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DIVISION COURTS.

OFFICERS AND SUITORS.

CLERKS—*Answers to queries by.*

J. L. puts several questions as to his duties and responsibilities in the payment over of monies, &c.; the answers to which may be more conveniently thrown into the form of observations on the point.

There is a good deal of difficulty in respect to the payment over of monies to the parties entitled to the same: strictly speaking, when the amount of a claim is paid into Court, the Clerk should hold until the person entitled appears to demand it, or some one on his behalf presents an authority in writing to receive the money: but if this rule was strictly carried out, it would be inconvenient in the extreme to suitors; and yet we see much difficulty in a Clerk being otherwise properly protected. In England the practice is to give what is termed a "plaint note" when entering the suit, and on the after production of this document, not otherwise, the party is entitled to receive his money; but a new plaint note may be obtained by order of the Court, if the old one be lost. In our Division Courts no charge could be allowed for such a document, and in any case the practice seems more adapted to Courts where the suitors are not personally known to the Clerk; the reverse of which is the case in nearly every Division. All that can be done by Clerks is to make the best of the present practice; they should however bear this in mind, that they must be able to produce vouchers, properly a receipt in the Procedure Book, for all monies paid out. We shall notice a few of the common methods of transacting business, offering thereon such observations as occur to us. In the case of Stove and Fanning-Mill Pedlars, &c., their accounts and notes are usually put in by some person professing to be an agent for the plaintiff: well, these demands sued upon and the money made, to whom should it be paid? The Clerk would certainly be guilty of *lâches*, and render himself personally liable for the amount in case the plaintiff did not receive the money, if he paid to any one but the plaintiff's agent. An order in writing, signed by the plaintiff, may therefore in all cases be reasonably required by a Clerk before he pays over monies; doubtless payment to the person who originally left demands would be held to be sufficient, but it may not be possible for the Clerk in all cases to prove the identity of the person, particularly if there be collusion with intent to defraud. The method we would recommend in such cases would be to require the professed agent to make out a list of the claims given in, to sign it and leave with the Clerk; afterwards when the money is paid out to obtain the agent's signature to the usual receipt in the Procedure Books; there would then be at least something to show towards proving identity. Another method taken by some Clerks is to give a receipt requiring it to be produced when a subsequent application is made, and before the money is paid out; but it is very doubtful if the Clerk would be justified in holding the money until his receipt was produced, and in any case that practice is attended with much inconvenience.

Parties sometimes leave notes, directing them to be sued in the name of a third person; in such cases it will be always prudent to ask the party to make out a memorandum in writing of the direction, and sign it; or if the party declines doing this, the Clerk can inform him the demand cannot afterwards be paid to him when collected without a written order from the plaintiff.

It is usual when any clerk in the employment of a merchant or dealer, who is accustomed to transact his business, calls for money, for the Clerk of the Court to pay it over when he is personally cognizant of the fact of such employment, and no doubt it would be held a good payment; but to avoid after question, particularly where there is a large business from plaintiffs who employ a number of Clerks, it will be well to obtain general directions in writing from the plaintiff, specifying the different persons in his employment to whom monies may be paid: it is the common practice also to pay monies to any Attorney-at-Law who represents himself as having authority from the plaintiff to receive it, and this without requiring a written order to be produced. As a general rule it seems safe to pay under such circumstances; but the order may be called for if the Clerk thinks it necessary to his safety.

In case of the death of a party having money in Court, the Clerk should pay only to the executor or administrator who has proved the deceased person's will, or taken out letters of administration to his estate; and the Clerk may require the letters Probate or letters of administration to be produced, if not otherwise satisfied that the party is entitled to act in the character he assumes. If the amount is small and the property left is so trifling as not to bear the expense of Probate or administration, the Judge would probably on application of the party best entitled, make an order to pay over the money in Court without the expense of administering, &c. It may happen that a Clerk pays money on a forged order; and on this point we are particularly questioned as to how the Clerk is to be satisfied of the forgery: our reply is that the Clerk can only know that the order is a forged one by the prosecution and conviction of the alleged offender, and we are certain that no Judge would make

a summary order on a Clerk to pay money a second time without such conviction being shown.

On the whole, Clerks have a difficult and very responsible duty in the particular referred to, and require the exercise of no little caution and judgment so to act that the public may not suffer inconvenience, and that they at the same time may be kept safe. We would be glad to hear from Clerks having large business what their practice is.

J. C.—I wish to know if I, as Clerk, can sue a party owing me, in my own Division, or if I must sue in an adjoining Division?—The words of the Statute are "may." It will cost the defendant much more if I am compelled to sue him in another Division.

We think that under the Statute neither Clerk nor Bailiff can sue or be sued in the Division for which they act, but *must* sue and be sued in an adjoining Division. Such, in our opinion, is the true construction of the clause, and it has been so held by several of the Judges.

G. McC.—An interested party wishes me to sue out interpleader summonses, but I have declined to do so, as I believe it is the Bailiff who must give me the order to do it. Am I right?—please say.

You are right in declining to act; the Interpleader proceeding is designed for the protection of the officers of the Court, and summonses are to be sued out "on the application of *the officer charged with the execution of the process*": if the party applying to you be the claimant or judgment creditor, he does not answer that description.

A County Clerk.—A person enters an account with me, consisting wholly of a grog bill; I wish to know if it will be legal in me if I refuse to sue it? I have told him he can't collect it, but he insists.

You have no right to assume the office of Judge and determine on the parties' rights. You must enter the account on payment of the usual fees, but the plaintiff will gain nothing by the suit. Yet if he chooses to spend money after being informed that the demand is not recoverable, he has a right to please himself; it is not for you to dictate to him.

W.—I have reason to believe that one of the Bailiffs of the Court makes a practice of adding mileage beyond the actual distance from the Clerk's office, and many people have complained to me of it; I tell them they must complain to the Judge, for I have to go by the Bailiff's affidavit. I wish to do my duty, and if there is anything else I should do, would be pleased to hear of it from you.

If only a case or two of the kind appeared, it would be as well to leave those who feel aggrieved to appeal to the Judge; but if you know that the Bailiff makes a regular habit of overcharging, you should take a note of the cases, and report the matter to the Judge, who would probably cross-examine the Bailiff in open Court. A Bailiff guilty of extortion would be dismissed.

Bailiffs—*Answers to queries by.*

T. S. P.—A Bailiff had a few cases in which the parties asked him particularly to act as their agent in some suits in his own Court; one of the cases was called on and the Bailiff was about to examine one of defendant's witnesses, when the Judge stopped him and said he could allow no Bailiff to practice as Attorney in the Court. The Bailiff did not want to act as attorney, but as agent, and the act gives a man a right to send an agent; other Judges allow it. Can you say something in the case? You advocate, I know, a practice uniform.

You are altogether wrong; the Bailiff of a Court cannot properly be allowed to act as Agent for the parties, and if no other reason existed there would be this objection, that he cannot properly attend to the business of the Court and that of his principal at the same time. But there are other objections; the practice would inevitably lead to fraud and favoritism; and the case referred to was very properly checked by the Judge. We know of *no County* in which the practice of Bailiffs acting in Court as Agent or Advocate on behalf of Suitors is sanctioned by the Judge. We have placed the above *quære* under this as the appropriate head, though coming from a party who is not a Bailiff.

SUITORS.

Adjournment of Hearing.

If either the plaintiff or the defendant is unable to proceed safely to trial for the want of a material witness or on other grounds, he should apply, when the cause is called on, for an adjournment to the next Court, and if *reasonable grounds* to the satisfaction of the Judge are shewn, the cause will be adjourned on such *terms* as may be fair under the circumstances.

It is necessary to consider what are *reasonable grounds:* If the party requiring a witness sues out a subpœna, and makes proper and timely efforts to serve such witness and cannot find him;—if the required witness be unable to attend by reason of sickness or unavoidable absence, or from some unexplained cause is not in attendance, although regularly subpœnaed and his fees paid—or if the party to a suit is himself unable to attend from some unavoidable cause;—any of the foregoing, if proved to the satisfaction of the Judge, would be *reasonable grounds* upon which to ask for an adjournment: but if a party needing a witness does not take the precaution to summon him a reasonable time before the Court, or is otherwise grossly negligent in preparing himself for trial, he has no reason to complain if an adjournment be refused. *The terms* of an adjournment vary according to the circumstances of each case; if the party asking it is not ready, owing to his own negligence, the adjournment will be on payment "of the costs of the day": *i.e.*, the court costs of hearing and ad-

journment, and the expenses of the opposite party, for self and witnesses; and unless such costs are paid at once the case will not be adjourned. If from accident or otherwise, without fault of the party applying, he is not ready, the case is not unusually adjourned, "the costs to abide the event of the suit,"—that is, the costs of the adjournment are added to the other costs, and the loosing party pays all in the end. If a defendant has in ignorance or from accident failed to give notice of a set-off, or of a defence of which the law requires a notice to be given, he can in general obtain an adjournment subject to the terms already mentioned. The main thing is to show the Judge that the adjournment is not asked as a put-off merely.

