt*, 3 T. R. 623; *Ex parte Fallon*, 5 T. R. 283.

Blevins supported the summons.—The case of *Scott* v. *Dickson* decides this question. The writ varies from the statute in the expression as to time. The writ commands the defendant to appear "within sixteen days of the service hereof." The second section of the act requires the appearance to be "within sixteen days *after* service."

The two expressions may, therefore, be considered as equivalent. This being so, *Scott* v. *Dickson* has determined under the former statute relating to ejectment, which provided for the appearance of the defendant within sixteen days of the service, that the day of service was not to be reckoned as one of these days. The judgment therefore was in this case signed too soon.

Adam Wilson, J.—The provision of the C.L.P. Act that, unless otherwise expressed, the first and last days of the periods of time limited by this act, or by any rules or orders of court for the regulation of practice, shall be inclusive, which is the old enactment taken from the 2 Geo. IV. cap. 1, might have been a very good rule for the courts and judges to have taken for their guidance in determining what the computation of time should have been in cases unprovided for, other than those referred to in the statute—if they possessed the power to do so, which I am by no means clear that they had—for the exclusion of the first day seems rather to be the effect or construction of the law.

Sir John Robinson, who gave the judgment in *Scott* v. *Dickson*, was quite clear upon the authority of *ex parte Fallon*, and another case which he referred to, that the day of service was not to be reckoned according to the general rule of law.

In *ex parte Fallon* the annuity was granted on the 6th of June, and the memorial of it was enrolled on the 26th of the same month. The statute required that it should be enrolled "within twenty days of the execution;" and Lord Kenyon, C. J., said, "It would be straining the words to construe the twenty days all inclusively. Suppose the direction of the act had been to enrol within one day after the granting of the annuity, could it be pretended that that meant the same as if it was said that it should be done on the *same* day on which the act was done. If not, neither can it be construed inclusively where a greater number of days is allowed."

In *Castle* v. *Burditt*, the notice of action was served on the 28th of April, and the writ was sued out on the 28th of May. The statute provided that no writ should be sued out until one calendar month *next after* notice in writing had been delivered, &c., and it was contended the full calendar month had not been given, for the writ should not have been sued out until the 29th of May.

But the court said, when the time is to be computed *from an act done*, the day when such act was done was to be included.

The *act done* here referred to, was the service of the notice, which was on the 28th of April; and as that day was held to be included, the 28th of May was to be excluded, and the writ had not been sued out too soon.

This last case is clearly overruled by *Young* v. *Higgon*, 6 M. & W. 49, so that the writ was sued out too soon according to the later authorities. Alderson, B., said, "Where there is given to a party a certain space of time to do some act, which space of time is included between two other acts to be done by another person, both the days of doing those acts ought to be excluded, in order to insure to him *the whole* of that space of time." And Parke, B., said, "Reduce the time to *one* day and then see what hardship and inconvenience must ensue if the principle I have stated is *not* adopted."

I find it also laid down in other cases, that where a party is allowed so many days for him to do an act, the first day is exclusive and the last inclusive; and also that where a party is allowed as many days *within* which to do an act, or so many days *after* an event, the first day shall also be excluded from the computation: *Williams* v. *Burgess*, 12 A. & E. 635; *Reg.* v. *The Justices of Middlesex*, 7 Jur. 396; *Robinson* v. *Waddington*, 13 Jur. 537; *The Mercantile Marine Ins. Co.* v. *Tytherington*, 11 Jur. N. S. 62.

I am of opinion, therefore, that as the defendant was allowed by the statute sixteen days within which to appear *after* the service of the writ, or of the service of the writ, that he must be allowed the full sixteen days within which to appear, and that the day of service of the writ, which was the 14th of September, must be excluded in the computation of these days. The last day for his appearance, therefore, expired on the 30th of September; but as the judgment was signed on that day against the defendant for not appearing, it was signed one day too soon, and must, therefore, be set aside.

I fully adopt the decision of Sir John Robinson, in the case of *Scott* v. *Dickson*, before referred to; for certainly if one day after service would exclude the day of service, sixteen days after the service must also exclude it.

I must also give to the defendant the costs of the application, because the case just referred to was a decision against the plaintiff when he signed his judgment, and because the general rule of computation in law is against him also; and his act was intended to deprive the defendant of a clear right which he possessed, and has compelled the defendant to incur expense and trouble in asserting and recovering his rights.

Order setting aside judgment with costs.

Gallagher v. Bathie.

Division Courts—Sec. 61 D. C. Act (C. S. U. C. cap. 19—Certiorari.

After the hearing of a cause has been proceeded with before the judge, though no jury is sworn, it is too late to serve a writ of *certiorari*.

A cause was heard and evidence taken therein, and judgment was postponed to be given at the clerk's office on a future day. Afterwards, and before that day, a writ of *certiorari* was served.

Held, too late, and a *procedendo* was awarded.

[Chambers, January 26th, 1866.]

The plaintiff, in three actions in the Seventh Division Court in the county of Simcoe against the same defendant, obtained a summons calling on the defendant Edward Bathie to shew cause why the order made on his application in the said suits, for writs of *certiorari* to remove them into the Court of Queen's Bench, and the writs of *certiorari* issued on the said order, should not be severally quashed and set aside, and writs of *procedendo* awarded on the grounds,

1. That the trials of the said causes in the Division Court had been proceeded with and the evidence on both sides taken by the judge of the Division Court, before the order was made, or the writs of *certiorari* served.

2. That the writs of *certiorari* were not, nor was either of them, served upon the judge of the Division Court until he had given his judgment and decision upon the causes or plaints respectively.

3. That the writs of *certiorari* were issued and served, contrary to the statute in that behalf. Or why one or more of the writs of *certiorari* should not be quashed and set aside, and a writ or writs of *procedendo* awarded on all or any of the grounds above mentioned, and on the further ground that the defendant Edward Bothie had not entered an appearance in this court in the causes removed thereto, although the said writs of *certiorari* and the returns thereto had been duly filed. Or why such other order should not be made therein, and as to the costs of the application as to the judge might seem proper.

It was shewn that the judge of the County Court of the county of Simcoe, as judge of the said Division Court, had returned the several writs of *cereiorari*. That before the coming of the said writs to him, the said causes were at the said court heard and tried, and after the hearing thereof, and of the evidence on behalf of the plaintiff and of Edward Bathie (John Bathie not having been served and not appearing), judgment was postponed, pursuant to the statute, to be given en the 20th November, at the office of the clerk of the court in Mulmur. That afterwards, and before the coming of the writs, that is to say, on the 13th November, the judgment in the causes was given in writing, and mailed to the address of the clerk of the court, according to the rules of practice in that behalf, to be read to the parties. That the clerk entered the same in the Procedure Book of the court, as follows:

"20th November, 1865. Judgment for plaintiff.....	$74 19
"And costs to be paid in thirty days...	9 81
(The claim in one suit.).....	$83 99"

That the said writs were served on the deputy judge of the County Court (before whom the said causes were tried, and who gave judgment therein), on the 18th November, 1865.

