Local Courts' & Municipal Gazette,

(NEW SERIES.)

VOLUME VI.

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CASES REPORTED IN THIS VOLUME.

DIARY FOR JANUARY.

1. Sat.. *Circumcision.* Taxes to be computed from this date.
2. SUN. *2nd Sunday after Christmas.*
3. Mon. Municipal Elections. Heir and Devisee Court begins. County Court Term begins.
5. Wed. *Epiphany.*
8. Sat.. County Court Term ends. Last day for Township, Village and Town Clerk to make return to Conuty Clerk.
9. SUN. *1st Sunday after Epiphany.*
10. Mon. Election of Police Trustees in Police Villages.
12. Wed. Election of School Trustees.
15. Sat.. Treasurer and Cham. of Municipalities te make returns to Board of Auditors of School Rep. to be made to Local Superintendent.
16. SUN. *2nd Sunday after Epiphany.*
17. Mon. Members of Municipal Councils (except Counties) and Trustees of Police Villages to hold 1st meeting.
22. Sat.., Articlts, &c., to be left with Sec. Law Society.
23, SUN. *3rd Sunday after Epiphany.*
25. Tues. *Conversion of St. Paul.* 1st Meeting of County Councils.
28. Sat... School Finance Report to Board of Auditors. Last day for Non-Residents to give list of their lands.
30. SUN. *4th Sunday after Epiphany.*

The Local Courts'

AND

MUNICIPAL GAZETTE.

JANUARY, 1870.

DUTY OF CLERKS IN "SPECIAL SUMMONS" CASES.

We understand that there is some difference of opinion respecting the duty of clerks, as to entry of judgment in undefended cases commenced by "Special Summons," and we have received communications soliciting our views on the subject.

The question shapes itself thus: Is a Division Court clerk *obliged, without previous notice* from plaintiff to do so, to enter judgment against defendant on a "Special Summons" immediately after the twelfth, seventeenth or twenty-first days, respectively, after service of the summons, defendant not giving any notice of disputing claim, notice of set off, or other defence? We might briefly reply, by an answer in the negative, but this would be scarcely satisfactory. Mr. O'Brien, in his notes on the late Division Court Act, thus refers to the point:—

"This judgment may be signed by the Clerk at the instance and request, it is to be supposed, of the plaintiff, when the proper time arrives, and not by the Clerk, as a matter of course. It might be that a request might be made on the entry of the claim that the clerk should sign judgment if defendant should fail to give notice of disputed claim, but the Clerk, if he consents to act on a request thus made in advance, should protect himself by having it in writing."

We would add that, though the clerk cannot upon his own mere motion enter judgment, the circumstances under which he receives a claim must always be taken into consideration in determining whether he has or has not had directions, or been required by the plaintiff to enter judgment. The operative part of the Division Court system is mainly worked out by officers who in some respects occupy a position, as respects plaintiff, similar to that of an attorney to his client. If, therefore, a clerk was directed by plaintiff to sue and get judgment for him as soon as possible; or even if he received a deposit sufficient to cover the charges for entering judgment, the not unnatural inference would be that there was in effect an authority and direction given to enter judgment; or if direction was given to proceed against the defendant under the second section of the late act, or the like, a direction to enter judgment might be inferred. We would advise parties and officers to act on the hint thrown out in Mr. O'Brien's note, already referred to—the plaintiff giving express direction to proceed by Special Summons *to judgment and execution without delay;* the officers, *when possible*, taking this direction in writing from the plaintiff or his agent.

THE NEW CHANCERY JUDGES.

The recent appointment of Mr. Spragge to the Chancellorship, and Mr. Strong to the seat vacated by Mr. Spragge's promotion, will give great satisfaction. The present Chancellor has risen step by step to his present high position, and none will grudge him his well-earned honors. The hopes of his many friends that his services would not be overlooked on the first available occasion have not been disappointed, and amongst the profession the elevation of this able, conscientious and most pains-taking judge—a man who has deservedly won the respect and regard of all—meets with general and hearty approval.

The new Vice-Chancellor has established a reputation second to none as an equity counsel; and the Equity Bench, as well as the Court of Appeal, will be greatly strengthened by the learning and talent that he will add to them.

The Chancellor took his oath of office at Ottawa, but Mr. Strong was sworn in at Osgoode Hall. The Bar was largely represented, and after the formal part of the proceedings were concluded, Hon. J. H. Cameron, Q.C., on behalf of the profession (we copy from one of the daily papers),

"Offered the congratulations of the bar to the Chancellor. He said that if anything could lessen the pain felt at loss of the able and well-beloved man who had last filled the high office of Chancellor so well, it would be the wisely and well-ordered action of the government in the choice of his successor. It gave him (Mr. Cameron) particular pleasure to be the medium of conveying the expresson of the Bar's feeling towards his Lordship. There was no member of the Bar who had had so long and intimate acquaintance of his Lordship's career. He (Mr. Cameron) had been first his Lordship's student, then his partner, and lastly a practitioner in his court—his whole acquaintance extending over half the time allotted to man. He could, therefore, well appreciate the high qualities of his Lordship, and know how well and honorably he had performed his duties. He cordially joined in the wish which he offered on behalf of the Bar, that his Lordship might live long and happily to enjoy the office to which he had been appointed and which he was so competent to fill.

Mr. Cameron, addressing Vice-Chancellor Strong, also tendered the warmest congratulations of the profession. The Chancellor had been so long in an official position, that there were few members of the bar who could remember him at the Bar. Mr. Strong, however, was fresh from the legal arena and its contests, and so seemed nearer to the profession. He considered that the Bench had a material assistance in the appointment of a Judge who was in the full vigor of manhood, and eminently in the possession of mental and physical strength. He hoped the Vice-Chancellor would long live to to enjoy his new dignity.

The Chancellor briefly returned thanks, saying that he could not make a return in set words and phrases, as the congratulations of the Bar had taken him by surprise. His Lordship then referred in touching terms to the worth and talent, the kindly heart, and amiable qualities of the late Chancellor. He said he trusted he would receive assistance from his colleagues in the discharge of his important and onerous duties, and then expressed the admiration he had always felt for the Bar of Ontario—in which could be found legal talent of which any nation might feel a just pride.

Mr. V. C. Strong also returned thanks for the expression of good will towards himself, and hoped that the same would continue. There could be nothing more assuring to a Judge entering upon his duties than such manifestations as the present. He should always conserve the privileges of the Bar, feeling that thereby he was best securing the ends of Justice."

SELECTIONS.

THE ALABAMA CLAIMS.

What are the "Alabama claims?" If the case of the *United States of America* v. *Great Britain* were now before some tribunal of competent jurisdiction, what are the precise claims that we should make, on what grounds should we urge them, and what award should we reasonably and fairly expect from an intelligent arbitrator? The failure of the recent attempt at negotiation having set the whole subject once more afloat, it is well to consider where we stand, and what is the next thing to be done. No one can suppose that a claim so large in amount, and so well founded in justice, can be waived or abandoned on our part.

It is very frequently said, that, in the present condition of thecase, there is no occasion for us to do any thing at all; and this suggestion is usually received with great favor, as if it embodied a large amount of practical wisdom. We are usually told that our claim is one that will "keep;" that England has established a precedent that we can follow hereafter with much advantage to ourselves, and much inconvenienee to her; that, in effect, we have put her under heavy bonds to keep the peace, and be of good behavior towards all the world; that, if ever she should venture into a war with any other power, we can cover the ocean with Alabamas, and fearfully retaliate upon her the wrong that she has done us. This is equivalent to saying that the question between the two nations, which has already produced so much exasperation on both sides, and which involves such large pecuniary interests, is never to be settled at all; that we are sullenly to wait an indefinite, and perhaps a very long time, for "something to turn up," as Mr. Micawber would say, which shall give us an opportunity, not for indemnity, but for revenge, and that in the mean time the actual sufferers by the depredations complained of—the merchants whose property was burnt, and the insurers who have paid losses—are to be left to the full enjoyment of the right of petition for relief from the national treasury. But this expectant system, though received with some applause when first suggested, is not likely on the whole to be satisfactory to the country. None but the head centre of some Fenian lodge would deny that a just and honorable settlement is better than any further postponement.

As we occupy the position of plaintiffs in this matter, we are of course to go forward, to state distinctly what our claims are, and on what grounds we undertake to maintain them. And, first of all, we are to bear in mind that our claim is against the British government for its *own* sins of omission or commission. This is a matter in which we can deal only with that government. So far as we have been injured by the reckless and unlawful acts of British subjects, perpetrated under such

circumstances as to furnish no ground for charging that government with expressly or impliedly authorizing, permitting, or conniving at the wrong complained of, we do not seek to call it to account. For that reason, it has never occurred to any one, not even to Mr. Sumner, to claim that the British government is to be held responsible for the manifold inconveniences produced by the almost constant evasions of our blockade of the Southern ports. There is no kind of doubt that the activity and success of the blockade runners prolonged the war for years. It would have been impossible, but for them, for the Confederacy to have maintained the contest for a single year. In regard to them, we neither had nor claimed any right from that government, except that it should leave them to take the chances of capture and confiscation. In regard to them, we have never charged that government with any complicity in the mischief, and their doings make no part of our claims against England. They were tempted by the prospect of enormous profits to run the risk of capture, and in this commercial age it has hardly occurred to any one that it was a matter of resentment, even against the blockade runners themselves.