Both the plaintiff and defendant should take care to have some one ready in Court, if themselves unable to attend, when the cause is called on, prepared with proof, if demanded, of the truth of the facts on which an adjournment is applied for; for if the opposite party should declare the alleged facts untrue, the Judge would require proof in support; the proof may be by affidavit prepared beforehand, or by any person who is in Court ready to testify. In case the ground be illness of the party or his witnesses, a medical certificate of the fact is usually deemed sufficient in those Courts we are acquainted with. In any case in which the party is unable to bring satisfactory proof entitling him to an adjournment, and judgment is given against him, he will be able afterwards, on making out good grounds, to obtain a new trial in the case. Hereafter we shall have occasion to speak more particularly in relation to the application for a new trial.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(*Continued from page* 63.)

OF COMPELLING THE ATTENDANCE OF WITNESSES.

The forms following are from the Act 16 Vict., chapter 178:—

Summons to a Witness.

PROVINCE OF CANADA, }
(*County* or *United Counties*, or *as the case may be*) of ——— }

To E. F. of ———, in the said (*County* or *United Counties*, or *as the case may be*) of ———:

Whereas information was laid (*or* complaint was made) before ———, (*one*) of Her Majesty's Justices of the Peace in and for the said (*County* or *United Counties*, or *as the case may be*) of ———, for that (*&c., as in the Summons*) and it hath been made to appear to me upon (*oath*) that you are likely to give material evidence on behalf of the (Prosecutor *or* Complainant, *or* Defendant) in this behalf; These are therefore to require you to be and appear on———, at ——— o'clock in the (*fore*) noon, at ———, before me or such Justices of the Peace for the said (*County* or *United Counties, or as the case may be*) as may then be there, to testify what you shall know concerning the matter of the said information (*or* complaint.)

Given under my Hand and Seal, this ——— day of ———, in the year of our Lord ———, at ———, in the (*County, or as the case may be*) aforesaid.

J. S. [L.S.]

Warrant where a Witness has not obeyed a Summons.

PROVINCE OF CANADA, }
(*County* or *United Counties*, or *as the case may be*) of ——— }

To all or any of the Constables and other Peace Officers in the said (*County* or *United Counties*, or *as the case may be*) of ———:

Whereas information was laid (*or* complaint was made) before ———, (*one*) of Her Majesty's Justices of the Peace, in and for the said (*County* or *United Counties, or as the case may be*) of ———, for that (*&c., as in the Summons*) and it having been made to appear to (*me*) upon oath, that E. F., of———, in the said (*County* or *United Counties, or as the case may be*) (*laborer*) was likely to give material evidence on behalf of the (*prosecutor*) (*I*) did duly issue (*my*) Summons to the said E. F., requiring him to be and appear on———, at ——— o'clock in the (*fore*) noon of the same day, at ———, before me or such Justice or Justices of the Peace for the said (*County* or *United Counties*, or *as the case may be*) as might then be there, to testify what he should know concerning the said A. B., or the matter of the said information (*or* complaint): And whereas proof hath this day been made before me, upon oath, of such Summons having been duly served upon the said E. F.; and whereas the said E. F. hath neglected to appear at the time and place appointed by the said Summons, and no just excuse hath been offered for such neglect; These are therefore to command you to take the said E. F., and to bring and have him on———, at ——— o'clock in the —— noon, at ———, before me or such Justice or Justices of the Peace for the said (*County* or *United Counties, or as the case may be*) as may then be there to testify what he shall know concerning the said information (*or* complaint.)

Given under my Hand and Seal, this ——— day of ———, in the year of our Lord ———, at ———, in the (*County, or as the case may be*) aforesaid.

J. S. [L.S.]

Warrant for a Witness in the first instance.

PROVINCE OF CANADA, }
(*County* or *United Counties, or as the case may be*) of ——— }

To all or any of the Constables, or other Peace Officers in the said (*County* or *United Counties, or as the case may be*) *of*———:

Whereas information was laid (*or* complaint was made before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said (*County* or *United Counties, or as the case may be*) of ———, for that (*&c., as in the Summons*) and it being made to appear before me upon oath that E. F., of———, (*laborer*) is likely to give material evidence on behalf of the (*prosecutor*) in this matter, and it is probable that the said E. F. will not attend to give evidence without being compelled so to do; These are therefore to command you to bring and have the said E. F. before me, on———, at ——— o'clock in the (*fore*) noon, at ———, or before me or such other Justice or Justices of the Peace for the said (*County* or *United Counties, or as the case may be*) as may

then be there, to testify what he shall know concerning the matter of the said information (*or* complaint.)

Given under my Hand and Seal, this ——— day of ———, in the year of our Lord ———, at ———, in the (*County, or as the case may be*) aforesaid.

J. S. [L.S.]

COURTS OF PETTY SESSIONS.

Before entering upon the details of proceedings before Justices acting judicially, it will be proper to notice the constitution and management of the Courts, which should properly be held by Magistrates for the trial and determination of cases of summary conviction.

Courts of Petty Sessions are formed in England by the periodical or occasional meetings of Justices of the Peace acting within certain Divisions or Districts, into which every County is divided; but there, as well as in Upper Canada, a Petty Session may be held by *any two Justices* on their private arrangement.

The Counties in Upper Canada have not hitherto been so divided either by arrangement between the Magistrates, or by order of Sessions, although it would certainly be desirable that cases arising in each locality should be decided before Magistrates acquainted with parties, and therefore better able to form an opinion of the real merits of the case, rather than by Magistrates from a distance.

An incorporated Village, a Township, or a part thereof, might be made to constitute a Division for the purposes referred to, and the Magistrates residing within it could appoint some convenient place and meet at stated intervals, say once or twice a month, or in more populous Divisions, weekly, to hold the Petty Sessions for the Division. Magistrates have, no doubt, power to hear many cases singly even at their own private residences, but it is more advisable that all their judicial business should be transacted in concert with each other, in a public place and at regular intervals. This will be sufficiently obvious from the following considerations.

There are many casess in which it is not competent for a *single* Magistrate to convict; and while an appeal lies from the judgment of *one* Justice, where *two* or more concur, the judgment, in several cases, is *conclusive*. Should any difficult question arise, there is a great advantage in bringing the united knowledge and experience of a Bench of Magistrates to aid in its solution; but above all there is this strong argument to favor the establishment of Petty Sessions: even a single Justice sitting for the trial of causes is, as it were, a Court of Justice for such purpose; and Magistrates, whenever acting in a case of summary conviction, exercising judicial authority, determine both the law and facts. Now, one of the essential qualities of a Court of Justice is, that its proceedings should be public; and just and satisfactory administration is best secured by publicity, and by it the moral effects of a firm and just administration of the law are best promoted. Nor is it a small matter that a Court should be so constituted as to present the form and attributes of a legal tribunal. An open trial and judgment before a Bench of Magistrates will always carry more weight than a sitting by a single Justice, or by several Justices in a private dwelling, and at uncertain periods.

Nor is it by merely meeting in a place capable of containing many hearers *that* publicity spoken of is obtained—it is by regular known, periodical sittings, to which the public will resort, a *Court* of Petty Sessions.

It is submitted that the judicial business of Magistrates should not be transacted singly nor at their private residences, but in a Town Hall, Schoolhouse, or other public place [1] at regular known periods, and that all process issued by Magistrates in the surrounding neighborhood, except in cases requiring immediate action, should be made returnable at the day and place appointed for holding the Court of Petty Sessions. An arrangement of this kind could be made in most localities, and would tend to dispatch in business, as well as greatly convenience both Magistrates and parties.