The claim in another suit was $60 66, and in the third, $84 75.

McCarthy shewed cause.

The writs were issued under the Division Courts' Act, sec. 61.

The general rule is that a *certiorari* is in time, if served at any time before the verdict is pronounced.

The trials in these cases cannot be said to have been completed until the judgments were recorded in the Procedure Book, and before then the writs were delivered to the judge.

The Statute 43 Eliz., cap. 5, does not apply, because there is no jury in these cases, and the statute must be strictly construed. *Smith* v. *Sterling*, 3 Dow. 609; *Godley* v. *Marsden*, 6 Bing. 433. Nor does it curtail the right to issue it under the 61st section of the act at any time according to the language of that clause. All proceedings taken after service of the writ are void. *Mungean* v. *Whatley*, 20 L. J. (Ex.) 108; 6 Exch. 88.

Osler, for plaintiff.

These writs having been delivered on the 18th November, when the evidence had been taken

and the written judgments prepared and sent to the clerk of the court some days before that day, were too late, and although the statute of Elizabeth may not in words apply, because there was no jury, yet the cases are within the intent and spirit of the statute, and the practice prevails in such cases. *Black* v. *Wesley*, 8 U. C. L. J. 277. He referred also to Arch. Pr. 10 Ed. 1265, 1313; and sections 61, 64, 86 and 106 of the Division Courts Act; *Cox* v. *Harrt*, 9 Burr. 759.

Reg v. *Scaife*, 21 L. J. M. C. 221, shews that a Judge in Chambers has power to send back proceedings removed by *certiorari* from an inferior court.

Adam Wilson, J.—It is laid down that a *certiorari* does not in general lie to remove proceedings in an inferior court after judgment, and perhaps cannot do so at all, unless for the purpose of granting execution. *Kemp* v. *Baine*, 8 Jur. 619.

It will not be granted after judgment by default signed and damages assessed, *Walker* v. *Cann*, 1 D. & R. 769, but it will be granted after judgment by default, but before the enquiry of damages has been had. *Godley* v. *Marsden*, 6 Bing. 433.

The 61st section of the Division Courts' Act provides, that "in case the debt or damages claimed in any suit brought in a Division Court amounts to $40 and upwards, and in case it appears to the judges of the Superior Courts of Common Law that the case is a fit one to be tried in one of the superior courts, and in case any judge grants leave for that purpose, such suit may by writ of *certiorari* be removed from the Division Court into either of the said superior courts, upon such terms as to payment of costs or other terms, as the judge making the order thinks fit.

Under this section, I think the legislature intended by the language used, that the suit should be removed before trial; the expressions "debt or damages claimed, and the case being a fit one "to be tried," shew that the demand must be yet in claim, that is, not adjudicated upon and yet to be tried, in order to be removed.

In these cases they had been tried and were reserved for consideration under sec. 106 of the act. The written judgments were prepared and sent to the clerk before the writs were delivered.

The plaintiff might, before the judgment was actually pronounced, have taken a nonsuit under sec. 84 of the act; and for that, and perhaps for other purposes, the judgment pronounced by the judge is put on the same footing as the verdict of the jury when there is one, but I think it is not for the purpose of removal of causes under section 61 of the act.

If it were otherwise, great and unnecessary trouble might be occasioned to the judge and to the parties and witnesses concerned, and a party might hold his writ in reserve until he had discovered what the judges opinion was, and withhold the same, if the opinion was favourable to him, and enforce it if it was adverse. Nothing could be more mischievous to the administration of speedy justice in such popular and benefical courts. The case of *Black* v. *Wesley*, shews this effect should be given to the statute of Eliz., if it can be properly done, and I think it may, under the fair exposition of section 61 of the Division Court Act.

I have not referred to that part of the summons relating to the delay in entering an appearance, because from the circumstances detailed, time would have been given for that purpose if the writs could have been maintained; neither have I referred to the merits of the case, which are so fully explained, and which shew apparently a case of some hardship against the defendant; but the facts were heard by, and I have no doubt strenuously urged before the judge who tried the suits, and yet after time for reflection he considered the plaintiff entitled to recover.

I think the order must go, and with costs, to be paid by the defendant Edward Bathie.

Procedendo awarded.

CHANCERY.

(*Reported by* Alex. Grant, Esq., *Barrister at Law, Reporter to the Court.*)

Shaw v. Cunningham.

Judgment creditor—Lien.

The lien of registered judgment creditors is not preserved by a bill filed before the 18th of May, 1861, but to which they were not made parties until after that day. *The Bank of Montreal* v. *Woodcock* (9 U. C. Chan. R. 142), overruled.

This was a suit of foreclosure. It was commenced before the 18th of May, 1861. After that day, three judgment creditors were added in the Master's office as parties, and the master reported that they had a lien on the property prior to the mortgage of the defendant *Blackett*. From this report *Blackett* appealed, contending that under the statute (24 Victoria, ch. 41), the lien of the three judgment creditors was gone. The Master's report was founded on *The Bank of Montreal* v. *Woodcock*. The judgment creditors insisted that the decision was correct; and if not so, yet, having been acted on ever since, should not now be disturbed. The question was argued before the full court.

Buchanan v. *Tiffany* and *Hawkins* v. *Jarvis*, 1 Gr. 98, 257; *The Bank of Upper Canada* v. *Thomas*, 9 Gr. 329; *Juson* v. *Gardiner*, 11 Gr. 23; *Byron* v. *Cooper*, 11 Clk. & F. 556; *Plowden* v. *Thorpe*, 7 Clk. & F. 137, were referred to

Blake, Q. C., for the appeal.

Crickmore, contra.

Vankoughnet, C.—We are of opinion that the decision in *The Bank of Montreal* v. *Woodcock* cannot be maintained, and that its having been acted on since is not a sufficient ground for refusing to give effect to what we consider the true construction of the statute.

CHANCERY CHAMBERS.

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

Re Sproule.

Solicitor's lien on deed—No right beyond that of client.

Where a solicitor prepared a deed and mortgage for a purchaser, and delivered them to the vendor's solicitor, (but without any stipulation as to lien,) who after the execution of the deed returned it to the solicitor for the purchaser.

Held, that his lien for costs was gone, as he had no right beyond what his client could have, and the vendor, as mortgagee, had a right to hold the title deeds as against the mortgagor.

[Chambers, January, 1866.]

This was an application for an order to compel a solicitor of the court to deliver up a deed on which he claimed a lien, his right to which was the question in dispute.

The property to which the deed related was sold under an administration order. The client of the solicitor who claimed the lien, became the purchaser, and was by the terms of sale, to give a mortgage for part of the purchase money, and to be at the expense of preparing the conveyance and mortgage. His solicitor prepared the conveyance and mortgage, and delivered the engrossment of the former to the vendor's solicitor, for execution. The sale was completed and both instruments were executed by the several parties thereto; but the conveyance was afterwards handed to the solicitor for the purchaser, and the application was made in the original suit on behalf of the vendor.

Hamilton for the applicant

English, contra.