The first item of our claim against the British government is one about which *we* need little argument, and which is not very seriously controverted anywhere, viz., the pecuniary claim; the damages demanded for losses incurred and depredations committed, directly resulting from, and occasioned by, the failure of England honestly and faithfully to fulfil the obligations of neutrality. Mr. Sumner insists that this is not the real question between the two nations, but even he will hardly deny that it enters into it, and makes a part of it. It is *one* of the things to be settled and adjusted, and it is important to consider upon what principles this part of our case is to be urged.

So far as this item is concerned, the claim can be computed, adjudicated upon, and paid, in pounds shillings, and pence. All this is a peculiarly proper subject for arbitration, and we, on our part, can have no hesitation or scruple in binding ourselves to submit to the award. We are fully prepared, as we think, to satisfy any impartial arbitrator, that, upon this point at least, we have an unanswerable case. It is hardly denied on the floor of Parliament that there was something approaching to neglect of duty on the part of the officials at Liverpool, at least in permitting the escape of the Alabama. We cannot reasonably complain that the same commission which passes upon our individual claims against England, is also to audit and examine the individual claims of British subjects against our own government. It is a little extraordinary that Mr. Sumner should object to the treaty on the ground that, in providing for individual claims on the part of our citizens, it makes them "subject to a set-off from the individual claims of England, so that, in the end, our country may possibly receive nothing." It would be strange if it did not. What sort of an arbitration would it be that provides that the claims of the plaintiff shall be heard and investigated, and that the claims of the defendant shall not be heard? Is not an account in set-off a good defence as far as it goes, and as far as it is proved? How can he say that, in the end, our country will receive nothing, if all our claims are allowed and charged against England in the general account current between her and our own country? Each country makes its claim in behalf, and in the right, of such of its own citizens as have been sufferers by the misconduct of the other. One of the objects of the proposed arbitration is to ascertain how much England owes, for depredations and losses, to our merchants. Certainly, there is no injustice in inquiring at the same time, and upon the same principles, how much (if any thing) this country owes for mistakes in seizures and confiscations, to British merchants. Mr. Sumner, surely, does not suppose that in the very improbable event of so large a set-off as to leave a very small balance, or no balance at all, in our favor, our Government can say to the merchants, in whose behalf it claims, that nothing has been recovered. Can our government charge these claims against England, and have them allowed, and then refuse to pay them over to the losers?

The next item of claim on our part would seem to be certainly more remote, or consequential damages, or what may be called the indirect losses, growing out of the same cause. The mere value of shipping and cargoes actually destroyed was but a part, and probably but a small part, of the injury to our commerce. A hostile steamer, fitted out with all the appliances of modern skill and science, roving about the Atlantic and along the great highways of commerce, her crew consisting of "gunners from the Excellent," herself finding enthusiastic friends and admirers in every British port; applauded, encouraged, and welcomed by every British colonial governor from Halifax to the Cape of Good Hope, and from the Cape of Good Hope to Australia, eagerly and promptly furnished with supplies, repairs, coals, and recruits, wherever British authority was established, and could reach out its hand to her,—such an enemy was, formidable, indeed. The fact that there were many such cruisers upon the sees, and that they had found such exceeding favour everywhere in the eyes of John Bull, was almost enough to substantially sweep our commerce from the ocean. The loss of profits, the difficulty of procuring insurance, the abandonment of contemplated voyages, and the very general transfer of our tonnage into foreign hands, threw us a long way behind, in the competition with other countries, for the carrying trade of the world, and inflicted upon us an immense national loss. But if we were to bring forward this great national loss as a matter of pecuniary claim, we should certainly find ourselves embarrassed with certain well-established, and not wholly pedantic rules, familiar to the courts of law, as to re-

mote and proximate causes of damage. The merchant, whose ship and cargo have been burnt on the high sees, has a claim for damages that admits of precise and definite computation. It can be expressed, and exact compensation can be made, in coined money of the realm. But a merchant who keeps his ships and cargo at home, for fear they may be burnt; the merchant who sells his ship, because it is unsafe to use her himself,—such a merchant may have taken very prudent precautions, and may be a decided loser; but can it be said that the damage which he has suffered was the direct and necessary consequence, the immediate result, of the breach of neutrality on the part of the British government? The decline of national commerce, the expense and inconvenience of convoys, the frequent and expensive search and pursuit after the rovers, enter into the sum total of the national loss, but none of them are elements which enter into a claim for pecuniary indemnity. According to well established legal principles, our claim, so far as it is merely of a pecuniary character, must be confined to losses by actual depredations. In an action against the worthy Captain Semmes himself, supposing him to be before a competent court, and able to respond, with all his demurrers and dilatory pleas overruled, we could hardly claim to hold him responsible in damages for any thing but the direct and proximate consequences of his acts. The expense incurred in trying to keep out of his way, would not be a matter of judicial consideration.

Such, then, being the extent of our pecuniary claim on the British government (for it cannot be too distinctly borne in mind that our claim is not against the British public at large), what is the next item? Much has been said, and much will continue to be said, of the hasty and unseasonable concession to to our insurgents, or belligerent rights. It was to them, perhaps, a very valuable and important concession, but it is to be remembered that this recognition of a mere fact must have come at last. They certainly were belligerents in the summer of the year 1861, if they had not become so in May of that same year. The recognition on the part of England may have been an unfriendly and discourteous act, but how could it be called a violation of our rights? It was a matter in which, perhaps, a decent regard for international civilities would have justified and perhaps may be said to have required some delay; and perhaps they should at least have waited until our minister, then on his way to England, had arrived. But the most that we can say is, that it was premature, and that the ministry ought to have waited for official information from our own government. It may possibly be true, as Mr. Bemis insists, that their reliance on our proclamation of the blockade, as a justification, was an afterthought. But long before this concession of belligerent rights, much had been done on our side of the Atlantic that indicated but too plainly what was coming. State after State had formally withdrawn itself from the Union, so far as such a withdrawal can be accomplished by mere legislation and by vote. State after State had disowned and excluded from its limits every shadow and vestige of the Federal authority. They had organized a new confederation, had formed a new government, so far as all this could be done on paper, and had raised armies. In April they struck their first blow, and all the world now acknowledged that that first blow was the beginning, not of a riot or a skirmish, but of what certainly may be called a civil war, if ever there was such a thing as a war. Before that first blow was struck, the whole world saw that war was coming, and was close at hand. The British government eagerly, and joyfully perhaps, declared, on the 6th day of May, 1861, that it had come. And the event has shown that their declaration was true as a matter of fact. But even if it had not proved true in point of fact, it would have been no violation of any international right. It might have been a great breach of decorum, or a great national insult; but whether civil or uncivil, friendly or unfriendly, considerate or hasty, it was an act entirely within their own discretion to do or not as they pleased. We on our part might have resented it by an instant declaration of war; but when it comes up for consideration long afterwards, as a matter of national complaint, it must be viewed with more calmness. If our insurrection had in fact proved to be a mere riot which had been suppressed by our civil authorities, the belligerent rights conceded to the insurgents would have been only an expression of ill-will against us, of as little practical importance perhaps as our own recognition of Hungary, some years ago, not merely as a belligerent, but as a nation. The concession of belligerent rights to our insurgents was not the cause of the fitting out of the privateers. They were not fitted out till long after the war had become a perfectly established fact, recognized as such by the whole civilized world.

This item in one list of grievances is usually spoken of as the climax of all injuries,—the crowning wrong and indignity that no merely human patience could be expected tamely to endure. Mr. Sumner denounces the declaration of neutrality as a declaration of equality between our national government and the rebel "slavemongers;" as an insult to our government; as a "moral absurdity,—offensive to reason and to all those precedents which makes the glory of the British name." Is there not some slight confusion of ideas in this view of the case? All that we had any legal right to demand of England was a strict and impartial neutrality;—and the sum and substance of all our complaints against her government is simply that she did not faithfully fulfil that obligation. The Queen's Proclamation of neutrality can hardly be said to have been intrinsically wrongful and offensive

of itself. It was a warning and command to her subjects to do the very thing that we insist they were bound to do, and the very thing and only thing which we had a *right* to insist that they should do. The fact that the rebels were "slavemongers" (to use the classical expression of Mr. Sumner) has nothing to do with the matter. So far as the obligation of neutrality was concerned, England placed both combatant parties upon equal ground. If she had done otherwise, it would not have been neutrality; if any thing in the time and manner of issuing the proclamation justifies us in saying that it was a premature concession, "a hasty recognition," we may have had cause to take offence: but it is difficult to conceive how it can be made the subject of a treaty. It cannot be paid for in money; it is too late now to resent it by a declaration of war; it is sheer absurdity to talk of retraction or apology. There is absolutely nothing that we can ask the British government to do about it,—and it is impossible to understand what Mr. Sumner proposes that we should do as to this (as he seems to consider it) most important item in our list of wrongs.