We now proceed to suggest how such a Court should be commenced and managed. The Court of Quarter Sessions having formed a County into Divisions, or the Magistrates of a locality having themselves arranged a Division, should meet and settle on the place and times of meeting, and if possible procure a competent person to act as Clerk—the general power of Magistrates to appoint a Clerk is, it may be here noticed, distinctly recognized by the 14 and 15 Vic., ch. 119, sec. 2—whose duty it would be to keep a record of the proceedings of the Court, to take down evidence in the presence of the Magistrates and prepare necessary forms,—or this duty might be undertaken by one of the Magistrates. A chairman also should be chosen to preside at each Court. On the day appointed for any sittings, two or more Magistrates having taken their seats, the Court might be opened by the Constable in attendance, with a proclamation to the following effect:—

"Hear ye, Hear ye! All manner of persons who have anything to do before this Court of Petty Sessions, draw near and you shall be heard.—GOD SAVE THE QUEEN."

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[1] It is very much to be regretted that Magistrates in many instances hold their Courts in a room in a Tavern: this practice is very objectionable. The remarks in the March number of the *Law Journal* in respect to Division are equally applicable to Magistrates Courts.

The parties are often unavoidably delayed for hours before their matters are disposed of, and are naturally tempted to the bar-room, and not unfrequently leave it in a state of intoxication. We quite agree that it would be better to hold Court in a barn than on the confines of a bar-room.

The several cases for trial, having been previously set down on a list, might then come on in order, the parties and their witnesses being called by the Bailiff, and the further business proceeded with after the usual manner of Courts. Further particulars respecting the mode of conducting trials will come more appropriately hereafter. In every Court of Petty Sessions there should be a minute-book kept by the Clerk or Chairman, showing the time and place of each meeting, the names of the Magistrates present, and the proceeding had before them,—the minutes of each sittings to be signed by the Magistrates present, so as to form a properly authenticated Record for future reference.

In the Court of Petty Sessions, and indeed on all occasions when exercising judicial authority, Magistrates must sit in *open Court*, to which every one may have admittance to a reasonable extent, so long as they behave themselves orderly and with propriety. And a Magistrate, if he hears a case in his private residence, makes it for the occasion a Court of Justice, and must accordingly throw open his doors to the public.[2] The 16 Vic., ch. 178, sec. 12, has this express enactment on the subject, viz: the room or place in which the Justice or Justices shall sit to try any complaint or information (in a case of summary conviction) "shall be deemed an open and public Court, to which the public generally may have access so far as the same can conveniently contain them."

Having now shown something of the Constitution and Management of the Court of Petty Sessions, it is proposed in the next place to consider in detail the proceedings at the hearing and trial of cases before Magistrates.

MANUAL, ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURT.

(*For the Law Journal.*—By V.)

CONTINUED FROM PAGE 66.

DUTIES OF BAILIFFS GENERALLY.

The duties of Bailiffs generally are set down in the 13th sec. of the D. C. Act in the words following: "The Bailiffs of the Court shall serve all "summonses and execute all such warrants, pre- "cepts and writs; and each of such Bailiffs shall "also exercise the power and authority of a Con- "stable and Peace Officer during the actual holding "of the Division," and by the 29th sec. of the D. C. Extension Act and the 2nd sec. of the 18th Vic., chap. 125, they are authorized to serve summonses and other process, whether issued in the County in which they act, or from a Division Court in any other County in Upper Canada. It will be necessary hereafter to allude more in detail to the duties of Bailiffs by Statute and Common Law; at this place we need only add that the officer does not appear to have the right of appointing a deputy to perform any part of his duties; in the case of process directed to him by name, he has clearly no right to make a deputy to execute it, and even where process is directed to the party, the whole tenor of the Statutes goes to show that the Legislature contemplated service by the Bailiff himself, and looking at the Rules it would appear that the Commission so construed the law.—Further, the office is one of considerable trust—(due service lying at the very foundation of the Judge's jurisdiction) it is held during pleasure: and as it must be presumed that the Judge, in appointing, trusted the Bailiff, and him alone, notwithstanding the office is a ministerial one, no such right would arise at common law.[1] It is not usual however for the Judge to appoint or sanction the appointment of some proper person to effect service of process in cases of emergency; but then the person so appointed is for the occasion and purposes named a Bailiff of the Court.

DUTIES OF BAILIFFS PREVIOUS TO THE SITTINGS.

In respect to service of Process.—Bailiffs should so regulate their proceedings that at proper intervals they may attend at the Clerk's Office to receive Summonses intended for service. Clerks should assist Bailiffs of their Courts in seeing that the originals and the copies of summonses and claims correspond: the original summonses properly remain in the office, the Bailiff takes the copies with him.

Every care should be given to ascertain where the several defendants live, and if there be more than one person of the same name in the locality, which person the summons is intended for; this

[2] Bushney v. Cooper, 10 B. & C. 940.

[1] It is not intended to convey the idea that service by a *Bailiff* is indispensable: by whomsoever process is delivered to a defendant, the Judge in his discretion may hold it to be good service, the object being to bring the summons to the notice of the defendant; but in the text we speak of the Bailiffs right to appoint a deputy which is the principle to which we object.

As to service simply, the question of what is due proof rests absolutely and entirely in the discretion of the Judge.—(*Davies* v. *Watson*, 16 Jur. 986.)

information is usually given by plaintiffs to the Clerk or is noted in the claim handed in for suit, and before the papers are taken from office, should be obtained. In Courts where the business is large, it will be absolutely necessary for the Bailiffs to make out a list of the summonses received, with columns for date and mode of service: it would otherwise be impossible to work to advantage, or to make proper returns to the Clerk.

The service of summons is made either by delivering a copy thereof *personally* to the defendant, or by delivering such copy to an inmate of the dwelling-house or place of business. In actions against absconding debtors after a Warrant of Attachment has been sued out, the copy of summons may be served either personally or by leaving a copy at the defendant's last place of abode: and such service of summons must be made ten days at least before the day when the same is returnable; in computing this ten days, neither the day of service nor the day of holding the Court is to be counted, (see the 24th sec. of the D. C. Act and Rule 22); there is an exception however in case of summonses under the 91st sec. of the D. C. Act, "Judgment summons," as they are called; in process of this description, service *at any time before* the day appointed for the appearance of the party is a good service if it be proved to the satisfaction of the Judge that such party was about to remove out of the jurisdiction of the Court (Rule 23). We would proceed now to note the mode of service more particularly.

Personal service of Summons.—In all places where the plaintiff's claim for debt or damages is more than forty shillings, the 24th sec. of the D. C. Act provides that the service on the defendant must be *personal;* what would amount in law to a personal service is a question for the Judge to determine, but it is not absolutely necessary to put the copy of summons into the actual *corporal* possession of the defendant, for whether a Bailiff touches him or puts it into his hand is immaterial for the purpose of personal service: it is sufficient if the officer sees the defendant or speaks with him, and draws his attention to the summons and leaves the copy for him, (*Phillips v. Ensell*, 2 Dowl. 684); and as by sec. 10 of the D. C. Extension Act the Judge is empowered to adopt and apply the general principles of practice in the Superior Courts to actions and proceedings in the Division Courts, the following cases will shew the circumstances under which a Judge acting in a Division Court would no doubt hold a sufficient personal service made out.

If after informing a defendant of the nature of the process and tendering the copy, he refuses to receive it, then placing it on his person or throwing it down in his presence, or leaving it at his house, would be sufficient service. When a process was put through the crevice of the door to a defendant who had locked himself in, the service was deemed sufficient; and the same where it was enclosed in a letter which was proved to have been received by the defendant, and that he took out the copy. In these and other similar cases the Courts have dispensed with strict personal service, when it appeared that the process had come to the possession of the defendant. (See cases cited in 1 Arch. Prac. 115.)

In many counties we are aware that the principles of the decisions referred to have been acted on, and it certainly seems proper that they should; for the object of service, to give the defendant timely notice of the claim against him, and when and where he is required to answer it, is sufficiently accomplished. Bailiffs then should keep this in view, and do all in their power to bring the summons to the timely notice of the defendant, and in peculiar cases instead of making the usual affidavit, note on the back of the original summons, "served under peculiar circumstances to be submitted to the Judge"; then when the case is called on, the Bailiff can state on oath the circumstances under which the service was made, and the Judge will determine upon the facts laid before him, if the requirements of the Statute have been sufficiently complied with—if there be sufficient to satisfy his mind that the process has been duly served.

In the practice of the Superior Courts it is deemed sufficient where the process is against both husband and wife, to serve the wife only. (Arch. Prac. 116.)

If the summons be against a Municipality, Trustees of a School Section, or other Corporation, the spirit of the Act is complied with by service, as in

the Superior Courts, on the President, Presiding Officer, Secretary or Treasurer of the Corporation.