Mowat, V. C.—It is not alleged that the solicitor made any stipulation about his lien, as was done in *Watson* v. *Lyon*, 7 Deg. McN. & G., 288; and I think it clear, that in the absence of such a stipulation, the lien he had against his client on the engrossment was gone, when he delivered it to the vendor's solicitor. Afterwards and after the deed was executed, he could not acquire a lien on it more extensive than his client could then have given him on the property to which the deed related. In other words his lien was subject to the rights of the vendor as mortgagee; and as a mortgagee has a right to the title deeds as against the mortgagor, it is plain that the grounds on which the present application is resisted cannot be maintained, *Smith* v. *Chichester*, 2 Dru. & War. 393.

It was objected that a summary application against the solicitor by the mortgagee, in the matter in which the sale had taken place, was irregular. But the case of *Howland* v. *Polley*, before the late Vice Chancellor Esten, (31st Jan. 1861) is a direct authority against the objection; and is in accordance with *Bell* v. *Taylor*, 8 Simons, 616, referred to in that judgment. It was not contended that anything which has occurred since the transactions referred to affects the rights of the parties.

The application must be granted with costs.

Order accordingly.

INSOLVENCY CASES.

(*Before* S. J. Jones, Esqr. *Judge County Court, Brant.*)

Re William Perry, an Insolvent.

Held that under sec. 9, sub-secs. 1, 3 and 6 of the Insolvency Act of 1864, a *consent to a discharge* of an insolvent is operative even *without an assignment*, provided the insolvent makes and files an affidavit that he has no estate or effects to assign. In this case the only notice given was the notice to discharge.

[Brantford, 23rd Oct., 1865, & 16th Jan., 1866.]

This case coming on this day on application for order for discharge of insolvent it appeared that the notice thereof had only been inserted in the *Canada Gazette* five times. No one appeared to oppose the discharge. The matter was thereupon adjourned till the 15th January, 1866, in order to have the notice in *Gazette* properly published. The judge ordering that the same notice be published four times more with first notice of adjournment to 15th January, 1866.

On the 16th January, 1866, the case accordingly came on, on application for final order for discharge. The following papers were filed on behalf of applicant: a consent to a discharge, notices with affidavits of proper service and publication, and an affidavit of the insolvent to the effect that he had no estate to assign, together with a schedule of his creditors.

Reference was made to Insolvent Act of 1864, sec. 9, sub-secs. 1, 3 and 6.

The day following judgment was given by

Jones, Co. J.—Under the 9th sec. of the Insolvent Act of 1864 a deed of composition and discharge may be executed by a specified proportion of the creditors which shall be binding on the others who do not so execute. But in this case however, there is no composition. The 3rd and 9th sub-secs refer to a *consent to a discharge* after an assignment. Here, it is true, there is no assignment, but as there is no estate to assign I think the consent would operate in the same manner as if an assignment had been made. I therefore make an order confirming the insolvent's discharge.

Order accordingly.

UNITED STATES REPORTS.

SUPREME COURT OF UNITED STATES.

Providence Tool Company v. Norris.

An agreement for compensation to procure a contract from the government to furnish its supplies is void as against public policy.

[2 Wallace's S. C. U. S. Rep., 45]

In July, 1861, the Providence Tool Company entered into a contract with the government, through the Secretary of War, to deliver to officers of the United States, within certain stated periods, twenty-five thousand muskets, of a specified pattern, at the rate of twenty dollars a musket. This contract was procured through the exertions of one Norris, upon a previous agreement with the corporation, through its managing agent, that in case he obtained a contract of this kind, he should receive compensation for his services proportionate to its extent.

Norris himself, it appeared—though not having any imputation on his moral character—was a person who had led a somewhat miscellaneous sort of life, in Europe and America. He had been in the "sugar business," in which he failed. He then took to dealing in horseshoe nails, in which he was not more fortunate; then went to Europe to act as patent and other agent, but without great fruits. Soon after the late rebellion broke out, he found himself in Washington. He was there without any special purpose, but, as he stated, with a view of "making business—anything generally;" soliciting acquaintances;" getting letters;" "getting

an office;" an office for himself—for his brother. His father had one, a small postmastership, already. Finding that the government was in need of arms to suppress the rebellion, which had now become organized, he applied to the Providence Tool Company, already mentioned, to see if they wanted a job, and made the contingent sort of contract with them just referred to. He then set himself to work at what he called "concentrating influence at the War Department;" that is to say, to getting letters from politicians and other people, great or large, who might be supposed to have influence with Mr. Cameron, at that time Secretary of War recommending him and his objects. Among other means, he applied to the Rhode Island Senators, Messrs. Anthony and Simmons, with whom he had got acquainted, to go with him to the War Office. Mr. Anthony declined to go stating that since he had been Senator he had been applied to some hundred times in like manner, and had invariably declined; thinking it discreditable to any Senator to intermeddle with the business of the departments. "You will certainly not decline to go with me," said Mr. Norris, "and introduce me to the Secretary, and to state that the Providence Tool Company is a responsible corporation." "I will give you a note," said Mr. Anthony. "I do not want a note," was the reply; "I want the weight of your presence with me. I want the influence of a Senator." "Well," said Mr Anthony, "go to Simmons." Mr. Simmons, it is requisite to state, had been publicly spoken of as sometimes assisting parties to get contracts—for a "gratification" to himself. By one means and another, Norris got influential introduction to Mr. Cameron, and obtained the contract; one eminently profitable; the Secretary, whom on leaving he warmly thanked, kindly "hoping that he would make a great deal of money out of it."

But a dispute now arose between Norris and the Tool Company, as to the amount of compensation to be paid. Norris insisted that by the agreement with them he was to receive $75,000; the difference between the contract price and seventeen dollars a musket; whilst the corporation, on the other hand, contended that it only promised "a liberal compensation" in case of success. Negotiations between the parties failed to produce a settlement, and Norris brought suit to recover the full amount claimed by him.

On the trial in the Circuit Court for the Rhode Island District, the counsel of the Tool Company requested the court to instruct the jury that a contract like that declared on was against public policy, and void; which instruction the court refused to give. The jury found for the plaintiff $13,500, and judgment having been given accordingly, a writ of error was taken to this court.

Mr. Blake, for Norris, defendant in error.

It is not easy to conceive of a more ungracious defence than the one set up below; the only one the party had. Confessedly, the contract was procured through the exertions of Mr. Norris alone. Of course he gave his time, spent his money, invoked the aid of acquaintances, solicited influence, waited about the ante-rooms, and went through such operations as persons seeking contracts at Washington generally go through; operations distasteful in the extreme to any man of independence; impossible, indeed, for such a man to undergo. There is no imputation upon the generally fair character of Mr. Norris, nor allegation that Mr. Cameron acted corruptly. Having got the contract through Mr. Norris' labours, having made an important sum by it, the company now turn round and plead the illegality of their agreements! Is not this base? More than this, is it not a case for the maxim, "*Nemo allegens turpitudinem suam audiatur?*"

There is no case which says that a corporation may not employ an agent to negotiate with the War Department for a contract to manufacture arms; or that if the agent is openly acting as such, the terms of his compensation may not lawfully be whatever the corporation and himself agree on.