By far the greatest part of the wrong which England inflicted upon us during our late struggle, is one which money cannot pay for, and which no treaty can adjust. When our rebellion, unprovoked and unreasonable as we considered it, first broke out, we flattered ourselves that we were upholding lawful authority against revolutionary violence and disorganization; that the world generally would understand that our disturbances had their origin in the domestic conflict of opinion in this country on the subject of slavery: that it was also universally known that the entire secession movement was in the interest of slavery as a permanent and dominant national interest; and that although, from our position, we claimed only to uphold and maintain the Constitution, and the existence and authority of the Union under it, and so were not at liberty directly to assail slavery in its local strongholds, we at the North at least deplored its existence, and would be glad to witness its downfall. We supposed that England also was sincerely, and on principle, a foe to slavery; but we were not at all prepared for the discovery that she was a thousand times more a foe to democracy. Nothing could have been more dismal and overwhelming than our disappointment at finding that all the sympathies of the British public and all the moral weight of British opinion were on the side of our foes. Of course, it was no matter of surprise that a large portion of the people of Great Britain, imperfectly informed of the merits of the case, and perhaps caring about them but little, should have bestowed their applause and sympathy upon the party which seemed numerically the weaker, yet defended its cause with such spirit, and with such a brilliant promise of success. But the difficulty lay much deeper. The cry everywhere throughout the kingdom was that the great republic had broken down, and all England clapped its hands with delight. England rejoiced and triumphed at the prospect of our downfall without reserve and without disguise. We were everywhere denounced as mere wrongdoers. Our efforts to defend our Union and preserve our nationality were stigmatized everywhere as unjustifiable and unchristian obstinacy, in prolonging a hopeless and meaningless, and for that reason a brutal and inhuman war. There was not a word of encouragement or sympathy for us (with a very few honourable exceptions) from the periodical press—from the peerage—from parliament—the clergy—the army—the navy—or the commercial classes. Bankers hastened to lend their money to the rebels, and the confederate loan was current on the London Exchange at a higher rate than that of the United States. So far as the public opinion of a country can be expressed in any mode intelligible to other nations, it was with substantial unanimity against us, and in favour of our enemies. The whole moral weight of England was upon the side of the Confederates; and she did about all she could, short of actually declaring war against the United States, to help them gain the victory over us.

But all these things, offensive, injurious, and insulting as they were, have very little to do with any international claims or grievances that can be made the subject of a negotiation or arbitration. They show that the state of public opinion in England was all wrong; but we do not claim to call the government of that country to account for errors of that kind. We have happily passed the point of time when the mistaken public sentiment of Great Britain gave us any cause for alarm. The only point of view in which it is now a matter of any practical importance, is, that it throws some light upon the *animus* which inspired their languid and feeble efforts to prevent the escape of the Alabama from the port of Liverpool. It is not at all strange, in in such a state of public sentiment, that the official telegram to Liverpool for the arrest of that vessel should unluckily fail to arrive till after office hours on a Saturday afternoon. It throws some light upon Lord Russell's insolent inquiry, addressed to Mr. Adams, whether it is common in America to arrest a vessel on a charge of an intended breach of neutral law without proof. The victorious conclusion of our great contest is a sufficient answer to all cavils, to all reproaches and insults; to all the shouts of triumph over our anticipated downfall. We can bear, without a murmur, the recollection that we had not a single friend upon the bench of bishops, and that respectable bankers invested in the confederate loan. We were willing that the high church-and-state tory should dislike our institutions, if he should feel so inclined, and should speak of them in any terms that he may happen to choose. But there is a portion of the matter in dispute between the two

nations which admits of being made the subject of a treaty, and which can be settled by arbitration. It is no sufficient reason for refusing to go so far, by treaty and by arbitration on fair and equitable principles, that there were also certain other unpleasant matters which are not the subjects of a negotiation, and do not admit of being disposed of by treaty. It is something, that, so far as the claim for damages is concerned, Great Britain, to use a phrase often heard in the New England court-houses, has offered "to leave it out to men,"—to submit the question to a fair and impartial arbitrator. Payment of the money under such circumstances would be an acknowledgment of the wrong, and apparently all the practical reparation for it that can be made. The offer to submit to arbitration is very little, if at all, short of it.

The position in which England stands at this moment is substantially this: She offers to make full reparation for all actual spoliations committed in violation of her neutral obligations, resulting from the want of suitable and proper legal provision for enforcing those obligations upon her subjects, or from the inadequate administration of such law in that behalf as was in existence; she has also invited us to join her in such new legislation, as to the duties of neutrals, as experience has shown to be needful. Under the circumstances, what more ought we to demand? and what other basis of negotiation does the nature of the case admit of?—*American Law Review.*

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

AWARD.—An award was made in favor of the defendant by mistake, from omitting to take account of an advance by the plaintiff to the defendant, which had been duly proved before the arbitrator, but which, at the time of making the award, he overlooked. The mistake was admitted by both parties, and the facts of the case were stated to the court. *Held*, that the court had power to refer the award back, on motion.—*Flynn* v. *Robertson*, L. R. 4 C. P. 324.

CARRIER.—A railway company refused to carry, free of charge, a "spring horse" (a substitute for a rocking-horse), weighing 78 lbs, and 44 inches long, tendered to them by a passenger, who was entitled to take with him 112 lbs. weight of "ordinary" or "personal" luggage. *Held*, that the company had a right to make an additional charge.—*Hudston* v. *Midland Railway Co.*, L. R. 4 Q. B. 366.

2. A carrier of passengers for hire does not warrant that the carriage in which a passenger travels is roadworthy. He is bound to use all vigilance to insure safety, but is not liable for a defect which could not be detected, and which arises from no fault of the manufacturer.—(Exch. Ch.) *Readhead* v. *Midland Railway Co.*, L. R. 4 Q. B. 379; s. c. 2 Q. B. 412; 2 Am. Law Rev. 107.

DESERTION.—A husband left his wife, and the two immediately afterwards executed a separation deed. The husband soon ceased paying the allowance which he had covenanted to pay.

Held, that the separation, being under the deed, was and continued voluntary, and was not desertion; and the husband's breach of his covenant did not make it so.—*Crabb* v. *Crabb*, L. R. 1 P. & D. 601.

EVIDENCE.—A declaration or written entry by a deceased person, who had, at the time of making the same, occupied a house four years, that he was tenant of said house at so much rent, and had paid it, is admissible to prove the payment as well as the tenancy.—*The Queen* v. *Exeter*, L. R. 4 Q. B. 341.

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

BIGAMY.—On a trial for bigamy, it was proved that the prisoner married A. in 1836, left him in 1843, and married again in 1847. Nothing had been heard of A. since the prisoner left him, but there was no evidence leading to the inference that A. had died. *Held*, that there was no presumption of law that A. was alive at the date of the second marriage.—*The Queen* v. *Lumley*, L. R. 1 C. C. 196.

EVIDENCE.—Thirteen hours before the death of a murdered person, she made a declaration upon oath. She was asked, "Is it with the fear of death before you that you make these statements? Have you any present hope of your recovery?" She said, "None." Her statements were written out, together with the above, but the word "present" was omitted from before "hope." The written statement was then read to her, and, at her suggestion, the words "at present" were inserted, thus: "with no hope *at present* of my recovery." It was then signed by her. *Held*, that the declaration was not admissible. It did not appear that the deceased was absolutely without hope.—*The Queen* v. *Jenkins*, L. R. 1 C. C. 187.

ONTARIO REPORTS

QUEEN'S BENCH.

(*Reported by* CHRIS. ROBINSON, ESQ., *Barrister-at-Law.*)

IN RE HALL V. CURTAIN, IN THE DIVISION COURT.

Division court—Unsettled account—Jurisdiction.

The plaintiff in a Division Court may recover $100, being the balance of an unsettled account not exceeding $200, but when the whole account exceeds that sum there is no jurisdiction.

An unsettled account means an account the amount of which has not been adjusted, determined, or admitted by some act of the parties.

The plaintiff here sued for $84, being the balance due for rent of premises occupied by defendant as his tenant for several years, at $160 a year, after deducting the payments from time to time.

Held, not within the jurisdiction.

[28 Q. B., 533.]

Kerr, in Michaelmas Term, obtained a rule calling on the judge of the county court and John Curtain to shew cause why a writ of mandamus should not issue, commanding the judge to proceed with the the trial of a certain action brought in the first division court of the County of Peterborough, in which Hall was plaintiff and Curtain defendant, on the grounds—1. That the judge erroneously refused to try the action on the ground of want of jurisdiction, because evidence was offered of an unsettled account which originally exceeded $200, said to have been reduced by payment. 2. That the action is a proper one to be tried in the said court. 3. That the jurisdiction of the said court extends to the case of an unsettled account which originally exceeded $200, but which had been reduced by payment to a sum under $200. 4. That the said action was brought in respect of a balance, claimed on an unsettled account under $200; and why the said judge should not pay the costs of the application.

The application was based on an affidavit, which stated that the suit was brought in the division court: that the particulars of demand in the summons were as follows:

JOHN CURTAIN, *To* WILLIAM HALL, *Dr.*

To balance due for rent of premises on Hnnter Street, Peterborough, from 1st August, 1864, to 21st January, 1868, after applying payments made on account	$82 23
Interest from 26th January, 1868	2 46
	$84 69

The defendant notified the plaintiff that he claimed to set off $62 for erecting a stable on the premises in question, and for certain repairs on the same.

The case came on for trial on the 8th of August, 1868, when both parties appeared.

The plaintiff, in order to establish his claim, offered evidence to the effect that the defendant occupied certain premises, as tenant of the plaintiff, at a rent of $160 a-year, from 1st of January, 1860, to the 20th of January, 1868: that he made payments on account of the rent at various times, leaving the balance claimed due to the plaintiff.

The learned judge refused to proceed further, stating as his reason, that evidence was offered of a claim or account unsettled which originally exceeded $200, and therefore he had no jurisdiction—the plaintiff contending that the account was not an unsettled account within the meaning of the 59th section of the Division Courts Act.

The learned judge then endorsed on the summons the following memorandum: "Refused to go into case because evidence offered of an account unsettled, amounting to $640, said to be reduced by payment." The plaintiff afterwards applied for a new trial, which the learned judge refused to grant, retaining the opinion he had expressed at the trial.