Thus the copy of summons and claim would be served, in an action against a County Municipality, on the Warden or Clerk; against a Township Municipality, on the Reeve or Township Clerk; against School Trustees, on the Chairman or Treasurer. It is sometimes provided by the particular Act of Incorporation on whom process is to be served; when so provided the provisions of the Statute must be pursued.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

BABY QUI TAM *v.* WATSON.

(Reported by C. Robinson, Esq., Barrister-at-Law.)
(Hilary Term, 19 Vic.)

14 & 15 Vic., ch. 7, effect of—Sale of right of entry, and pretended rights—Registry laws.

A. the owner of certain lands, conveyed to the plaintiff by deed, which was never recorded; the plaintiff conveyed to others, who registered their deeds: the defendant, A's. son and heir at law, subsequently released to S., which was also recorded; the defendant had never been in possession, but the persons to whom the plaintiff conveyed were. The plaintiff having sued the defendant for the penalty under 32 Hen. VIII., chap. 9, for selling a pretended right:

Held, that the 14 & 15 Vic., ch. 7, would not apply in defendant's favor, for that only allows the sale of a right of entry, and as his father's deed was binding upon him, he had no such right; but

Held, also, that by the registry of the deed to S., the conveyance to the plaintiff became fraudulent in its inception, and therefore he could not recover.

Semble, that the effect of the 14 & 15 Vic., ch. 7, is to repeal the 32 Hen. VIII., and not merely to permit the sale of a right of entry subject to the penalty.

Debt, on the statute 32 Hen. VIII., ch. 9. The declaration contained two counts. *Plea*—Not guilty, *by statute*.

At the trial, before *Burns, J.*; at the last assizes held at Sandwich, the plaintiff's counsel opened the following case to the jury:—John Gowrie Watson became the purchaser of lots 2 and 3 in the first concession, west side of the communication road in the township of Harwich, and parts of lots 2 and 3 in the first concession east side of the communication road in the same township, in all 693 acres, at sheriff's sale for taxes, and on the 15th of October, 1842, obtained the sheriff's deed for the same, which was registered on the 26th of October, 1843. The title was previously a registered title. Watson, by deed of release, dated 22nd of May, 1843, conveyed the same lands to the plaintiff, but this conveyance had never been registered. The plaintiff subsequently conveyed the land to other persons, and it had passed through several hands since, and these subsequent conveyances were registered. After the death of John Gowrie Watson, the defendant, who was his heir at law, by deed of release, dated 31st of January, 1855, in consideration of 5s., conveyed the same lands to one William Sheldon. This conveyance was registered on the 10th of February, 1855. The defendant never had been in possession of any part of the lands, but the persons to whom the plaintiff had conveyed were in possession after the plaintiff conveyed. The plaintiff's counsel proposed to prove that the defendant, before he conveyed to Sheldon, was aware of his father's conveyance to the plaintiff, and was also acquainted with the fact that the plaintiff had transferred to other parties, who were in possession before he executed the deed to Sheldon.

The learned judge nonsuited the plaintiff on these facts, conceiving that the effect of the registry law was to give validity *primâ facie* to the subsequent conveyance, being registered, over the unregistered conveyance of the defendant's ancestor to the plaintiff; and that although it might be urged that Sheldon was not a subsequent purchaser for valuable consideration, so as to enable him to take the benefit of the provision of the statute in favor of deeds made to subsequent purchasers for valuable consideration, yet that such a matter was not the subject of enquiry in an action of this description, for the penalty under the statute of Hen. VIII.

The plaintiff accepted a nonsuit, with leave to move against it. During last term, *O'Connor* obtained a rule *nisi* accordingly.

Prince shewed cause, and cited Doe dem. *Williams v. Evans*, 14 L.J. (C.P.) 237.

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

This case brings up one or two rather curious questions. Our statute 14 & 15 Vic., ch. 7, allows a person now to sell a right of entry. Before that the owner of such a right, while dispossessed, could not dispose of it at common law, and was further precluded by 32 Hen. VIII., ch. 9, which forbids the sale of *pretended rights*, for in the construction of that statute it has always been holden that the being disseized turned a good right of entry into a pretended right, the sale of which would bring a man under the penalty of the act.

But now we take it, that as a man may legally sell and convey "*a right of entry*," he is safe from the penalty in 32 Hen. VIII. ch. 9, in doing so, for he can no longer be looked upon as selling a pretended right, when the law allows such right to be the subject of legal conveyance. It is contended that our statute 14 & 15 Vic., chap. 7, has not that effect, but that, though the right of entry may pass, the penalty may still be incurred. We do not at present think so; but it would have been well if our statute had taken notice of the 32 Hen. VIII., ch. 9, and had not left it doubtful how far its provisions were intended to be superseded.

However this may be, the law is only changed as to the case in which a party has conveyed "*a right of entry*," not when he professes to convey a right, when in fact he has none; and the case of a man who has no right taking upon himself to make a deed to another of land which a third party is in possession of, seems to us not to be affected by our statute 14 & 15 Vic., ch. 7, for it cannot be denied that that would be selling a pretended right.

Now, looking at the facts of the case before us, it is true that the defendant, when he made his deed to Sheldon, had no right of entry, for his father's deed to the plaintiff was binding upon himself and upon the defendant, who claimed under him; and though liable to be defeated by the prior registry of a subsequent conveyance, yet no right of entry or title of any kind remained in the defendant, at the time he gave his deed to Sheldon, nor till the registration of the subsequent deed, and so far he came within the statute of Hen. VIII. that he would have been liable, if any one now can be, to the penalty imposed by it: but when by the registry of the deed to Sheldon that deed had gained priority over the deed to the plaintiff, then, in order to carry out the Registry Act, we must hold that deed to have been in its inception fraudulent and void, in which case a right of entry was always continuing in the defendant the same as if that deed had never been made.

In the case of *Major qui tam v. Reynolds*, in this court, Hilary Term, 6 Vic., the same view was taken of this point, and we adhere to that opinion.

The consequence is, that the deed to Sheldon must, so far as the Statute of Maintenance is concerned, be considered as lawful, and the plaintiff was therefore properly nonsuited.

Rule discharged.

Read v. The Municipal Council of the County of Kent.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

(Hilary Term, 19 Vic.)

Registry books—Liability of County Council for—16 Vic., ch. 187, sec. 3.

A., the registrar of Kent, applied to G., the registrar of Huron, to order books for his office: G. ordered two books from the plaintiff in A.'s name, and these were charged to A.; three others were afterwards furnished, which the plaintiff charged in his books to "The County of Kent, for Mr. A."

Held, that the plaintiff had no right of action against the County Council.

Assumpsit for goods sold and delivered, and upon an account stated. Plea, non-assumpsit.

At the trial, before *Burns, J.*, at the last assizes held at London, the facts appeared to be these: The late Mr. Ackland had been appointed registrar for the county of Kent, and at the time of his appointment the office required books for the registry. Mr. Ackland applied to Mr. Galt, the registrar for Huron, to order what books would be requisite, and to assist him to put his office in order. Mr. Galt did order books from the plaintiff for the registry, and ordered them in Mr. Ackland's name; and Mr. Galt said he supposed the plaintiff gave credit to Mr. Ackland, for it was usual, he said, for the registrar to purchase books, and for the treasurer of the county to repay him. The plaintiff furnished at first two books at £5 each, and the original entry of those was against Mr. Ackland. Subsequently three books were furnished at £15 4s. 6d., and the entry made in the plaintiff's books was "The County of Kent, for Mr. Ackland." After Mr. Ackland's death another book was ordered, at £5 10s., and the entry of that was "The County of Kent, for Mr. Knapp," (the newly appointed registrar.) The last mentioned book was paid for by Mr. Knapp, and repaid to him by the treasurer of the county. The amount of the first two books was not paid, but the second bill, £15 4s. 6d., was paid to Mr. Ackland by the treasurer of the county on the 4th of April, 1854, and a few days after that Mr. Ackland died, without having paid the plaintiff. The plaintiff rendered an account of the five books in Mr. Ackland's name. At the time the county of Lambton was set off from the County of Kent, one of the five books was delivered to the registrar of Lambton, with the extracts which the statute requires in such cases; but the plaintiff knew nothing of that, and had nothing to do with it. The plaintiff said when the books were sent that he would supply the county, but not Mr. Ackland.