Messrs. Thurston and *Payne* contra.

Mr, Justice Field delivered the opinion.

The question is this: Can an agreement for compensation to procure a contract from the government to furnish it supplies be enforced by the courts? We have no hesitation in answering the question in the negative. All contracts for supplies should be made with those, and those only, who will execute them most faithfully, and at the least expense to the government. Considerations as to the most efficient and economical mode of meeting the public wants should alone control, in this respect, the action of every department of government. No other consideration can lawfully enter the transaction, so far as the government is concerned. Such is the rule of public policy, and whatever tends to introduce any other elements into the transaction is against public policy. That agreements, like the one under consideration, have this tendency, is manifest. They tend to introduce personal solicitation and personal influence as elements in the procurement of contracts, and thus directly lead to inefficiency in the public service and to unnecessary expenditure of the public funds.

The principle which determines the invalidity of the agreement in question has been asserted in a great variety of cases. It has been asserted in cases relating to agreements for compensation to procure legislation. These have been uniformly declared invalid, and the decisions have not turned upon the question, whether improper influences were contemplated or used, but upon the corrupting tendency of the agreements. Legislation should be prompted solely from considerations of the public good, and the best means of advancing it. Whatever tends to divert the attention of legislators from their high duties, to mislead their judgments, or to substitute other motives for their conduct than the advancement of the public interests, must necessarily and directly tend to impair the integrity of our political institutions. Agreements for compensation contingent upon success, suggest the use of sinister and corrupt means for the accomplishment of the end desired. The law meets the suggestion of evil, and strikes down the contract from the inception.

There is no real difference in principle between agreements to procure favours from legis-

lative bodies and agreements to procure favours in the shape of contracts from the heads of departments. The introduction of improper elements to control the action of both, is the direct and inevitable result of all such agreements.

The same principle has also been applied, in numerous instances, to agreements for compensation to procure appointment to public offices. These offices are trusts, held solely for the public good, and should be conferred from considerations of the ability, integrity, fidelity and fitness for the position of the appointee. No other considerations can properly be regarded by the appointing power. Whatever introduces other elements to control this power, must necessarily lower the character of the appointments, to the great detriment of the public. Agreements for compensation to procure these appointments, tend directly and necessarily to their introduction. The law, therefore, from this tendency alone, adjudges them inconsistent with sound morals and public policy.

Other agreements of an analogous character might be mentioned, which the courts, for the same or similar reasons, refuse to uphold. It is unnecessary to state them particularly; it is sufficient to observe, generally, that all agreements for pecuniary considerations to control the business operations of the government, or the regular administration of justice, or the appointment to public offices, or the ordinary course of legislation, are void as against public policy, without reference to the question whether improper means are contemplated or used in their execution. The law looks to the general tendency of such agreements; and it closes the door to temptation by refusing them recognition in any of the courts of the country.

Judgment reversed, and the cause remanded for new trial.

SUPREME JUDICIAL COURT OF MAINE.

(From the American Law Register.)

The State v. Thomas O. Goold.

It is a reasonable regulation for a railroad corporation to fix rates of fare by a tariff posted on their stations, and to allow a uniform discount on these rates to those who purchase tickets before entering the cars.

A passenger, who has thus neglected to purchase a ticket, has no right to claim the discount, and if he refuses to pay to the conductor the fare established by the tariff, the conductor is justified in compelling him to leave the train at a regular station.

Peters, Attorney-General, for the State,

P. Barnes, for defendant.

The respondent was indicted for assault and battery, and a verdict of guilty was rendered against him. He was a conductor on the Grand Trunk railway. The company had established certain rates of fare, and had published the same by posting them on a sheet in their different station-houses On this sheet was a notice that a discount of ten cents from these established rates would be made in favour of those passengers who should purchase tickets before entering the cars.

The complainant entered the cars without purchasing a ticket, and refused to pay the established rate, but insisted on the discount. The conductor removed him from the car at a regular station. The assault and battery charged was for this removal.

The opinion of the court was drawn up by

Kent, J.—Railroad corporations have an undoubted right to fix and determine the rights of fare on their roads, within the limits specified in their charters or by existing laws. They have also an undoubted right to make reasonable regulations as to the time, place, and mode of collecting the same from passengers. They may reasonably require payment before the arrival of the train at the station where the passenger is to leave the cars. We see no reason to question their right to require payment in advance, to be made at a convenient office, and at convenient times; certainly, where there is no positive interdict to entering the cars without a ticket, as in this case. There is neither hardship nor unfairness towards the passenger, who, ordinarily, can pay his fare and procure his ticket, without trouble or delay, at the office. But to the company it is something more important than mere convenience that such regulations should be enforced. It is important in simplifying accounts. It is important to promote and secure safety, by allowing time to the conductor to attend to his proper duties on the train, and which would be often seriously interfered with, if his time was taken up in collecting fares and exchanging money, and answering questions. It is highly important as a check against mistakes or fraud on the part of conductors, and as a guard against imposition by those seeking a passage from the station to another without payment.

In the case at bar, no absolute rule of exclusion was established. It appears from one statement of facts in evidence, that certain rates of fare were established by the company—that these rates were the regular rates, published in the tariff tables, posted in the stations of the company. It was the rate thus established that the passenger in this case was requested to pay. But he says that he was not bound to pay the sum thus fixed, because by the same rules and tariff a discount of ten cents was made from the rates to those persons who purchased tickets at the office before entering the train, and that this, in fact, created two distinct and different rates for the same passage.

If this were so, we are not prepared to decide that it would be an unreasonable or illegal exercise of the power given to the corporation. Assuming that it is reasonable to require prepayment and the production of a ticket, it would seem to be simply a relaxation of the rule, in favour of the passenger, to allow him to pass upon the payment of another rate, slightly advanced. If he neglected to avail himself of the opportunity offered to him to procure a ticket at the lower rate, he can hardly complain that he is allowed to proceed on the train, on the payment of the rate established for such cases, instead of being at once removed from the car.

In fact, however, in this case, but one rate was established, and that was the sum required in the cars. This was "the established fare," specified in our R. S., ch. 51, sec. 47. A discount of ten cents was made on these rates, if a ticket was purchased before entering the train. What right had this passenger to claim this

discount on the established rate? If he knew of the regulation, it was his carelessness or folly that led him to neglect this opportunity. If he did not know it, it was his misfortune. The company had done all that could reasonably be required of them, by posting the regulation conspicuously in the stations of the company. It would be an utterly impracticable rule to require that every passenger be notified of its existence before entering the cars. Although it is not important in the view we take, yet one cannot help asking how this particular passenger persistently insisted on paying only "the sum required at the ticket office," if he did not know of the rule allowing the discount at the offices? But if the regulation was reasonable, and reasonable notice had been given of its existence, it is not necessary to prove actual knowledge of its existence on the part of the passenger before entering the cars. It was not a special and exceptional but a general rule. If a passsnger enters the car, without knowing anything of the rates of fare or of the rules in relation thereto, and without making any inquiries, he must be held to pay, as on an implied contract, according to the reasonable rates and rules of the company. He might as well claim exemption from the payment of *anything* for his passage, because he did not personally know that any rates, or what rates, were established, as to claim exemption from the rule which makes a distinction in rates, because he did not ascertain the fact before entering the train.