The plaintiff in his affidavit stated that the defendant rented the premises, as already mentioned: that he paid at different times $473,31, the last payment of $50 being paid on the 17th of December, 1867; and that since the 20th January, 1868, he was indebted to him in the unpaid balance of $82,23, and that all the payments the plaintiff gave credit for were made expressly on account of the rent. The learned judge filed an affidavit, stating that the plaintiff's counsel stated at the trial that for the purpose of proving his claim he had to shew the whole amount of rent that became due during the whole period.

During this term *J. A. Boyd* shewed cause. The plaintiff in the suit has another remedy, by suit in the county court, and a mandamus therefore will not be granted; besides which, the judge has in fact considered and determined the case: *Allen* v. *Turner*, 2 Dowl. N. S. 24; *Rex* v. *Marquis of Conyngham*, 1 D. & R. 529; *Walker* v. *Biggar*, 4 U. C. Q. B. 497; *Kernot* v. *Bailey*, 4 W. R. 608; *Ex parte Smyth*, 1 Har. & Wol. 128; *In re Corbett*, 4 H. & N. 452; *Ex parte Milner*, 15 Jur. 1037; *Brown* v. *Cocking*, L. R. 3 Q. B. 672; *Williamson* v. *Bryans*, 12 C. P. 275. But admitting that a mandamus will lie, it cannot be granted here, for the judge was right. Under the Division Courts Act, Consol. Stat. U. C. ch. 19, sec. 55, these courts have jurisdiction in all cases of debt, &c., "where the amount or balance claimed does not exceed $100;" but this provision is retained by sec. 59 [see this section set out in the judgment] to cases in which the whole account, of which the balance is claimed, does not exceed $200, which in this case it did. If specific payments have been made of specific items, those items might perhaps be treated as struck out of the account, so as to form no part of it: *Mearns* v. *Gilbertson*, 6 O. S. 577; but that was not shewn here. *Miron* v. *McCabe*, 4 P. R. 171, seems to be the latest case in which the question has arisen, but *McMurtry* v. *Munro*, 14 U.C. Q B. 166; *Higginbotham* v. *Moore*, 21 U. C. Q B. 329; *In re The Judge of the County Court of Northumberland and Durham*, 19 C. P. 301; and *Waugh* v. *Conway*, 4 U. C. L. J. N. S. 228; are in conflict with that decision, which was in chambers. The term "unsettled account," is a term well known in the law, as being the converse of an account stated: *Neil* v. *Neil*, 15 Grant 110; *Llewellyn* v. *Llewellyn*, 15 L. J. N. S. Q. B. 4; *O'Connor* v. *Spaight*, 1 Sch. & Lef. 308; *Tomlins'* Law Dic. "Account."

Kerr, contra.—The argument that there is another remedy by suit in the county court does not apply. What the plaintiff claims is his right to have the case tried in the division court, and for that right a suit in the county court is no remedy; nor is there any other means by which he can enforce his right. Here the learned judge refused to entertain the case at all, and the plaintiff was debarred therefore from shewing pay-

ments made in discharge of specific items, or that the account was not unsettled, within the meaning of the act. Sec. 55 clearly gives jurisdiction, and its operation is not confined by sec. 59, which is intended only to provide against the splitting of demands. This last clause is similar to that in the English Act, 9 & 10 Vic. ch. 95, which is commented upon in *Avards and Rhodes*, 8 Ex. 312. He cited also *Turner* v. *Berry*, 5 Ex. 858; *Walker* v. *Watson*, 8 Bing. 414; *Furinval* v. *Saunders*, 26 U.C.Q B. 119; *Cameron* v. *Thompson*, 1 U. C. L. J. 9; *Halford* v. *Hunt*, 2 U. C. L. J. 89; *Kimpton* v. *Willey*, 1 L. M. & P. 280; *Wallbridge* v. *Brown*, 18 U. C. R. 158.

MORRISON, J.—By the 55th section of the Division Courts Act the judge of any division court may hold plea of, and may hear and determine, &c., all claims and demands of debt, &c., where the amount or balance claimed does not exceed $100. By the 59th section it is enacted "A cause of action shall not be divided into two or more suits for the purpose of bringing the same within the jurisdiction of a division court, and no greater sum than $100 shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds $200."

If the 55th section stood alone, the judge would have jurisdiction in every case where the balance claimed did not exceed $100. The applicant's counsel contended that such was the meaning of the whole act, and that the intention of the 59th section was not to limit the jurisdiction, but merely to prevent the splitting of suits. I cannot adopt that view, for I think it is quite clear that the legislature intended to limit the jurisdiction first to a balance of $100 in the case of an unsettled account above that sum, and then it declared that even in cases where such balance was claimed the plaintiff could not sustain his action in that court if the unsettled account exceeded $200: in other words, a party may recover in that court as high as $100, being the balance of an unsettled account not exceeding $200, but where the balance claimed is of an account unsettled and exceeding the sum of $200, he cannot sustain his action for any balance in that case, while on the other hand, he may recover $100 being the balance of any settled account between the parties to any amount.

What is meant by an unsettled account does not appear very clear, but I think the reasonable interpretation is, an account the amount of which is not adjusted, determined, or admitted by some act of the parties, such as by the giving of a note, a mutual stating or balancing of the account, or fixing the amount due.

In the case we are considering, the particulars of claim endorsed on the summons are for a balance *prima facie* which the plaintiff was entitled to sue for and recover, and within the jurisdiction, viz., $84 69, a balance due for rent after applying payments. Such particulars might refer to an unsettled account under $200, and it is only when the case comes on for trial that the difficulty arises. The plaintiff then says, "I claim this $84 69 as the balance of three years five months and twenty-one days' rent. due on certain premises rented by the defendant at $160 a year, payable monthly;" and in order to establish his claim he states to the judge that he must first prove the tenancy, and that the defendant was indebted to him, the plaintiff, in about $600, and that he intended reducing that amount by payments to less than $100.

Why the plaintiff was compelled to adopt this mode of proof upon his own case one cannot readily see. If the tenancy was admitted by the defendant, and the payments made during the three years were payments made on account of the rent, all that the plaintiff had to do was to sue for the last say seven months' rent; but if the matter in dispute was either the amount of rent payable or the duration of the term, and either of these facts had to be investigated and determined before the balance could be struck, in such a case the judge, I think, would be trying a case beyond the jurisdiction—viz, to recover a balance due of an unsettled account over $200; and we must assume such to be the case here, for neither at the trial nor upon the application for a new trial does it appear that the plaintiff rested his case upon the ground that the balance was due on an account at any time settled or stated between the parties.

And upon this application the plaintiff has not shewn that the account is not an unsettled one, and, for all that appears, the amount of the annual rent, as well as the time charged for, were both in dispute. It was the duty of the plaintiff when the matter was before the court below, both at the trial and upon the motion for a new trial as well as on this application, to have shewn that the case was clearly within the jurisdiction of the learned county court judge, and not to leave him or this court to conjecture what kind of a case the plaintiff intended to make out in the division court. On the whole, as the case appears before us, we think that the learned judge was right in the conclusion he arrived at—viz, that the action was brought to recover the balance of an unsettled account which in the whole exceeded $200, and that the rule should be discharged, as moved, with costs.

ADAM WILSON, J.—As *Miron* v. *McCabe*, (4 P. R. 171) which I decided in chambers, has been referred to, it is proper I should say that on examining again the sections of the Division Courts Act, I am quite satisfied that by the direct language of the 59th section no action for the balance of an account can be brought in the division court, "where the unsettled account in the whole exceeds two hundred dollars."

This section was not sufficiently in my mind when I decided that case. The decision was not warranted by the statute, because the unsettled account in the whole was $236 55. The sooner it is expressly over-ruled the better. The judge of the county court of Wentworth, in *Waugh* v. *Conway* (4 U. C. L J. N S. 228), and the junior judge of Northumberland, in a case which was shewn to me on my last circuit, and which has since been properly affirmed in the Common Pleas (19 C. P. 301), have already pointed out the objection to it.

I quite agree with the opinion expressed in this case, and that *Miron* v. *McCabe* was wrongly decided.

RICHARDS, C. J., concurred.

Rule discharged.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

MACKLEM v. DURRANT.

Witness—Privilege from arrest.

A witness is privileged from arrest whilst returning home after giving his evidence, and he does not lose his privilege by staying a night at the house of a friend, some distance from the place of trial, to refresh himself, if he uses reasonable expedition to return home.

[Chambers, Nov. 3, 1869.]

The defendant, who was indebted to the plaintiff, went to Michigan to reside. He subsequently returned to this country, to give evidence at a trial which took place at St. Thomas. After the trial was over, it being then too late to start for home that evening, except he went by the night train, he went to a friend's house to stay the night. To do this he had to go a few miles from the place of trial and out of the direct route homewards. He went to the station the next morning to take the first train towards his home, but was arrested on a *capias*, at the instance of the plaintiff.

J. A. Boyd thereupon obtained a summons to set aside this arrest, as being a breach of the defendant's privilege as a witness.

R. A. Harrison, Q. C., shewed cause.—The defendant deviated from his direct route towards home, and thereby lost his privilege: *Spencer* v. *Newton*, 6 A. & E., 623.