It was objected, on the part of the defendants, that the plaintiff could not recover, first, because it was not shown that the registrar was authorized by the Municipal Council to make the purchase of the books; secondly, because no contract under seal was proved, in order to bind the corporation.

The jury were asked to find whether the credit was given by the plaintiff to Mr. Ackland or to the county, and they found that the books were furnished by the plaintiff on the credit of the county. Upon this finding the learned judge directed the verdict to be entered for the plaintiff for the amount claimed, £27 5s., subject to the opinion of the court whether the verdict should be entered for the defendants generally, or be reduced to £10, the price of two books, if the £15 4s. 6d. could be considered to have been paid; or reduced further to £5, if the County of Kent was not liable for the price of the book which the County of Lambton obtained.

The case was argued by *John Wilson* for the plaintiff, and by *Boecher* for the defendants.

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

If the statute on which the plaintiff relies for supporting this action had been at hand to be referred to on the trial, we think there could have been no hesitation in determining that he could not succeed.

The plaintiff, of course, could not enable himself to recover against the defendants by showing that he had at the time charged the articles to them in his own books, or had delivered accounts against them for the price. It was not with such a view the evidence was given; and indeed, so far as it did go, it rather established a case in favour of the defendants than against them.

It is clear from the evidence that the defendants neither directly nor in any manner gave an order upon the plaintiff to furnish the books, and therefore the case wholly rests upon the effect of the statute 16 Vic., ch. 187, sec. 3, in making the county liable; and it was argued upon that ground.

The provision is, that "whenever a registrar shall require a new registry book, the same shall be furnished to him by the treasurer of the county, on his application therefor, and shall be paid for by such treasurer out of the county funds; and if such treasurer shall refuse or neglect to furnish such book within thirty days after the application of the registrar, the registrar may provide the same, and recover the cost from the municipality of the county."

It was not proved that Mr. Ackland, the registrar, had ever applied to the treasurer of the county for the necessary books, and there could not therefore have been that refusal or neglect to furnish them after application which would entitle the registrar to procure them himself; and if there had been, the consequence, according to the act, would have been, not that the person furnishing them could have sued the county, but that the registrar, when he had bought and paid for the books, could have recovered the amount from the county. Whether, however, in such a case, to prevent circuity of action, the person furnishing the books could have sued the county, is not necessary to be determined in the present case, because here the facts were different. Mr. Ackland did not afford to the treasurer of the county an opportunity to procure the books, but went directly in the first instance and selected such as suited him, and bought them where he pleased.

This was not what the statute authorised, and therefore no right of action can be created under the statute. And the distinction is not an idle one; for we see that the county here, having paid the treasurer for three books out of the five, would have to pay twice for those books if they should be held liable in this action; and this could not have happened if the provisions of the Act had been attended to and followed out, for then they would have either bought them themselves and paid for them, or would by their neglect to buy them have rendered themselves liable to the registrar when he had paid for them, but not before.

No person looking at the clause of the statute could have any right to conclude from it that he could hold a county liable for registry books which were not ordered by the council or the treasurer, or by any authority from one or the other. A verdict should, in our opinion, be entered for the defendants.

Judgment for defendants.

Perry v. The Town Council of the Town of Whitby.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

(Hilary Term, 19 Vic.)

By-law, form of rule Nisi to quash—Insufficient rate.

A rule *Nisi* to quash a by-law, obtained near the end of term, was made returnable eight days after service; the defendants appeared, and objected that the rule should have been to show cause on a day certain. *Held*, that this objection, if fatal, was waived by the appearance.

The by-law in this case was clearly bad, the rate directed to be levied in the first year being insufficient.

M. C. Cameron obtained a rule *Nisi* to quash by-law No. 18, passed on the 27th of November, 1855:

1. Because it does not fix a day within the financial year in which it was passed, when the same shall take effect.

2. Because the time is uncertain when it is to come into force, and the time during which the special rate is to be levied is also uncertain, and at all events no part of the sum required is to be raised in the year 1855.

3. Because it provides that if the rate imposed by it shall in any year be insufficient, the deficiency shall be made up from the general funds of the town, which funds cannot legally be so appropriated.

4. Because the rate of 5¼d. in the pound, thereby required to be levied annually, will be insufficient for the first year of the ten to pay £125 and interest on the whole sum unpaid, as required to be paid by law in that year.

5. Because the sum £7127 10s. 5d. was not the amount of ratable property in the town of Whitby, ascertained by the assessment returns of 1854. and there were no such returns *for that year* for the town of Whitby; and the persons voting at the general meeting of qualified electors for considering the said by-law were taken from the assessment rolls of 1855, and not from the collector's roll for 1854.

The by-law was passed for raising £1250 by way of loan, for the purpose of purchasing the site of a market, and defraying the cost of erecting market buildings thereupon, in the town of Whitby.

It recited that it was advisable to purchase certain lands specified, for the purpose of erecting market buildings thereon, and that it was expedient to raise by loan a sum sufficient to pay for the land, and for erecting the buildings, being £1250; that the whole ratable property of the town of Whitby for 1854, was £7127 10s. 5d.; that the annual rate in the pound required as a special rate for the payment of the interest, and the creation of a sinking fund for the principal, of a loan of £1250, is 5¾d. in the pound.

And it then enacted, that it should be lawful for the Mayor of the town to raise by way of loan, at a rate of interest not to exceed six per cent per annum, upon debentures and the special rate theron imposed, a sum of money not exceeding in the whole £1250, to be applied to the purposes mentioned.

2. That the Mayor might issue debentures for £1250, in sums not less than £25 each, dated on the day on which they should issue, and payable at the several and respective periods 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 years; and that no greater sum than £125 of the principal, being one-tenth part of the said loan, should be made payable in any one year, and the interest half yearly on such parts of the principal as remained unpaid, said debentures to be made payable at the agency of the Bank of Montreal, in Whitby.

3. That for payment of the debentures and interest there should be assessed, &c., upon the assessed value of all the ratable property in the town, over and above all other rates and taxes, a special rate of 5¾d. in the pound annually from the year 1856 to 1865, both years inclusive; provided always, that if the rate in any one year should prove deficient for the purpose aforesaid, such deficiency should be made up from the general fund of the town.

Wilson, Q.C., showed cause, and objected that the rule *Nisi*, having been taken out too late for obliging the Municipality to answer it during last term, not being drawn up till the last day but one of the term, ought to have been made returnable on some certain day in this term, in order that the Municipality might know when they could be called upon to answer it. He cited *Mitchell v. Foster*, 12 A. & E. 472; *Smith v. Collier*, 3 Dowl. 100; *Arthur v. Marshall*, 13 M. & W. 465; *Sells* and *The Municipality of St. Thomas*, 3 C. P. 286.

M. C. Cameron supported the rule.

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

The statute 12 Vic., chap. 81, sec. 155, as amended by 14 & 15 Vic., ch. 109, sched. A. 21, directs that the rule shall be made "to show cause within not less than *eight days* after service."

We cannot tell certainly whether the legislature meant by this that the rule should be drawn up exactly in these terms, or should appoint some day for showing cause, which should not be less than eight days after service. The language of the clause is rather inaccurate in using the word "within"; what was meant was, not that the defendants should be called on to show cause *within* not less than eight days, but that not less than eight days must elapse.

This rule was drawn up to show cause eight days after service, not naming any day, but the Municipality must be supposed to know that cause could only be shown in term, and they appear to have been aware that they must shew cause in the next term, for they did appear and answer, though they objected.

We think the appearance is a waiver of any objection in respect to the return, for the rule has had its effect. In the cases cited by Mr. Wilson the party served with the rule had not appeared, and the rule had been made absolute in his absence, and the question was whether it was regular to make it absolute.

It would be to be regretted if we unnecessarily caused delay by giving way improperly to the objection; for generally speaking, when a by-law is such that we cannot refuse to quash it, it is desirable that it should be quashed as soon as possible.

It seems too clear to be doubted that this by-law is illegal, in not conforming to that condition of its validity which is expressly imposed by the 177th clause of 12 Vic., chap. 81: namely, that it shall contain authority for levying a rate sufficient in each year to pay the interest on the debt, and that portion of the principal which is to be paid off within such year. It is clear, and is admitted, that the 5¾d. in the pound on the sum stated in the by-law to be the value of ratable property within the Municipality would not produce such an amount as would cover the payment which under the by-law is appointed to be made within the year; but considerably less. It will be found, I think, to come short by about £30.