The question is to be determined on the ground of reasonableness and power, and not on the ground of individual knowledge.

The conductor of a train is justified in compelling a passenger who utterly refuses to pay his legal fare, to leave the car at a regular station: R. S., ch. 51, sec. 47.

The principles before stated have been recognised and sanctioned in Vermont, in the case of *Stephens* v. *Smith*, 29 Verm. 160, and by the court in New Hampshire in the case of *Hilliard* v. *Goold*, 34 N. H. 230. See also Redfield on Railways, sec. 26, *Commonwealth* v. *Powers*, 7 Met. 596.

The decision of the questions involved in this case rests upon two general principles, well established, viz —that it is the *duty* of the corporation to adopt such regulations as are required to secure the comfort and safety of passengers, and it is equally their *right* to adopt all reasonable rules for their own security and the orderly management of their business. The corporation is no more bound by the one than the passenger is by the other.

The ruling of the judge was incorrect.

Exceptions sustained. New trial granted.

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* I. The foregoing opinion embraces a question of considerable practical importance, and one in regard to which, at different times, there seems to have been considerable doubt and uncertainty among railway managers in this country. It is probably known to our readers that, as a general thing, upon European railways, both in England and upon the continent, the passenger is required to produce his ticket in order to gain admittance into the carriages of the train; and the particular compartment of the carriage, if not the particular seat, is indicated upon the ticket. The same rule obtained, for a time, upon some of the railways which first went into operation here, and does, even at the present time, to a very limited extent. But the rule was found inconvenient in most localities, and has been very generally relaxed; and passengers are, at the present time, more commonly allowed to enter the cars, in all portions of the country, and to pay fare to the conductors.

This is done at considerable inconvenience to the conductors, and not a little hazard thereby arises of neglecting other important duties, But the most serious evil to railway management thereby induced results from it breaking up all systematic control of the finances of the company, by reason of the impracticability of maintaining a thorough check upon all receipts and disbursements. And if that system of exact check is thus infringed, it becomes difficult, if not impossible, to secure the same degree of public confidence which would otherwise be attainable. And there is another embarrassing result— the want of perfect confidence and security among the different receiving and discharging agents of the company—which is almost indispensable to the harmonious management of extensive public works.

There can therefore be no question of the importance of the requirement, that fares shall be paid at the station. And it has always seemed to us that the regular fares should be established, with reference to payment, at the stations, and should always be required to be so paid. And if any relaxation is allowed, for sepna tymin thecars, under any circumstances, it should be strictly defined upon what grounds it will be allowed, and an additional sum required sufficient to compensate the company for increased trouble and risk of loss. That was the form in which the discrimination was first made in such cases; but some over-nice heads—more nice than wise, as we regard it,—suggested that all question would be avoided by making the *regular fare* the sum which should be required in the cars, and a reduced sum receivable at the stations. That has very much the appearance of an evasion, or else of fixing the *regular fare as payable in the cars*, when the fact, as everybody well enough understands, is that the *regular fare* is that which is receivable at the stations; and if it had generally assumed this form, it would have had a strong tendency to crowd out the paying of fare in the cars, by giving it a bad name, and causing persons to feel that they were thereby compelled to pay more than the regular fare. The evasion, as far as it tends to gloss over the discrimination, to the same extent tends to defeat its object, by inducing person to pay at the stations. We think, therefore, that the direct and manly, the straightforward form of making the discrimination is the true one, so as thereby to render the payment of fare in the cars difficult and odious.

II. In regard to the right to make such a discrimination, we believe there is no ground of hesitation or doubt. In addition to the cases

* Note by Editor *American Law Register*.

already referred to in the opinion of the learned judge, the question is ably discussed in *Crocker* v. *New London, W. & P. Railway*, 24 Conn. Rep. 249; *Chicago, Quincy & B. Railway* v. *Parks*, 18 Illinois Rep 460; *St. Louis, Alton & Chicago Railway* v. *Dalby*, 18 Illinois Rep. 353.

If the company have the right to require all fares paid in advance at the stations before receiving tickets or entering the cars, of which there can be no question, it would seem very obvious that they may indemnify themselves against loss and risk by consenting, under special circumstances, to receive fare in a different mode.

It has been made a question in some cases whether the company, if they recived fares in their cars at all, should not consent to accept the same fare which they demand at their stations, in all cases where the passenger is not in fault for obtaining a ticket in advance, the office of the company being closed at the proper time for applying for it: *St. Louis, Alton & Chicago Railway* v. *Dalby, supra, Chicago, Quincy & B. Railway* v. *Parks, supra.* This distinction, however, does not seem to have been considered important in *Crocker* v. *New London, W. & P. Railway, supra.* I. F. R.

GENERAL CORRESPONDENCE.

Articled Clerks — Discretion of Law Society under late Act.

To the Editors of the U. C. Law Journal.

Gentlemen,—By substituted section 12 of the Act respecting Barristers and Attornies, it is provided, "That if the contract to serve as a clerk to an attorney or solicitor, or the asssignment thereof, be not filed within three months from the date thereof, the contract may nevertheless be filed, &c., but the services of the clerk shall be reckoned only from the date of such filing, unless the Law Society, in its discretion, shall for special reasons in any particular case otherwise order."

What, in your opinion, would be such a special reason as would induce the Law Society to exercise its discretion? The most usual, and almost the only reason for the contract not being filed within three months, is the neglect of the attorney; the clerk at the time of being articled probably knew nothing of the Act requiring his articles to be filed within three months. Or, would the Society hold the clerk to the maxim, "*Ignorantia non excusat?*" And if they hold that the service counts only from the date of filing, would it be necessary to be re-articled at the expiration of the time mentioned in the articles, for a like length of time as elapsed between the date of the articles and the time of their being filed?

As there are no doubt a number of students whose articles are in a position similar to the above, to whom your opinion would be very satisfactory, would you, therefore, be kind enough, if you think the matter of sufficient importance, to give your opinion on the above points in your next issue.

I am, &c.,

Ottawa, Feb. 5, 1866. Law Student.

[It would be impossible for us to mention all the reasons that the Benchers might consider sufficient for an exercise of their discretion under the section referred to. It is very probable that they might, under some circumstances, exercise it in favour of a clerk who had omitted to file his articles within the proper time. Each case must depend on its own merits.—Eds. L. J.]

Attachment of debts—Rent—Fi. fa.

To the Editors of the U. C. Law Journal.

Gentlemen,—In the cause of *Read* v. *Gibson*, in the County Court of the County of Lincoln, it was held that a garnishing order did not hold the rent accruing due under the following circumstances:

Judgment was obtained in January, 1865, but no execution was issued to the sheriff of the county of Lincoln.