J. A. Boyd, contra.—There was no deviation. The defendant did not go out of his way on his return home; he merely went to spend the night at the house of a friend, instead of staying at an Inn, or travelling all night, and, he was at the station ready to take the first train the next morning: see *Pitt* v. *Coombs*, 5 B. & Ad. 1078; *Hatch* v. *Blissett*, Gilbert's cases, 308; Bacon's Abridgment, "Privilege;" *Meekin* v. *Smith*, 1 H. Bl. 636; *Lightfoot* v. *Cameron*, 2 W. Bl. 1113; *Webb* v. *Taylor*, 1 D. & L. 684; *Willingham* v. *Matthews*, 2 Marsh. 59; *Selby* v. *Hill*, 1 Dowl. 257, 8 Bing. 166.

GALT, J., during the argument said, that unless the rule laid down in the case cited from Gilbert's Reports was no longer law, the defendant's contention must prevail.

After deliberation the summons was made absolute, the judge remarking, that the defendant had used reasonable expedition in preparing to return home. He was not bound to leave the same evening after the trial, as, under the cases, he was entitled to rest and refresh himself. Nor was it any deviation that the defendant, instead of lodging at an hotel or inn, went out of town to stay at a friend's house; in all this he was acting within the limits of his privilege, and should not have been arrested at the station on the following morning.

INSOLVENCY CASES.

ROYAL CANADIAN BANK v. MATHESON.

Insolvent Act of 1864—Sec. 3, clause c—Affidavit.

Held, 1. That a sale by a debtor for full consideration to a *bona fide* purchaser cannot render his estate liable to compulsory liquidation under above section merely because he declines to pay the proceeds to one of his creditors, though coupled with subsequent circumstances tending to raise a suspicion of the *bona fides* of his disposal of such money.

2. Affidavits to found an attachment should definitely charge the act of insolvency relied upon.

Semble, that no conveyance which is in itself an act of insolvency can be upheld as valid in favor of any party to it.

[Chambers, Nov. 3, 1869.]

This was an appeal from the judgment of the judge of the county of Oxford setting aside a writ of attachment sued out by the Royal Canadian Bank against John Matheson. The writ of attachment was obtained on the affidavits of Mr. Burns, agent of the plaintiffs at the town of Woodstock, and of Mr. Ashton Fletcher of the same place, solicitor for the plaintiffs These affidavits shewed that the defendant was indebted to the plaintiffs in the sum of eighteen hundred and thirty-eight dollars, on two bills of exchange, drawn by one Malcolm McKinnon, and accepted by the defendant. The affidavits were so far similar that it is unnecessary to cite them both. The following is an extract from that made by Mr. Burns. After swearing to the amount and origin of the claim, the deponent proceeded as follows:—

To the best of my knowledge and belief, the defendant is insolvent within the meaning of the Insolvent Act of 1864, and has rendered himself liable to have his estate placed in compulsory liquidation under the above act, and my reasons for so believing are as follows:

That the defendant has always, since maturity of the first bill above-mentioned, informed me that he had no property except his house in the town of Woodstock, and that he would sell the same and pay the amount of the plaintiff's claim, and has fixed different times for so doing, all of which have passed.

Some time ago, and within three months, the defendant told me, that he had arranged a sale of the said house to one Mrs. Dunbar, and as soon as she paid the money for the same that he would pay up the plaintiff's claim.

On the twenty-second instant, the defendant came into the office of the bank and told me that he had got sixteen hundred dollars on the said house, that he had given to his wife one thousand dollars to induce her to bar her dower, and had nine hundred dollars in his pocket, but that he would not pay the same unless I would release the whole of the bank's claim, and give up both the said bills of exchange on receiving the said nine hundred dollars.

I requested him to pay the same on account, offering to give time for the balance.

From these facts and circumstances I have been led to believe, and verily do believe, that the defendant has within a few days past assigned or disposed of his property, or has attempted to assign or dispose of his property with the intent to defeat or delay his creditors, or the plaintiff."

The affidavit of Mr. Fletcher concluded in the same words, which, in fact, are a transcript of clause *c*, of sec. 3 of the Insolvent Act of 1864, omitting any reference to a removal of property which in the present case would be inapplicable.

Upon the facts set forth in these affidavits, the attachment in question was issued on 29th July, 1869, and was served on the defendant on the 2nd of August. The petition of the defendant to set aside the attachment was duly presented to the judge of the county court, supported by an affidavit of the defendant in which, among other things, he stated that he believes that he

has not rendered himself liable to have his estate placed in compulsory liquidation; that the papers attached to his affidavit contain true statements of his liabilities and assets; that before selling his house and premises he informed the agent of the plaintiffs of his intention to do so; and that he sold the same for the express purpose of enabling him to pay all his liabilities in full; and that he did not sell the said property with intent to delay or defraud his creditors or any of them; that he had duly received $1000 of the purchase money; that his wife positively refused to bar her dower unless $1000 were paid to her; that the solicitors of the purchaser (Mrs. Dunbar) advised her not to purchase the property unless the wife's dower was barred; and that he was forced to consent to this payment being made, and that the same never came into his hands; that certain improvements are to be made by him, upon the completion of which the balance of the purchase money is to be paid to him, and will amount at least to the sum of $850. There were then several statements made respecting the origin of the plaintiff's claim and other matters, which, as they do not affect the decision of the present appeal are omitted, and the affidavit concluded with a denial of any intention to abscond, or that he had assigned, removed, or disposed of his property with intent to defraud, defeat, or delay his creditors, or any of them, &c., &c. The papers alluded to in the foregoing affidavit shewed that the liabilities of the defendant amounted to $1001.52, exclusive of plaintiff's claim, or including that to the sum of $2831.52; while the assets, including the $950 to be paid by Mrs. Dunbar, amount to $3918; in other words, that exclusive of the plaintiff's claim, the defendant is possessed of nearly four times the amount of his liabilities, and that including it he has $1000 over and above his debts. There were affidavits from Mr. Burns and Mr. Fletcher in reply, but the learned judge did not think them to be of much consequence to the decision of the point in dispute.

The case was first argued before the judge of the county court, D. S. McQueen, Esquire, whose judgment was as follows:—

"The words descriptive of an act of bankruptcy in clause c of the 3rd section of our Insolvent Act are similar, and a mere repetition in substance of section 3 of the Imperial Act, 6 Geo. IV. c. 16.

I take it then, that the rule of law and the construction of those enactments as affecting the commercial interests of the county must be the same in all cases coming within them.

That being so I see no difficulty in the way, on considering authorities, of coming to the conclusion, that, in this, as well as every other case, in order to render the estate of a party subject to compulsory liquidation under the clause in question, several circumstances must concur: 1st, the transfer must be fraudulent; 2nd, there must be an intention to defeat and delay creditors; and 3rd, the buyer must know, or, from the very nature of the transaction must be taken necessarily to know that the object was to defeat and delay creditors: *Hill* v. *Farnell*, 9 B. & C. 45; *Harwood* v. *Bartlett*, 6 Bing. N. C. 61; *Baxter* v. *Pritchard*, 3 N. & M. 688; *In re Colemere*, 13 L. T. N.S. 621; *Sharp and Secord* v. *Mathews*, 5 P. R. 10.

Was there then such a concurrence of circumstances in this case as would shew that the sale of the defendant's house and lot in Woodstock was fraudulent so as to constitute an act of bankruptcy? I think not. It was not contended on the argument that the sale was not *bona fide* and for value; and the affidavits upon which the application for the attachment rests do not aim at impeaching the transaction on the ground of fraud or want of consideration.

The sale, then, being *bona fide* and for value cannot be tortured into an act of bankruptcy merely because the defendant did not pay over to the plaintiffs the amount of the purchase money as they were lead or seemed to expect he would, on the sale, in discharge of their claim against him.

Baxter v. *Pritchard* is an express authority on this point. There it was held that an assignment by a trader of his whole stock with intent to abscond and carry off the purchase money was not an act of bankruptcy, as a fraudulent transfer and delivery of his property with intent to defeat and delay his creditors, as the purchaser paid a fair price for the goods and was ignorant of the trader's design.

But the plaintiffs contend, without impeaching or attempting to impeach the sale or deed of conveyance of the property, that his subsequent conduct with regard to the purchase money shewed that the sale was for the purpose of delaying and defeating creditors, and therefore an act of bankruptcy.

With regard to this doctrine, the Lord Chancellor (Cranworth), in *Colemere and Colemere*, 13 L. J. N. S. 623, says: 'That I cannot understand, because, if the deed is impeachable it can only be impeachable so as to constitute an act of bankruptcy because it is fraudulent. But if it is fraudulent the deed is void. It will not be an act of bankruptcy because the person who receives (erroneously reported, *gives*) the money has it in contemplation probably to deal with the money in some way that may constitute an act of bankruptcy. That is not what can be looked to in considering whether the deeditself is fraudulent. The deed itself, if fraudulent, would be impeachable. If not impeachable, it is not an act of bankruptcy.'

Then on the merits, the defendant, in his affidavit annexed to the petition to set aside the writ of attachment, swears that he sold the property for the express purpose of enabling him to pay off his liabilities in full; that before he sold it he informed Mr. Burns of his intention to do so; that he did not sell it to defeat or defraud his creditors, or any of them; that he disputes and intends to dispute his liability to the plaintiffs in this case; that he is not insolvent; and he then swears to statements of assets and liabilities, which shew an amount of assets in excess of his liabilities, inclusive of the disputed claim of plaintiffs to the amount of $1087 98.

Upon the whole, considering and acting upon the evidence adduced, I can see nothing to lead to the belief that the defendant has made a fraudulent disposition of his property, or, to shew that his estate has become subject to compulsory liquidation. I think therefore that the prayer of the defendant's petition must be granted.