And the manner in which the by-law provides for making up any deficiency that may arise in the payment, even if it were clearly legal, would still not cure the objection, for the statute expressly requires that the rate imposed shall be in itself sufficient to cover it upon the basis of calculation assumed, and if not, it declares that the by-law shall be void.

Rule absolute.

ROSS ET AL *v.* BRYAN ET AL.

Ca. Sa.—Under what circumstances may be sued out after issue and before return of fi. fa.

[In Chambers, April 15, 1856.]

This was an application on behalf of one of the defendants to set aside his arrest under a *ca. sa.* made after issue and before the return of a *fi. fa.* goods.

Cause was shown.

Judgment reserved.

DRAPER, C. J., C. P.—On the 20th of February last Mr. Justice *Hagarty* issued a summons calling on the plaintiff to show cause why the *ca. sa.* in this cause and the arrest of the defendant *Benjamin Bryan* thereon should not be set aside on the ground that said *ca. sa.* was issued before the writ of *fi. fa.*, also issued in this cause was returned, and while the writ was still in force, and while property was under seizure thereof. On the first of March following the same Judge discharged that summons, without costs, for insufficiency in the affidavits filed. The order discharging the summons was drawn up in those

terms; but on the summons the learned Judge had endorsed—"I discharge this summons without costs—the affidavits are too vague; so far as I have power so to do, I am willing to allow a second application on better materials."

On the 7th March Sir *J. B. Robinson*, C. J. issued a summons on reading among other things "the permission granted by the Hon. Mr. Justice *Hagarty*" calling on the plaintiffs to show cause why the *ca. sa.* issued in this cause should not be set aside, and the arrest of the defendant *Benjamin Bryan* on the ground that the said writ was issued before the writ of *fi. fa.*, also issued in this cause, was returned, and while the said writ was still in force, and whilst property was under the seizure of the Sheriff of the County of Ontario under said *fi. fa.*

Two affidavits were filed: 1st, that of defendant *Benjamin Bryan*, stating that judgment was entered on the 24th January last in the suit, and on the same day a *fi. fa.* against goods was issued for £603 16s. directed to the Sheriff of Ontario, endorsed, to levy £595 10s. 10d. with interest, &c., and costs; under which writ Sheriff, on the said 24th January, took in execution "as the goods of the said defendants" one piano-forte, which remained in the hands of the Sheriff, as deponent is informed and believes, until the 3rd of March, when deponent was informed the writ was returned *nulla bona*; that on the 9th of February a *ca. sa.* was issued in this cause against deponent, endorsed, for the same debt, &c., and that deponent was arrested on the 11th February, while the *fi. fa.* was in force, and while the said goods were in the Sheriff's hands; that deponent is still in custody. 2nd, that of *Norman J. Ham*—that on the 3rd March the Sheriff told him he had on that day returned the *fi. fa.* in this cause "no goods"; that on the 11th February both writs, the *fi. fa.* and the *ca. sa.* were in the Sheriff's hands, and that the Sheriff's Bailiff on that day told deponent that the *fi. fa.* was still in force, and the piano in his hands under the *fi. fa.*; and that defendant, *Benjamin Bryan*, was "while the writ of *fi. fa.* and the goods thereunder seized and under execution in his hands" taken, and then in custody under the *ca. sa.*; that both writs are issued upon the judgment mentioned in *Benjamin Bryan's* affidavit.

On showing cause the order of Mr. Justice *Hagarty* of the 1st March was put in with an affidavit that the defects in the affidavit alluded to in that order were not formal defects in the entitling of such affidavits, or in the jurat; and an affidavit of plaintiffs' attorney was filed, stating that after the seizure of the piano and before the issuing of the *ca. sa.*, the defendant, *Benjamin Bryan*, caused a notice to be served on the Sheriff on behalf of one *Fanny Bryan*, claiming the piano as the property of *Fanny Bryan*, and disclaiming property therein on behalf of *Benjamin Bryan*; that deponent also received notice of the claim of the said *Fanny Bryan*; that no other goods of the defendants in this cause were seized under the *fi. fa.*; that after these notices deponent caused the *ca. sa.* to be issued, and defendant *Benjamin Bryan* to be arrested; that the other defendant, *Abraham Bryan*, has absconded from the Province; that nothing, as he believes, was done on the *fi. fa.* after the seizing of the piano, and that before the present application the *fi. fa.* was returned "no goods," and is filed in the proper office.

Cases cited for defendants:—

Ross et al v. *Cameron*, 1 Chamber Reports 21.
Miller v. *Parnell*, 2 Mans. 78, 6 Taunt. 370.
Hodgkinson v. *Whateley*, 2 Cr. & J. 86, 2 Tyr. 174.
Wilson v. *Kingston*, 2 Chit. 203.

Cases cited for plaintiffs:—

Levi v. *Coyle*, 2 Dow. N. S. 932, 2nd appl'n.
Reg. v. *Pickles*, 12 L. J. 40, do.
Reg. v. *Barton*, 9 Dow. 1021, do.
Reg. v. *Leeds & Manchester Ry. Co.* 8 A. & E. 413—do.
Joynes v. *Collinson*, 13 M. & W. 558.
Withers v. *Spooner*, 6 Scott N. R. 165—2nd appl'n.
Reg. v. *Harland*, 8 Dow. 323, do.
Sanders v. *Westley*, 8 Dow. 652, do.
See also, *Bodfield* v. *Padmore*, 5 A. & E. 785, notes.

The general rule is, that when a rule is discharged on the ground of the inefficiency of the materials brought before the Court, there being other materials in existence not brought before it, but on the ground of defects in the title of the affidavits the Court will not allow the application to be renewed. "Without departing from the general rule not to open matters "which have been once disposed of on account of substantially "defective affidavits, when the defects in the affidavits might "have been supplied at the time, it is impossible to grant the "application." *Sanderson* v. *Westley* shows that this rule applies to the case of a prisoner on a *ca. sa.*, even where the ground of application is that the *ca. sa.* is a nullity.

Miller v. *Parnell*, 6 Taunt. 370: the Sheriff made a seizure under a *fi. fa.* of goods of greater value than the amount of the judgment. No sale took place, the plaintiff abandoning the *fi. fa.*, but before it was returned he issued a *ca. sa.*, on which the defendant was arrested. The Court set the arrest aside. The Court said a plaintiff having sued out a *fi. fa.* may if he pleases omit to execute it, and may take out a writ of *ca. sa.* and execute that before the *fi. fa.* is returned or returnable, and the judgment concludes thus. We think the writ of *ca. sa.*, being sued out after the *fi. fa.* issued, and after the Sheriff had taken the goods under it, cannot be supported.

Edmunds v. *Ross*, 9 Price 5: a *fi. fa.* was sued out, endorsed, to levy the full amount of the debt and costs, which was executed on defendant's goods in his house; but there was a distress for rent on the goods, which it seemed the goods were insufficient to satisfy, and the *fi. fa.* was withdrawn and a *ca. sa.* issued. It seems from the argument of Counsel, p. 12, that the *fi. fa.* was not returnable and had not been returned; the Court discharged a rule with costs which had been obtained to set aside the *ca. sa.* and discharge the defendant from custody.

Diles v. *Warne*, 10 Bing. 341: a *fi. fa.* was sued out against defendants goods, returnable 2nd of November, 1833; under which the Sheriff entered defendant's premises on the 5th June, and remained till the 20th. During all that time defendant's goods were in *custodia legis*, under a distress for taxes, and defendant then exhibiting a bil of sale under which they had been previously assigned to another creditor. Plaintiff on the 20th of June sued out a *ca. sa.*—the *fi. fa.* was not returned. The Court discharged a rule to set aside this *ca. sa.*, and the arrest, sustaining *Edmunds* v. *Ross*. *Tindal, C.J.*, says, "if the first writ were inoperative, the plaintiff was entitled to have recourse to a second."

Knight v. *Coleby*, 5 M. & W. 274: a *fi. fa.* and a *ca. sa.* were both put into the Sheriff's hands against defendant. The Sheriff went to execute *fi. fa.*, but found defendant had absconded, and that there was nothing to levy on except some articles of trifling value which he seized. Next day he was instructed only to execute the *ca. sa.* Within a fortnight he saw defendant, who told him he had sold his goods in order to cheat the plaintiff. The Sheriff thereupon said he would have nothing to do with the goods—withdrew from the possession, and took the defendant under the *ca. sa.* The Court approved of *Edmunds* v. *Ross*, and *Dean* v. *Warne*; and while holding the general rule to be that the Sheriff cannot execute the *ca. sa.* until after the return of the *fi. fa.*, held this case was like the others, an exception.