In *Phelps* v. *Gibson*, in the same court, judgment was obtained and execution issued in July, or thereabouts, in 1865, and a *fi. fa.* goods placed in the sheriff's hands, under which he did nothing until after the attaching order in the first suit was served. He then got the lease given up to him, and held it under the Phelps' *fi. fa.* The lease or term was never advertised or sold by the sheriff.

Gibson, the defendant, also *pledged* the lease for a debt to a third person who had no judgment, and deposited the lease with him, besides giving him an order on the tenant to pay the rent to him, which order the tenant never accepted.

The rent fell due on the 1st of January last. The garnishing order was served about the 20th of December previous, and the pledgee gave up the lease to the sheriff shortly afterwards, subject to his claim.

On these facts, which are as I learned them, the judge decided: 1st. That the pledgee's claim had the priority and on being paid, 2nd. That the *fi. fa.* would come in before the attaching order, and take until it was satisfied, after which the order would be available.

Yours respectfully,

Attorney.

St. Catharines, Feb. 6, 1866.

Law Society Scholarships.

To the Editors of the U. C. Law Journal.

Gentlemen,—Being admitted a member of the Law Society, in Easter Term of 1865, but having been articled in the spring of 1864, I wish to inquire whether I shall be eligible to compete for the first year's scholarship of the present year? Does the time spent under articles previous to admission into the society disqualify one for such competition? Please inform me if so, and oblige

Feb. 15, 1866. A Law Student.

[We think you are eligible. See Rule of Law Society of February, 1865, on p. 228 of last volume of the *Law Journal*. We do not see that your articles of clerkship have anything to do with the matter..—Eds. L. J.]

Division Courts and Credit System in Upper Canada.

To the Editors of the U. C. Law Journal.

Gentlemen,—I noticed in the last *Law Journal* a communication from your correspondent "Dike," and I desire to express my concurrence with his views.

I believe that the total abolishment of our Division Courts would be of great benefit to the country. I would even go farther than "Dike," and allow no suits for debts under $100. The small credit system, if not actually ruining a number of our farmers, is a great obstacle to their advancement and prosperity; and whatever conduces to their well-being must be beneficial to the country at large. This change would involve no hardship, for *honest* men could get credit for all they desired; and as against the *dishonest*, the present system is no effectual check.

Actions for torts up to $40 might well be left to the magistrates for summary disposal, subject to appeal, and this would also lessen the costs.

I quite agree with "Dike" in all his remarks, and hope that our Legislature will seriously consider this matter, for I am convinced that any change in this direction will be for the better.

Yours truly,

February 16, 1866. H. R.

Watt v. *Vanevery et al.* 23 *U. C. Q. B.* 196—*Correction in statement of facts as reported.*

To the Editors of the U. C. Law Journal.

Gentlemen,—I observe in the January number of the *Local Courts' Gazette*, in the article on "The Law and Practice of the Division Courts," a reference to the case of *re Watt* v. *Vanevery et al.* 23 U. C. Q. B. 196. From the report of this case it would appear that the County Judge had assumed to exercise jurisdiction, until prohibited, in a case where the *whole cause of action* had not arisen within the limits of his Division Court. Now such was not the fact. The evidence showed that the contract sued on, which was made at Brantford, was for the delivery by the defendants of a quantity of fish at the Goderich Station, to *arrive at the Brantford Station* in good condition.

The breach sued for was that the fish, when they arrived at Brantford, were in bad condition. On these facts the County Judge held, that the whole cause of action arose at Brantford. The defendants then applied for a writ of prohibition, erroneously stating the contract to be for the delivery of the fish in good condition at Goderich, and not elsewhere. Upon this the Court of Queen's Bench granted a rule *nisi* for a writ. It was this application that was reported.

Upon the return of the rule, and the facts of the case appearing as I have above stated them, the court discharged the rule, and the case was disposed of in the Division Court.

It would have been better if the reporter had waited until the rule was disposed of, when the whole case could have been given, instead of reporting the *ex parte* application for the rule *nisi*.

February 17, 1866. Justitia.

[As the above letter is written by one thoroughly conversant with the facts, his statement may be relied upon as being perfectly accurate. But whilst—for the purposes of

the law affecting the point treated of by the gentleman who writes the treatise referred to by our correspondent—the reference to the case of *Watt* v. *Van Every* was perfectly legitimate and proper, it is only fair to the learned Judge of the County Court that the statement of the supposed facts of the case, as they appear in the report, should be corrected.—Eds. L. J.]

Practice in Chambers—Supplemental affidavits.

To the Editors of the U. C. Law Journal.

Gentlemen,—Would you be kind enough to inform me of the practice in chambers of the Superior Court Judges on the following point: An application is made for an examination of D. H. as to his estate and effects. On return of the summons, an objection is taken that the affidavit does not shew that the party making it is attorney for plaintiff, nor that a *fi. fa.* goods has been issued, nor any means taken to obtain payment of the debt. Should a judge allow another affidavit to be filed on the part of the plaintiff to meet these objections, and what is the general practice in Toronto in all such applications as to the allowance of supplementary affidavits?

Yours, &c.,

Goderich, Feb. 19, 1866. Lex.

[The allowance of supplemental affidavits in chambers is a matter of discretion; but the judges more frequently decline than grant such a favour. In strict practice they ought not to be allowed.—Eds. L. J.]

Exemption Act, 23 *Vic.*, *cap.* 25, *sec.* 4, *sub-sec.* 6—*New points—Important to sheriffs.*

To the Editors of the Law Journal.

Gentlemen,—In reading your remarks in the January number of the *Law Journal*, on the exemptions of debtor's chattels from seizure under a *fi. fa.*, it occurred to me to ask the following questions, which you will, (should you deem them of sufficient importance) oblige by answering through the pages of your valuable Journal:—

1. Supposing that the debtor is only possessed of one chattel ordinarily used in his trade or occupation—say one horse—of *greater value* than $60, would the horse be liable to be sold by the sheriff, and the proceeds applied on the execution, or could the debtor claim $60 of his value.

In the case of *Davidson et al.* v. *Reynolds et al.*, Mr. Justice John Wilson, in delivering judgment, says, "We are of opinion that a horse ordinarily in a debtors occupation, of the value *of* $60 *or less*, &c., &c., is exempt &c., under the statute."

2. *Is it the duty of the debtor to point out*, and claim from the sheriff or his officer the goods that are exempt, or should they be left by the sheriff although no claim is made to them.

I am, Gentlemen,

Your obedient servant,

D.

Berlin, 24th Feb., 1866.

[The questions put by our correspondent are not free from difficulty, and must be answered without the aid of any decided case.

1. The part of the act to which our correspondent refers, exempts "goods and implements of or chattels ordinarily used in the debtors occupation, *to the value* of sixty dollars." Strictly speaking, this might be read, tools, &c., *not exceeding the value* of sixty dollars. Now a horse exceeding sixty dollars *in value, does not come under this description*, and as it is in its nature indivisible, the difficulty arises as to the application of the act. The horse exceeding sixty dollars in value would certainly not be exempt from seizure, and not being exempt from seizure, of course might be legally sold by the sheriff. And the act makes no provision for the return of a portion of its proceeds to the debtor, where the proceeds exceed sixty dollars. In the absence of such a provision, we think, though not free from doubt, the whole proceeds would be applicable to the execution.