This decision, upon the advice given, will, no doubt, be appealed from; and, if erroneous, will

be corrected. It is a great satisfaction to know, that in such important matters the decision is not conclusive upon the parties. The judge or court appealed to will have, however, an advantage, inaccessible to me on the argument, of hearing this case and *Colemere* v. *Colemere*, distinguished."

On the argument in chambers, on the appeal from the above decision of the learned judge of the county court.

R. A. Harrison, Q.C., appeared for appellant.
J. A Boyd, contra.

GALT, J.—The authorities principally relied upon by the learned judge in his very able and carefully considered judgment are, *In re Colemere*, L. R. 1 Ch. Appeal 128, and the cases cited therein, and *Sharp & Secord* v. *Robert Matthews*, 5 Prac. R. 10, decided by Mr. Justice Gwynne. Upon the argument before me, Mr. Harrison, counsel for the appellants, endeavoured to distinguish this case from *In re Colemere*, on the ground, that in the 3rd sec. of 6 Geo. IV. ch. 16, the word "fraudulent" is used, which is wanting in our Insolvency Act of 1864, sec. 3 sub-sec. c. Mr. Boyd, for the defendant, supported the judgment of the learned judge, and in addition, objected that the affidavits on which the attachment was issued were defective for uncertainty, and that they were so vague that it was impossible to say positively what was the act of bankruptcy on which the plaintiffs relied.

I am of opinion that the judgment of the learned judge is correct, and I cannot agree with Mr. Harrison's argument, that a sale made for a full consideration, and to a *bona fide* purchaser (which is not disputed in this case), should, under the provisions of our act, render the vendor's estate liable to compulsory liquidation, because, for some reason or other, he declines paying over the proceeds to some one of his creditors, although he may have ample means to satisfy all claims against him, as is positively sworn to in this case. The case of *Sharp* v. *Matthews*, to which reference has been made, is a stronger case in its circumstances than this, and is an authority in favour of the defendant. Mr. Harrison was obliged to contend in order to distinguish this case from *In re Colemere*, that in this Province, under the peculiar wording of our act, a deed might be valid *quoad* the purchaser, but an act of bankruptcy on the part of the seller It appears to me, on the contrary, that no conveyance, which itself is the act of bankruptcy relied upon, can be valid in favour of any party to it if the bankruptcy is upheld.

As regards the objection to the affidavits. I am of opinion that it is entitled to prevail, and that the affidavits in this case are insufficient. It is impossible to say whether the plaintiffs complain of an act, or an attempt to commit an act, and when we consider how essential it is to a party to know exactly with what he is charged, as the consequences to him are so penal, I think that the rule laid down in Chitty on Criminal Law, Vol. 1, p. 230, which is as follows:—"Another general rule relative to the mode of stating the offence is, that it must not be stated in the disjunctive, so as to leave it uncertain what is really intended to be relied upon as the accusation"—should be followed in cases of this description, and that an affidavit should state positively the act relied upon as constituting the act of bankruptcy.

The appeal therefore is dismissed with costs.

(In the County Court of the County of Essex.)

IN THE MATTER OF GILBERT MCMICKEN, AN INSOLVENT.

Insolvency.

A person who is insolvent at the time he contracts a particular debt or debts is not guilty of fraud within the meaning of section 8, sub-section 7, of the Insolvent Act of 1864, unless he conceals the fact or makes wilful misrepresentations as to his solvency at the time.

[Sandwich, 17th April, 1869.]

LEGGATT, Co. J.—Mr. Cleary, representing the firm of Gault Brothers, opposes insolvent's discharge on the ground of fraud, in this, that the insolvent obtained credit from their creditors, knowing or believing himself unable to meet his engagments, and concealing the fact from them with intent to defraud, etc. It is true that at the time insolvent commenced business in 1865 or 1866, in Windsor, he was to a certain extent involved, a balance of a large debt incurred in 1856 still remaining due and unpaid. There was no evidence adduced, however, by opposing creditors to show that at the time their particular debt was contracted the insolvent had misrepresented his position and circumstances. The creditors rely altogether on insolvent's own statements, on oath, in his examination before the Judge, to substantiate the charge of fraud. The insolvent, however, in his examination wholly disclaims any intention on his part when the debt was contracted with Gault Brothers of obtaining credit for the purpose of defrauding them. He states that all his purchases were made through an agent at Montreal, Mr. Crawford, who was well aware of his, insolvent's, liabilities, and could afford the parties from whom he purchased all the information they could wish, as to his insolvent's, circumstances. That in no single instance did Gault Brothers or any of his creditors make any enquiries of him personally as to his standing or solvency before advancing him goods.

A discharge under the Act of 1864 may be refused for, among other things, fraud or fraudulent preferences within the meaning of the Act. By section 8, sub-sec. 7, it is provided, "that if any person whosoever in Upper Canada who purchases goods on credit, or procures advances in money, knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person, thereby becoming his creditor, with the intent to defraud such person, or by any false pretence obtains a term of credit for the payment of any advance or loan of money, or of the price or of any part of the price of goods, wares or merchandise with intent to defraud the person thereby becoming his creditor, and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty of a fraud, and shall be liable to imprisonment for such term as the court may order, not exceeding two years, unless the debt and costs be sooner paid. * * Provided always, that in the suit or proceeding taken for the recovery of such debt or debts the defendant be charged with such fraud, and be declared to be guilty of it by the judgment rendered in such suit or proceeding."

There appear to be two courses open to the creditors under this clause. They may either object to insolvent's discharge on the ground of fraud under the Act when he applies for it, or they may sue the insolvent for the amount of their debt, alleging fraud, and have the fraudulent debtor imprisoned for any period not exceeding two years. It does not apppear that any action has been brought by the opposing creditors, under the above section of the Act, they simply content themselves with opposing insolvent's discharge. Mere passiveness on the part of the insolvent when he contracts a debt, and an omission to tender unsolicited a statement of his circumstances at the time of his effecting a purchase does not, I think, constitute an offence under the Act. One would imagine that nowadays when such facilities are afforded the wholesale merchant by commercial agencies of acquiring information as to a person's solvency or standing, that no advances would be made to anyone without first consulting these institutions, or putting direct questions to the would-be purchaser as to his ability to pay. In the latter case if the debtor wilfully misrepresented his affairs, it would be a concealing the fact, within the statute. Under the 253rd section of the English Bankrupt Act of 1849, similar in substance to the clause above quoted in our own Act, it has been held that to constitute a fraudulent obtaining of goods under that clause, it was necessary that the bankrupt should have obtained the goods by means of representations which he knew to be false at the time he made them, it was not sufficient to prove that he received the goods from the seller, who by urgent persuasion induced him, the insolvent, to purchase them: *Reg.* v. *Boyd*, 5 Cox, C. C. 502. Assuming that McMicken was involved when he commenced business in Windsor, the incurring of these subsequent debts is not fraudulent because he was insolvent. It is only those debts that are contracted with intent to defraud the parties from whom the goods are purchased that would constitute a fraud within the Act, and that intent I think, must be manifested by the insolvent taking some means to conceal his true condition, or his making misrepresentations as to his standing at the time of his obtaining credit: See 15 U. C. C. P., 71. I cannot say, from all that was elicited from the bankrupt here, that he contracted the debt of Gault Brothers, or any of his debts, knowing himself to be unable to meet his engagements and concealing the fact with intent to defraud them. The defendant is entitled to an absolute discharge.

MUNICIPAL CASE.

IN THE MATTER OF APPEAL OF THOMAS PAXTON, FROM THE COURT OF REVISION FOR THE TOWNSHIP OF SANDWICH WEST, AS TO ASSESSMENT OF FIGHTING ISLAND.

Assessment—Fishery attached to land—Licenses—Value.

[Sandwich, May, 1869.]

LEGGATT, Co. J.—The whole of the island is assessed as real property at $4,500. From the evidence of the assessor it appears that in fixing the value of the island at this sum he took into consideration the fact that there are several fisheries on the island, and that he put an estimate upon each fishery in addition to the land proper, and that the island itself, aside from the fisheries, would not be worth over $700 if assessed in proportion to neighbouring farms on the main land. I am induced to think the assessor was wrong in determining the value of the island in the way he did. If we consider what the terms "land," "real property," and "real estate," as used in the Assessment Act, mean, we find that they include "all buildings or other things erected upon or affixed to the land, and all machinery or other things so affixed to any building as to form in law part of the realty, and all trees or underwood growing upon the lands, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty." There is not a word about fisheries. If Mr. Paxton has a patent for Fighting Island, and the limits of the island are defined therein as extending to the channel bank around the island, it would not give him an exclusive right to fish in the waters adjoining or covering the channel bank. Unless the exclusive right to fish was given to Mr. Paxton expressly in his patent, he only takes the land covered with water subject to the right of all to use it for fishing and navigable purposes. The Minister of Marine and Fisheries, under the Fishery Act, has the power to grant fishing leases and licenses for fisheries and fishing wheresoever situated or carried on, and where the exclusive right of fishing does not already exist by law in favour of private persons. So that the right is not necessarily an incident attached, affixed or appurtenant to lands adjoining the river, but is a separate and distinct easement granted to the riparian proprietor adjoining the fishery, or any other person, at the option of the Minister of Marine. The principle involved in the Fishery Act is that of a right which has always been asserted by the Queen. Blackstone says that a free fishery or exclusive right of fishing in a public river is a royal franchise, and is considered as such in all countries where the feodal polity has prevailed. The statute points out how that right is to be exercised in this country, viz., by dividing the public or navigable rivers into limits, and granting exclusive licenses or limits to fish therein. The right to fish in these limits may be defined to be the same as a free fishery in England, that is, the right to fish irrespective of the ownership of the soil over which the water runs, or which may be adjoining, and therefore cannot be taxed as land or real property, or real estate, under the Assessment Act. The case of *The Buffalo and Lake Huron Railway Company* v. *The Town of Goderich*, 8 U. C. L. J. 17, is, I think, in point. McLean, J., in that case says: "There is, in my opinion, no doubt whatever that under our present Assessment Act (the definition of land is the same now as it was then) the water-covered part of the land cannot be taxed as part of the land, and cannot be looked upon apart from the water for the purpose of taxation." And Burns, J., says: "The legislature has defined what was meant by land, and there is no necessity for our extending that meaning in any way by the application of legal doctrines. The mentioning of mines, minerals, fossils, &c., convince me the legislature never intended to tax the use of water." "Everything," says Hickman, in his