Lawes v. *Codrington*, 1 Dow. 30: *Parke, J.*, says,—"If you "execute the *fi. fa.* you cannot take another step till the "following term, for that writ cannot be returned into Court "until the Court is, in contemplation of law, sitting."

1 Gale 47, *Drew* v. *Warne*, 2 Dow. 762,—*Miller* v. *Parnell*, 6 Taunt. 370, 2 March 78, overruled—and the Court discharged

a rule similar to the present—as when the officer went to execute the *fi. fa.* he found the goods already seized under a distress for rent, and after remaining ten days in defendant's house he withdrew. Plaintiff sued out a *ca. sa.* without waiting to have the *fi. fa.* returned. In *Lawes* v. *Codrington* 7s. 6d. was levied under the *fi. fa.* (Not so; Sir *N. Tindal* referred to *Hodgkinson* v. *Whateley.*)

Wilson v. *Kingston,* 2 Chit. 203: *Fi. fa.* issued: the return stated a levy of part, and that goods and a lease of the value of £ remained in the Sheriff's hands unsold. Plaintiff sued out *ca. sa.* for residue, and the Sheriff's return thereto recited the former *fi. fa.* and return, and stated that the goods and lease had been sold for £— less than the debt; but it did not state any return by the Sheriff what had been done with the goods and lease. *Per. Cur.* Recital insufficient—and until Sheriff finally returned what had been done with the property, no *ca. sa.* for the supposed residue could legally be issued.

Blayes v. *Baldwin,* 2 Wils. 82—*Ross* v. *Cameron,* 1 Chamb. Rep. 21: *Fi. fa.* to Sheriff issued 15th of May, 1846, under which he seized divers goods and made £84 15s. 2d. It was returnable on 1st Easter Term then next, but was not in fact returned until 31st August, 1846; and on 18th July, 1846, a *ca. sa.* issued, returnable on the last day of Trinity Term. The defendant was under these circumstances discharged.

Hodgkinson v. *Whateley,* 2 Cr. & J. 86: *Fi. fa.* sued out and levy under it; all of which went to satisfy the landlord's claim for rent, except 17s. 6d., which went towards the expense of the execution. A *ca. sa* was also sued out and defendant was arrested on it before the *fi. fa.* was returned. The Court set aside the arrest. *Bayley, B.,* remarked: "No doubt both "may issue together, because the practice is not to enter them "on the record if nothing is done: but if you execute one, you "must make the entry of the return of that before you can "award the other. Here there has been a seizure under the "*fi. fa.*, and if an action of trespass were brought for the "seizure you would have to justify under the *fi. fa.*"

The numerous cases cited have satisfied me that the second application—made in consequence of the prior one having failed from defects in the affidavits, not merely in the title or jurat, but in substantial parts—should not be entertained. It was attempted to take this case out of the ordinary rule by the statement of the permission of my brother *Hagarty.* A similar suggestion was made in *Todd* v. *Jeffrey,* and was thus replied to by Mr. Justice *Patterson:* "What the Judge may say on "importunity of being content that the matter should be recon- "sidered, is of no consequence."

Independently of this objection, I am of opinion this summons should be discharged on the merits. *Miller* v. *Parnell* shows that though a *fi. fa.* be sued out yet if it be not acted upon, a *ca. sa.* may be executed before the *fi. fa.* is returned or returnable. *Edmunds* v. *Ross,* and *Dean* v. *Warne,* go further and show that an ineffectual attempt to execute the *fi. fa.* on goods already under seizure, as by a distress for rent, does not make it necessary to return the *fi. fa.* before executing the *ca. sa.* And *Knight* v. *Coleby* goes still further, for there a seizure on some goods in defendant's house was actually made, and the Sheriff remained in possession some ten days or more, and then withdrew and arrested defendant, not having returned the *fi. fa.*, and the Court refused to discharge defendant from custody. It is true the goods are stated to have been of very small value; but *Hodgkinson* v. *Whateley* shows that nothing turns upon that, for there only 17s. 6d. was applicable to the *fi. fa.*, but yet that small sum being actually levied, was held sufficient to make a return of the *fi. fa.* necessary. There is another peculiarity in *Knight* v. *Coleby,* namely, defendant's own assertion that he had sold the goods to cheat the plaintiff, and the Court lay some stress on that as disentitling him to set up as a ground for his discharge that any of *his* goods had been levied on. A similar conclusion may be drawn here from the defendants giving the Sheriff notice that the only article seized was not his property. On the whole, I gather from the cases: that the *fi. fa.* and the *ca. sa.* may issue together; that if the *fi. fa.* is inoperative and cannot be and is not executed for want of goods whereon to make a levy, that it is not necessary that it should be returned; that an ineffectual seizure on goods not liable to the execution, although they are defendant's property, does not render it necessary to return the *fi. fa.* before executing the *ca. sa.*; and that where a defendant represents that property seized as his belongs in fact to another person, in consequence of which the seizure is abandoned—he cannot set up that seizure afterwards as rendering it necessary that the *fi. fa.* should be returned before he could be arrested on the *ca. sa.*

I think, therefore, the summons must be discharged with costs.

Ross et al *v.* Bryan et al.

Bail—Allowance of—Insufficiency of affidavit of justification as to amount—Venue.

[In Chambers, April 15, 1856.]

Application by one of the defendants to have the bail to the limits put in allowed.—Summons dated 2nd April, 1856.

Cause shown.

Reserved.

Draper, C. J. C. P.—The affidavit of justification is clearly insufficient. The rule as laid down in the books of Practice is, that the bail must justify in double the sum sworn to, unless that exceeds £1000; and then that they should each justify in £1000 more than the sum sworn to. Bail put in after judgment must justify to double the amount of the sum recovered. (2 Chit. Rep. 73.)

In the present case one of the bail does not justify in as large a sum as that recovered, and the other in a sum much less than double the sum. Indeed adding interest to the *debt,* and the *ca. sa.* is endorsed to take interest, the whole sum sworn to by both bail is less than double the debt and interest, taking no notice of costs.

The bail piece is also defective for want of a County being named in the margin.

Application refused.

Spence *v.* Drake.

Weekly allowance—How to be paid—Suggested fraud.

(In Chambers.)

This was an application on behalf of the defendant, calling on the plaintiff to show cause why he should not be discharged from the custody of the Sheriff of Middlesex (on writ of Capias issued in the cause) for non-payment of weekly allowance, and on grounds disclosed in affidavits and papers filed.

After cause shown and Judgment reserved—

Draper, C. J., C. P.—I think that a payment to the gaoler to bind the debtor in custody must be made on the same day that it would have to have been made to the debtor himself. It is not, in my opinion, the intention of the Statute that the gaoler should be made the depository in advance of any indefinite number of weeks' allowance, and that whether he paid the five shillings on each Monday to the debtor or not, it is to be considered as a weekly payment to the debtor so long as the gaoler has sufficient funds in his hands; for if so, then though the gaoler never paid the insolvent anything, he could not so long as the time for which the sum received by the gaoler would last obtain his discharge. The Statute makes the gaoler the debtor's agent to bind him by the receipt of five shillings on each Monday, but no further.

As to the suggested fraud, the proviso at the end of the 45 Geo. III., ch. 7, requires the plaintiff to *prove* to the satisfaction of the Court, that the defendant has secreted or conveyed away his effects to defraud his creditors. The plaintiff's affidavit does not, in my opinion, go far enough—for it only shows a clandestine removal to prevent a distress; and though this raises a strong presumption of fraud against the defendant, it does not amount to *proof*, especially as the defendant has no opportunity of answering it. The plaintiff should either have moved to discharge the rule for the weekly allowance on the allegation of the fraud, or should have exhibited interrogatories to the defendant under the 2 Geo. IV., ch. 8.

As it is, I think the order for the defendant's discharge should be granted.

FERGUSON v. CLARKSON.

Stay of proceedings—Order with—What a breach of.

[In Chambers, March 15, 1856.]