2. The articles specified are declared to be "*exempt* from seizure." And if there were only one article sixty dollars of the class exempt (*i.e.*, one horse of the value of $60) it would be the duty of the sheriff to refrain from seizing or selling that article. But where there are several (*i.e.*, several horses of the value of $60 each) we think it devolves upon the debtor to make a selection, and if he neglect or refuse to do so, upon proper notice from the sheriff, it would necessarily devolve on the sheriff to make the selection for him. —Eds. L. J.]

Registry Act—Affidavit of execution not on some part of instrument itself—Whether necessary.

To the Editors of the U. C. Law Journal.

Gentlemen,—The Registrar of this county refuses to receive for registration any instrument the affidavit of execution of which is written on the *last* sheet, provided there is *no portion of the instrument itself written thereon.* He contends that such is not "*made on the said instrument;*" that in some instruments there are as many as three unwritten sheets, any one of which *might* be detached from their fastenings without touching *the instrument.* Is he right in this view of the matter?

Yours truly,

Goderich. A Subscriber.

[The matter admits of argument, but we at dresent think that the affidavit is by the act required to be on some part of the instrument itself, and that annexing an affidavit does not seem to be sufficient under the wording of the act.—Eds. L. J.]

REVIEW.

The Registry Act of 1865, (29 Vic. chap. 24), with Notes and Appendix, by Samuel George Wood, LL.B., of Osgoode Hall, Barrister-at-Law: Toronto, W. C. Chewett & Co., 1866.

We are in receipt of a copy of a most useful little book under the above title.

It commences with a preface "comprising a sketch of the history of the Registry Laws of Upper Canada, and some remarks upon the operation of the new Act," which bring us down to the present time, from the first Registry Act of 35 Geo. III., cap. 5. This is followed by an index of cases and of Statutes referred to in the notes. We then have the Act of 1865, with notes of decided cases on the subject in hand, and other matters of interest tending to elucidate doubtful points under the Act. These notes appear to be carefully prepared, and exhaust the cases which have been decided in this country on the subject of the Registry Acts, besides containing references to several English and Irish decisions. We give the following, being a note to section 64, as an example of the style.

"Registration is not notice under the Registry Acts of England and Ireland, nor was it in Upper Canada prior to Statute 13 & 14 Vic. cap. 63, sec. 8. (See *Street* v. *Commercial Bank*, 1 Grant, 169.)

"Registration is notice of the thing registered for the purpose of giving effect to any equity accruing from it, but it can be notice of any given instrument only to those who are reasonably led by the nature of the transaction in which they are engaged to examine the register with respect to it. *Boucher* v. *Smith*, 9 Grant 347.

"While the act declares that registration shall be notice, it does not provide that notice of an unregistered conveyance shall not affect a registered conveyance or judgment; and we must take it that the Legislature had knowledge of the doctrine of a Court of Equity on this head; and indeed they appear to have had it expressly under consideration, when they declared that registration should be notice. Per Vankoughnet, C., in *Bank of Montreal* v. *Baker*, 9 Grant 298.

"Registration of an instrument not required to be registered, does not create notice. (*Doe d. Kingston Building Society* v. *Rainsford*, 10 U. C. Q. B. 236; *Malcolm* v. *Charlesworth*, 1 Keen 63.)"

and again the following, which is the note to section 66:

"This section will produce an important change with respect to the rights and privileges of equitable mortgagees, whose rights, as heretofore recognized in the Court of Chancery, were specially preserved by the late Act; under which, in a case where a mortgage had been created by deposit of title deeds, and the borrower had signed a memorandum stating the sum loaned and times for re-payment, and agreeing to execute a writing to enable the lender to transfer or control the mortgages so deposited, it was held that the memorandum did not require registration to secure its priority over a subsequently registered incumbrance, See *Harrison* v. *Armour*, 11 Grant 303, and English cases there cited.

"In *Neve* v. *Pennell*, 33 L. J. Chy. 19, it was held that a memorandum not under seal, accompanying a deposit by way of equitable mortgage of deeds, requires registry.

"The latter clause of this section will not interfere with the docirine of tacking, in cases where the provisions of this act do not apply. See *Hyman* v. *Roots*, 10 Grant 340, and cases there cited."

In the appendix Mr. Wood gives us some very useful tables, evidently prepared with much labour and care.

1. A list of special deeds and documents of which the registration is necessary, in order to their validity, or to the priority of the rights of the parties, within the times within which registry is to be made, where the time is fixed by statute.

2. A list of documents which may be registered at the option of the parties.

3. A table of Miscellaneous Statutory Enactments relating to Registrars and Registration.

4. A Table of Fees payable to Registrars under sec. 68 of the Act. And with reference to this we may remark that it would have saved a world of trouble if the compiler of the Act had taken some such course, as that which Mr. Wood does, as a matter of more easy reference, for the purpose of showing the fees payable to Registrars—a part of the Act which is in a most unsatisfactory position at present, and which leads to innumerable petty annoyances, and even worse evils.

A "Postscript" is added, containing references to cases decided, and questions which had arisen during its progress through the press. Some of these questions we have already discussed, many others are open for discussion; for, as we have already said, the Act is not drawn up with that care that the importance of the subject required, or the time spent, or supposed to have been spent upon its compilation, might lead us to expect.

A very full Index completes the volume; and, in conclusion, we must say that the thanks of all concerned in the registration of titles, whether professional men, Registrars, or that multitudinous class that go by the misapplied name of "conveyancers," are due to Mr. Wood, for a very useful and complete manual on the law affecting the registration of titles in Upper Canada.

The material part of the work is got up, as usual, in Messrs. Chewett & Co.'s excellent style. The price in paper covers is one dollar, and in half calf one dollar and fifty-cents.

MONTHLY REPERTORY.

COMMON LAW.

EX. Jourdain v. Palmer. Jan. 11.

Common Law Procedure Act, 1854, *sec* 51—*Interrogatories.*

In an action for the breach of an agreement to pay the stamp duties upon letters patent, whereby the letters patent became void,

Held, that the defendant was not entitled to interrogate the plaintiff as to the value of the patent, and the damage sustained by its loss, with a view to the payment of money into court.

Wright v *Goodlake*, W. R. 349; 3 H. & C. 540, questioned.

To entitle a party to interrogatories, it is not enough that he is entitled to discovery in equity upon some ground and for some purpose, it must be upon the same ground and for the same purpose for which the interrogatories are sought. (14 W. R. 283.)

EX. Jan. 16, 18, 19.

Dyer v. Best.

Common informer—Limitation of action—31 Eliz. cap. 5, sec. 5.

The 31 Eliz. cap. 5, sec. 4, applies to a common informer suing *pro se ipso*. A common informer, therefore, must bring his action within a year after the commission of the offence. (14 W. R. 336.)

CHANCERY.

L. J. Robson v. Whittingham. Jan. 17.

Ancient lights—Trivial injury—Damages—Form of decree—Remedy at law.