Quarter Sessions, "is ratable under the denomination of land which implies a possessory interest in the soil itself, but not mere easements or incorporeal hereditaments which are incapable of occupancy, unless they are connected with the enjoyment of land and form part of its value. Our statute, however, limits the term land to all *buildings or other things* erected upon or affixed to the land, and all machinery or other things so *fixed* to any building as to form *in law part of the realty*. The term realty is used in contradistinction to incorporeal hereditaments, and means something visible and capable of being handled. If Paxton were to build a wharf on his island, that would be, I presume, something tangibly affixed to his land, and would be taxable as real estate; but a mere right to fish, if he does possess it, is neither visible or tangible, and cannot be affixed to his land according to the meaning of the statute. To all the fisheries there are, I suppose, attached landing-places and sheds or houses. These may be be looked upon as part of the realty; and if we value them at $500 and the land at $700, it will make the total value $1,200, to which I think the assessment ought to be reduced.

Order accordingly.

ENGLISH REPORTS.

CROWN CASES RESERVED.

REG. v. RITSON AND RITSON.

Forgery—Ante-dating a deed—24 & 25 Vict. c. 98, s. 20.

A deed really executed by the parties between whom it purports to be made, but ante-dated with intent fraudulently to defeat a prior deed, is a forged deed.

[C. C. R., 18 W. R. 73.]

Case stated by Hayes, J:—

The prisoners were indicted at the last Manchester Assizes under 24 & 25 Vict. c. 98, s. 20, for forging a deed with intent to defraud James Gardner. William Ritson was the father of Samuel Ritson, and prior to May, 1868, had been the owner in fee of certain building land, on the security of which he had borrowed of James Gardner more than £730 for which he had given him on the 16th of January, 1868, an equitable mortgage by written agreement and deposit of title deeds.

On the 5th May, 1868, William Ritson conveyed all his estate real and personal to a trustee for the benefit of his creditors, and on the 7th of May, 1868, there being then due to James Gardner from William Ritson a sum in excess of the value of the land, William Ritson and the trustee conveyed the land, in fee, to James Gardner, covenanting that they had good right to convey, except as appeared by the deed. The deed contained no mention of the deed which the prisoners were charged with forging.

James Gardner entered into possession of the land so conveyed to him, and about March, 1869, he employed William Ritson to erect some buildings on adjoining land, and permitted him to erect a shed on the land conveyed to him as aforesaid. He afterwards wished to have the shed removed, and upon Ritson's refusing to do so, removed it himself; Samuel Ritson thereupon brought an action of trespass against him, claiming under the deed charged as a forged deed.

This deed was dated the 12th of March, 1868, and purported to be a demise from William Ritson to Samuel Ritson for 999 years from the 25th March, then instant, of a large part of the frontage and most valuable part of the land which had been conveyed to James Gardner. It was executed by both the Ritsons, and professed to have been attested by a witness; but such witness was not called at the trial, nor was any evidence given as to the professional man by whom the deed was prepared. Although the deed was dated 12th March, 1868, it was proved by the stamp distributor who had issued this stamp, that it was not issued before the 7th of January, 1869, nor was the deed ever mentioned by the prisoners before that year.

It was contended on the part of the prosecutor that the deed was a forged deed, made after the prosecutor's conveyance, and ante-dated for the fraudulent purpose of over-reaching that conveyance, and so endeavouring to deprive the prosecutor of his estate under the said conveyance, and of a considerable part of the property for a long term, and leaving only a valueless reversion in him in such part of the property.

The counsel for the prisoners contended that the deed could not be a forgery, as it was really executed by the parties between whom it purported to be made, and that there was no modern authority in support of the doctrine contended for by the prosecution. He also contended that the prosecutor had obtained his conveyance by fraud, and that it was void against the prisoners, and if so, the lease would be rightfully made.

The jury found that there was no ground for imputing any fraud to the prosecutor with regard to his security and conveyance; and the learned judge having expressed an opinion in conformity with the authorities cited, on the part of the prosecution, informed the jury that if the alleged lease was executed after the prosecutor's conveyance, and ante-dated, with the purpose of defrauding him, it would be a forgery. The jury found both the prisoners guilty, and in pursuance of the request of the prisoners' counsel, the question whether the prisoners were properly convicted of forgery under the circumstances was reserved for the opinion of the Court for the consideration of Crown Cases reserved.

Torr for the prisoners.—There is no authority for holding this to be forgery, except the case of *Salway* v. *Wale*, Moore, 655, cited by Coke, 3rd Inst. p. 169. Coke there says:—The statute of 1 Hen. 5 hath these words [forge of new any false deed] and yet if A. make a feoffment by deed to B. of certain lands, and after A. maketh a feoffment by deed to C. of the same land, with an ante-date before the feoffment to B, this was adjudged to be a forgery within that statute, and, by like reason, within this statute also" (5 Eliz. c. 14); "and the rather in respect of the words subsequent [or make, &c.]." But there are no such words in 24 & 25 Vict. c. 98, s. 20, upon which this indictment is framed. The section only applies, to "forging or altering," and what was done here did not amount to forgery, and came within no definition of that offence. [MARTIN, B.—It is defined in 2 East, P. C. 852, as "a false making of any written instrument for the purpose of fraud and deceit]. There is a distinction between a mere false statement and an instrument false in itself, and this

was a mere falsehood. Suppose a man who had no property were to make a purely imaginary conveyance, that would clearly be no forgery: how does the case differ because he once had property with which he has parted, and then purports to convey it again? [BLACKBURN, J.—Is there any case which conflicts with the passage in 3 Inst. and the case in Moore?] No: but that case is not referred to in Comyn's Digest, tit. Forgery, and he defines forgery to be the fraudulent writing or publication of a "false deed." [BLACKBURN, J.—A deed is false if it purports to be what it is not; is not that the case where it purports to be of a day on which it was not in fact made—the date being material, and being inserted for the purpose of fraud?] I should submit that the deed is not false, but contains a falsehood, and might be ground for an indictment for conspiracy, or for obtaining money by a false pretence, but not for forgery.

Addison, for the prosecution.—According to all the authorities, this was a forgery, for it was the making of a false deed with intent to defraud. In addition to the definitions already quoted, it is said, in Bacon's Ab.: Forgery, p. 745: "The notion of forgery doth not consist so much in the counterfeiting of a man's hand and seal, which may often be done innocently; but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is in no way privy to; *or at least to make a man's own act appear to have been done at a time when it was not done*, and by force of such a falsity to give it an appearance which in truth and justice it ought not to have. Hence, it is holden to be forgery for a man to make a feoffment of certain lands to J. S; and afterwards make a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S., for herein he falsifies the date in order to defraud his own feoffee, by making a second conveyance which at the time he had no power to make: 3 Inst. 169, Pult. 46 b. 27 H. 6; 3 Hawk. P. C. c. 70, s. 2."

KELLY, C.B.—I have entertained some doubt upon this question, because all the authorities upon the subject are comparatively ancient, and long anterior to the statute 24 & 25 Vict. c. 98, or to 11 Geo. 4, c. 66, which was in operation before that statute was passed. But, on referring to all the ancient authors, and to all writers upon criminal law, Coke, Foster, Comyns, and others, we find that they are uniform to the effect, not that every instrument which contains a false statement is forged, but that every instrument which purports to be what it is not, as by purporting to be executed on a day on which it is not in fact executed, is a forgery if the date is material and is inserted with intent to defraud.

I think that it is impossible to distinguish this case from the old authorities and text writers, and that it comes within the definition of forgery given by them.

MARTIN, B.—I am of the same opinion. I agree with Mr. Torr that this is not an ordinary instance of forgery; but all the books, ancient and modern, concur in their definition of that offence, and this case is clearly within those definitions. In Tomlin's Law Dictionary, Forgery, 7, I find it said that "when a person knowingly falsifies the date of a second conveyance, which he had no power to make, in order to deceive a purchaser, &c., he is said to be guilty of forgery: 3 Inst. 169; 1 Hawk. P. C. c. 70."

BLACKBURN, J.—I am of the same opinion. The statute 24 & 25 Vict. c. 98, s. 20, makes it a felony to "forge" a deed with intent to defraud; it does not define forgery, and the question is what is included in that word. The correct definition, as I understand it, is that given by Baron Comyns: "Forgery is where a man fraudulently writes or publishes a false deed to the prejudice of the rights of another." Not "a deed containing a falsehood," but "a false deed." Then, according to the passage cited from Bacon's Ab. by Mr. Addison: "The notion of forgery may consist in making a man's own act appear to have been done at a time when it was not done;" and if an instrument purports to have been made at a time when it would have one effect, and has in reality been made at a time when it would have another effect, that I think would make the deed a false deed, and be forgery. The date of a deed is frequently quite immaterial, but here that is not so. The date is shown by extrinsic evidence to be false, and the deed is therefore a false deed within all the definitions. Even without any authority upon the question, I think that common sense would lead to this conclusion. But all the authorities are at one upon this point. Lord Coke refers to the Year Books to show that forgery includes this very case; the case in Moore as far back as the time of Queen Elizabeth, is to the same effect. In the case of Ann Lewis, Foster's Crown Cases, 116, the same view was taken by eleven judges in consultation. No authority can be cited on the other side, and the only argument against this view is that there is no recent authority in support of it.