In a bill for an injunction the court will not interfere unless substantial injury has been established; but, in declining to give damages, there is no intention to decide that there is no case at all; the court simply leaves the parties to their remedy at law. (14 W. R. 291.)

L. J. Williams v. Glenton. Jan. 16, 17.

Vendor and purchaser—Interest—Costs—Legal estate.

Where a purchaser has agreed that if from any cause whatever the purchase shall not be completed by a day named, he will pay interest on his purchase-money, the mere existence of a difficulty as to title, though caused by the *laches* of the vendor, is not sufficient to absolve the purchaser from his liability to pay interest.

Under such circumstances, nothing short of misconduct on the part of the vendor will disentitle him to maintain a claim for interest.

Semble, that a purchaser will not be ordered to pay the costs of a suit necessary for getting in the legal estate. (14 W. R. 294.)

M. R. Jan. 13, 17.

Earl Poulett v. Hood.

Will—Construction—"Money due on mortgage from any person—Charge—Succession duty.

A testator, by his will, gave "all money which, at the time of his death, should be due to him on mortgage from any person or persons whomsoever."

Held, that charges upon real estate, created under a settlement, and to which the testator was entitled, did not pass by these words.

A fund set apart by the testator for the payment of the legacy and succession duty, "in consequence of his death, is liable to pay the duty upon every succession which occurs upon his death, and not merely upon these successions which are created by his will. (14 W. R. 298)

L. C. In re Colemere. Dec. 20.

Act of bankruptcy—Fraudulent assignment.

An assignment of the whole of a trader's property upon a contract for sale to secure a present advance of money, which, without the lender's knowlenge, is applied in payment of some of the of the antecedent debts of the borrower, is not fraudulent, and consequently not an act of bankruptcy. (14 W. R. 318.)

S. C. Blossom v. Railroad Company. U. S.

Judicial sale—Rights of bidder—Adjournment—Discontinuing sale.

1. A bidder at a judicial sale at public auction, whose bid has not been accepted—the sale being adjourned for sufficient cause and finally discontinued—cannot insist on leave, even though he have been the highest and best bidder, to pay the amount of his bid, and have a confirmation of the sale to him.

2. The marshal, or other officer, who makes a sale of real property under a decree of foreclosure, possesses the power, for good cause shown, in the exercise of a sound discretion, and

in subordination to the superior control of the court over the whole matter of the sale, to adjourn from time to time.

3. In a case where the decrees was that the sale should be made *unless the mortgagors should previously pay the mortgage debt*, a few short adjournments for the purpose of enabling the mortgagors to make an arrangement to pay it, are adjournments for sufficient cause, although such adjournments have been made by direction of the complainant's solicitor. And if, prior to the day to which the sale stands adjourned, the mortgagors come in and pay the complainants the amount of the decree, &c., the sale may properly be discontinued altogether. (Phil. Leg. Int.)

U. S. Young v. McKee.

Mortgage by infant—Affirmance.

An infant who receives a conveyance of lands and gives a mortgage for the purchase-price, affirms the mortgage if he claims to retain the land after coming of age. The conveyance and the mortgage are all one transaction, and he cannot affirm it so far as it results to his benefit, and repudiate it in other respects. (13 Mich.)

Cockenour v. Bullock.

Mortgages—Practice—Amending decree.

It is no defence to a bill of foreclosure that the mortgage was given to secure the purchase money of the mortgaged property, and that to part of it the vendor (now the mortgagee) had no title.

Where, on a bill praying foreclosure only, a decree for sale was drawn up with a direction that the mortgagor should pay any deficiency, the court, at the instance of the mortgagor, four years afterwards amended the decree by striking out this direction, but ordered the mortgagor to pay the costs of the proceedings which had taken place under the decree. (12 U. C. Chan. 138.)

PROBATE.

Nov. 14, 1865.

Jackson v. Jackson.

Administration bond — Justifying by sureties — Where dispensed with—Practice—20 & 21 *Vic c 77, s.* 81.

Where the Court is satisfied that property in which infant children take a share is in the custody of the Court of Chancery, and cannot be taken out by a collusive or fraudulent termination of the suit, it will dispense with the sureties usually required in administration bonds, if it appear that the person to whom administration is granted is unable, or finds it difficult, to procure such sureties. When the Court is not satisfied that the property cannot be fraudulently taken out of the custody of the Court of Chancery, it will not dispense with the sureties, but will allow the number to be increased so as to facilitate finding security. (14 W. R 112.)

Re J. H. Roland. Jan. 23.

Will—Misdescription—Parol evidence.

Where there is a person corresponding in name and address, but not in other particulars, to the description of the legatee contained in the will, and another person corresponding in every particular except the Christian name, the court admitted parol evidence to show that the latter was the person intended to be benefitted. (14 W. R. 317.)

CHANCERY SPRING SITTINGS, 1866.

The Hon. Vice-Chancellor Spragge.

Toronto	Tuesday	20 March.

The Hon. Vice-Chancellor Mowat.

Stratford.....	Tuesday	3 April.
Goderich	Thursday	5 "
Sarnia	Monday	9 "
Sandwich	Wednesday ...	11 "
Chatham	Friday.....	13 "
London	Tuesday	17 "
Woodstock	Saturday.....	21 "
Simcoe	Thursday	26 "

The Hon. Vice-Chancellor Spragge.

Guelph	Thursday	26 April.
Brantford	Tuesday	1 May.
Hamilton	Thursday . .	3 "
Niagara	Thursday	10 "
Whitby	Monday.....	14 "
Cobourg	Thursday	17 "
Barrie	Tuesday	22 "
Owen Sound... ...	Friday.....	25 "

The Hon. the Chancellor.

Belleville	Tuesday	15 May.
Brockville..... ..	Thursday	17 "
Ottawa	Monday.....	21 "
Cornwall	Saturday.....	26 "
Kingston	Wednesday....	30 "
Peterboro'.....	Tuesday	5 June.
Lindsay.....	Thursday	7 "

APPOINTMENTS TO OFFICE.

NOTARIES PUBLIC.

RICHARD SNELLING, of the City of Toronto, Esquire, Barrister-at Law, to be a Notary Public in Upper Canada. (Gazetted February 3, 1866.)

CORONERS.

JAMES HUTTON, of Forest Village, Esquire, M D., to be an Associate Coroner for the County of Lambton. (Gazetted February 3, 1866.)

HENRY R. HANEY, of Fenwick, Esquire, M.D., to be an Associate Coroner for the County of Welland. (Gazetted February 3, 1866.)

THOMAS EYRES, of the Village of Millbrook, Esquire, to be an Associate Coroner for the United Counties of Northumberland and Durham. (Gazetted February 3, 1866.)

TO CORRESPONDENTS.

"Attorney"—We insert the case you send us, but under the rules we have laid down for our guidance, this is all we can do.

"Lex"—We do not understand your statement of facts; but in any case it does not appear to touch matters of *general* interest, and is therefore not in our province to answer.

"Law Student"—"Attorney"—"A Law Student"—"H. R"—"Justitia"—"Lex"—"D."—"A Subscriber"—Under "General Correspondence."