LUSH, J.—I am of the same opinion. If the parties had originally made a deed bearing a true date, and had then fraudulently altered the date, no question could have been raised; it seems to me that it would be an absurdity that the alteration of a true date to a false should be a forgery, and yet that the making of a deed with a date originally false should not be. I think that this deed was "a false deed" within all the definitions, as purporting to be what it in fact was not.

BRETT, J., concurred.

CORRESPONDENCE.

Division Courts—Duty of Clerks in Court.

TO THE EDITOR OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—I have read the communication of your correspondent "Lex," in your December number, and join issue with him as to the alleged general custom in the Ontario Division Courts as to the minuting memoranda of orders and judgments declared in court, for to my knowledge, in an experience of more than twenty years, I can confidently assert, that the custom has only been exceptional and not general; more than this, it was never pre-

scribed by any rule or form (and it would be exceedingly inconvenient to occupy the valuable time of the judge if it were so), that the judge should fill up and sign forms on the Bench, or, make out written memoranda of his judgments or orders, when there is a clerk present and paid for the purpose, whose duty it is by the 42nd section of the D. C. Act, to cause a note of all orders and judgments to be duly entered. The recent rules and forms do not prescribe anything different in this respect to what the former rules did, and I do not see what "Lex" means by saying "until recently this custom has been almost universally followed by the judges;" there is nothing to hinder its being pursued still by those who like it, but in cities like Toronto, London and Hamilton, where the business of the court is large, the pursuing such a practice must have a tendency to consume time needlessly. The custom of the judge swearing the witnesses, wherever it took place (and that too I apprehend was only done in exceptional cases), was a very absurd one, and must have been pursued in ignorance of the very plain wording of section 101 of the D. C. Act, which requires the oath to be administered by "the proper officer of the court," which I suppose means the clerk.

I do not know what is the custom of order in the courts which "Lex" attends, but the old well-established and time-honoured custom of hearing all parties and their witnesses and proofs with all due patience by the judge, and then for the parties and their counsel to take their seats and wait for the public declaration of his decision by the judge, is, in my experience, the more common, and strikes my mind as the more seemly. I have never found any difficulty in hearing what is said by the judge on the Bench on those occasions, excepting when invaders of the profession, who act as agents, in ignorance and in violation of the rules of good breeding, get up to criticise the judgment either before it is concluded or during the course of its delivery, or after it has been delivered;—in exceptional cases, inexperienced members of the legal profession do this, but they soon learn better behaviour;—in all such cases the judge should insist upon the person so interrupting taking his seat, and should permit of no further discussion. Where he does not so insist, it is very apt to make confusion—but it is always easy for the clerk to gather from the judge what the decision is, and to correctly minute it. The Judge's list furnishes a sufficient safeguard against mistakes such as "Lex" suggests, because the judge minutes upon that what his decision is, and how every case is disposed of, and the list will always afford the means of testing the correctness of the clerk's entries. There is no reason at any time for the judge to say what "Lex" suggests he might say, "I cannot precisely remember,"—the list can always be referred to, if it is properly framed and properly kept,—and there can be no reason whatever for imposing the double duty upon the judge, of first minuting the decision on the back of the summons and of also entering it upon the list.

Yours respectfully,

"UNION."

Union, Jan. 17, 1870.

[In our last number we published a letter from a correspondent who styled himself "Lex." Desirous as we are of giving space in our columns for free discussion on all subjects within the scope of this journal, we published the letter, but at the same time without agreeing with the views expressed by the writer. We had intended at the present time to shew wherein "Lex" had erred, but the above admirable letter from "Uuion" saves us the necessity of speaking as fully on the subject as we should otherwise have been obliged to do. We entirely agree with "Union," and disagree with "Lex."

As to the latter, we think our correspondent was not correct in respect to "endorsing the judgment on the summons" when he said it was a general practice. Our experience is otherwise in one of the counties (Simcoe), doing the largest business in Upper Canada.

Our correspondent is wrong also in his law that a judgment once entered can be altered after the rising of the court, either by judge or clerk.

Evidently "Lex" is not very quick of hearing, or, the court he is familiar with is not conducted with the regularity becoming a court of justice. If so, more is the pity, and the sooner there is a change in this respect the better it will be for all concerned. We sincerely hope the majority of the courts in Ontario are not conducted with that disregard to all propriety which is implied by "Lex," nor can we believe that such is the case.

A person who is not capable of noting correctly the judgment as rendered by the judge,

cannot be said to be competent for the office of clerk; and in a well conducted court with an intelligent clerk giving himself wholly to the business in hand, we do not see how a mistake could be made; we must confess we see no good ground for advocating the theory that the judges should do that which it is the clerk's duty to perform.—EDS. L. J.]

Transmitting moneys to suitors by mail.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—Regarding the authority of a Clerk to transmit suitors' moneys on transcript of judgment, I have for the last eleven years, followed your valuable suggestion in the *Law Journal* for 1858, Vol. IV., page 37, and have never met with any difficulty on that subject. You then suggested: "When a Clerk sends a transcript of judgment to be acted on in another Division, let him forward with it an order to transmit the money, when made, by mail in bank notes, or by Post Office order."

At the foot of the "Transcript of Entry of Judgment," of which you kindly published a copy in the *Law Journal* for 1855, Vol. I., page 201, I wrote an order, authorizing the Clerk to whom the transcript was sent, to mail the money when made; that order was afterwards printed on the transcript, and is in the following words:

Preston, —— 18—.

SIR,—Please issue execution in the above cause forthwith, and on receipt of return thereto from the Bailiff of your Court, make proper return to this office. If money made, you will please remit the same by a Post Office Money Order to this office, if the Post Office of your place is a Money Order Office, otherwise remit said money in a registered letter to this office, at my risk, and oblige,

Yours respectfully,

—— Plaintiff.

If convenient, I obtained plaintiff's own signature at the time the transcript was ordered, otherwise I signed his name *per O. K.*

This plan of having the order *on* the transcript appears to me preferable to a separate or subsequent order from the plaintiff; it not only saves postage, time and labor, but shows the whole authority, power to issue execution and to remit, on one sheet; and is to all intents and purposes the same which is now stipulated by Rule 159 of 1869, and I think that if an order like the above, or to that effect, were printed on the back or at the foot of the transcripts now in use (Forms 98 and 100), it would be an improvement.

Respectfully yours,

OTTO KLOTZ.

[If all Division Court officers gave the same intelligent care to the working of the system they are concerned in administering as our correspondent, we should have fewer complaints from the public, or from officers. The suggestions of Mr. Klotz are very valuable, and many doubtless will act upon them.—EDS. L. C. G.]

Once Bishop Horsely met Lord Thurlow walking with the Prince of Wales. The Bishop said he was to preach a charity sermon next Sunday, and hoped to have the honor of seeing his Royal Highness present. The Prince intimated that he would be present. Turning to Thurlow, the Bishop said, "I hope I shall also see your lordship there," "I'll be —— if you do; I hear you talk nonsense enough in the House of Lords; but there I can and do contradict you, and I'll be —— if I go to hear you where I can't"—*Bench and Bar.*

APPOINTMENTS TO OFFICE.

(From the Canada Gazette.)

JUDGES.

The Hon. JOHN GODFREY SPRAGGE, of the City of Toronto, in the County of York, to be Chancellor of the the Court of Chancery for Upper Canada, now Ontario, n the stead of the Hon. P. M. M. S. VANKOUGHNET ideceased. (Gazetted January 1st 1870.)

SAMUEL HENRY STRONG, of the City of Toronto, in the County of York, Esq., Q.C., to be one of the Vice-Chancellors of the Court of Chancery for Upper Canada, now Ontario, in the stead of the Hon. J. GODFREY SPRAGGE. (Gazetted January 1st, 1870.)

(From the Ontario Gazette.)

DEPUTY CLERK OF THE CROWN, &c.

JAMES C. MORROW, of Barrie, Esq., to be Deputy Clerk of the Crown and County Court Clerk for the County of Simcoe, in the stead of JONATHAN LANE, Esq., deceased.

NOTARIES PUBLIC.

A. G. McMILLAN, of Elora, Gentleman, Attorney-at-Law; FREDERICK ARTHUR READ, of Petrolia, Esq., Barrister-at-Law; and HORACE THORNE, of Toronto, Esq., Barrister-at-Law. (Gazetted January 1st, 1870.)

CHARLES GREAM, of the Village of Madoc, Esquire. (Gazetted January 15th, 1870.)

JAMES A. MACPHERSON, of the Village of Kincardine, Esq. (Gazetted January 29th, 1870.)

ASSOCIATE CORONERS.

WILLIAM LINDSAY, of Napier, Esq., to be an Associate Coroner within and for the County of Middlesex. (Gazetted January 8th, 1870.)

JOHN MILTON PLATT, of Picton, Esq., M.D., to be an Associate Coroner within and for the County of Prince Edward. (Gazetted January 22nd, 1870.)