A summons was obtained on the part of the defendant calling on the plaintiff "to show cause why the rule to discontinue in "this cause issued by the plaintiff the appointment thereunder "and the taxation had under and by virtue of the said rule, "and the masters *allocaturs* of the amount of costs taxed on "such taxation and all proceedings in this cause by said plain- "tiff subsequent to the said rule to discontinue should not be "set aside with costs on grounds that said rule was issued after "an order was made in this cause staying proceedings until "sufficient security should be given in this cause to answer "the defendant's costs in case the said plaintiff should discon- "tinue, be nonsuited, be nonprossed, or a verdict should be "entered for said defendant, and on ground that said rule is "dated in Michaelmas Term instead of Hilary Term, and that "said rule is not in the usual or proper form of such rules "where taken out after plea pleaded, there being no clause in "said rule for payment of costs by plaintiff within four days, or "that defendant shall have judgment in default thereof, and on "grounds disclosed in affidavits and papers filed."

M. B. Jackson for defendant.

J. R. Jones showed cause.

DRAPER, C. J. C. P., held that where an order for security for costs was obtained with stay of proceedings taking out a rule to discontinue was a breach of the order, and the application was according granted.

TO CORRESPONDENTS.

W. M.—We agree with you that those referred to "are not too well paid"; but on the *right* to receive, a different view from yours obtains generally, we believe. Any observations you may favor us with, we will willingly receive, and if convinced, gladly confess judgment.

H.—If others of your class felt as you do, and kept pace with your exertions in aid of the L. J., our ability to serve the cause of right, which includes their interests, would be greatly increased. The plan you propose is an admirable one, but cannot *originate with us*. Those to whom you refer already know our position, and we are not prepared to *importune*. The apathy shown is most discouraging: the back numbers will be attended to.

J. C.—Look to Johnston and the "Imperial," and you will find the "jocular definition" (as you call it) sustained.

J. J.—A thousand thanks. We have no doubt their answer to the "order" will be, "to hear is to obey."

T. R.—There is a case noted in the Repertory which gives the answer you require.

F. G.—We cannot insert malignant effusions from disappointed parties. Your proposal to compensate and indemnify is rejected with contempt.

NEMO.—Furnish your name, not necessarily for publication, but as a guarantee of good faith.

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THE UPPER CANADA LAW JOURNAL is published at the *Barrie Herald* Office, Dunlop-Street, Barrie.

THE LAW JOURNAL.

MAY, 1856.

LAW REFORMS OF THE SESSION.

We notice that the Common Law Procedure Bill has passed the third reading in the House, and probably before this reaches our readers, will have passed the Upper House. We understand that no substantial alterations have been made. It is to be hoped that as soon as it passes both Houses, it will receive the Royal Assent, and be printed for instant distribution: it comes into operation as early as the 21st day of August.

Mr. Attorney General Macdonald has also, we are pleased to see, introduced a kindred measure, "A Bill to simplify and expedite the proceedings in the County Courts of Upper Canada, and to alter and amend the Law in relation to these Courts": doubtless it will be as remedial in its nature as the Common Law Procedure Bill, and will, we trust, amend the obviously existing defects in the County Courts Acts, which we took occasion to refer to in the March number of this Journal.

We see by the English papers, that there is a measure now before the House of Commons enlarging the jurisdiction of the County Courts; and it is settled that the County Judges are to have the full yearly salary of £1,500 *sterling*. In the *Illustrated London News* of the 6th April, there is an

article on the Salaries of the Judges, which may be read with advantage by those who feel an interest in the administration of Justice, and are desirous to deal fairly with its Ministers.

CONTRACT BY A CORPORATION.

The following reference to English cases on the liability of a Corporation upon a contract *not under seal*, may be useful to the readers of the *Law Journal*:—

"The *Rule* of Common Law is that a Corporation cannot contract except under common Seal; the *exception* to the Rule applies in cases where to hold the Rule applicable would defeat the purposes for which it was established, the principle of the exception being convenience almost amounting to necessity. The Court of Queen's Bench has in the following cases *extended the exception* to all cases of contract by trading or other Corporations, where the contract is incidental to the business or purpose for which the Corporation was established, though not of ordinary occurrence:—Copper Mines Co. *v.* Fox, 20 Law. J.B. 174; Clarke *v.* Cuckfield Union, 21 Law J.B. 349; Henderson *v.* Australian Steam Navigation Company, 24 Law J.B. 822.

The Court of Exchequer and Common Pleas have, in the following cases, *maintained the Common Law Exception in its integrity*, refusing relief on all contracts not falling strictly within it:—East London Water Works Co. *v.* Bailey, 5 Law J., C.P. 175; Samprill *v.* Billercay Union, 18 L. J. Ex. 282; Diggle *v.* Blackwall Railway Co., 19 Law J. Ex. 308; Homersham *v.* Wolverhampton Water Works, 20 Law J. Ex. 193; Smart *v.* West Ham Union, 24 L. J. Ex. 201."—*Communicated.*

REPORTS AND REPORTERS.

Our readers will have noticed that from the first many cases have appeared in this Journal in advance of the regular Reports; we are indebted for this to C. Robinson, Esq., the Reporter of the Court of Queen's Bench. The cases have been chiefly in relation to Municipal Law and Common School subjects, in which very many of our readers must be greatly interested, and would have no opportunity of being informed on except through the medium of the *Law Journal*.

It is *possible* that Mr. Robinson may in consequence lose a few subscribers, but the extensive publicity the law decisions he kindly gives us gain through our pages, is calculated to do much good and save the expense of much litigation to the country. We know already cases in which an aggregate of several hundred pounds was saved by a timely knowledge through the *Law Journal* of the decisions of the Courts. We would be most unwilling to interfere with the legitimate interests of others—indeed we could not if the regular Reporter objected copy his head notes—yet, as everybody knows that tendencies of a mercenary character are neither inherited nor possessed by Mr. Robinson, and as *he* must see that the object of more than one contributor to the *Law Journal* is not gain, we have gladly accepted his gratuitous assistance in the way spoken of in aid of the useful objects the *Journal* has in view; and we desire thus publicly to acknowledge his kindness. Few persons are aware of the mass of business transacted in Chambers by the Common Law Judges;—the mere enumeration of what is done daily would occupy a whole newspaper column: very important points of practice come up constantly for decision, of great interest to the country practitioner, and to the solution of which many hours of the Judge's time, of right exclusively their own, are necessarily devoted.

The more important written decisions are, we believe, published in due course by Mr. Robinson, but many valuable decisions are not given in writing. Our late arrangements enable us to lay before our readers a copious supply of the decisions of the learned Judges in Chambers, comprising all in which written judgments are given, and most of those in which any new or important point of practice is verbally decided; and we have to acknowledge the very cordial aid in this respect received from many of those connected with the practice in Chambers.

In another department of the Law, attempts have been made to procure reports of cases on matters within the objects of a Local Courts Journal, the result of which we will announce hereafter.

AMERICAN LAW PUBLICATIONS.

The way in which law books were got up some twenty years ago in the United States many of our readers will remember. The printing indistinct and faulty in every respect—the paper execrable—the binding little better than a loose cover—the whole mechanical execution far inferior to "the cheap publications" of the present day. Perhaps there is no branch of business in which our neighbours have more progressed than in book-work, particularly in law books. In the social condition of Canada and the United States the lawyer finds a great similarity, more particularly in the nature and objects of contracts and the transfer of property generally; moreover the Common Law of England is the basis of the legal systems in both countries, and it is obviously of great advantage to us to be able to procure *reliable* American Editors of standard English works, enriched by Notes, and with references to the decisions of a Kent, a Story, &c. Yet until of late years, American editions, if not full of errors, have been so uninviting "in substance and in form," that few cared to obtain them. Now, however, it is otherwise: and for ourselves we would always prefer an American edition, if coming from reliable publishers—not merely because of the difference in cost, (it is seldom half the price of an English edition) but for reasons we have stated.

We have been led to make these remarks from an examination of two books now before us, (Bishop on Criminal Law and English L. and E. Reports, vol. 32, noticed in another place) published by Little, Brown & Co., of Boston. These works are well got up in every respect, and do great credit to the publishers. The typography fully equals any work of the kind we have seen. We are not prepared to admit an equality with English works, either in paper or binding, but at the same time believe the English publishers could not turn out anything so good for the same money.

We commend Little & Brown's publications to our professional brethren in Canada.

DIVISION COURTS—OFFICERS, &c.

It has been suggested to us that our articles under this head are too practical. We cannot think so—for we happen to know that Officers generally need and are anxious to obtain full information on the duties and responsibilities of their office, and one prominent object of this Publication was to place it within their reach.

In the first number of the first volume of the *Journal* our intentions were announced as follows: "The Officers of these Courts have important and responsible duties to perform; often so situated that it is impossible for them to procure advice, they must frequently act on their own unaided judgment—to assist that important and numerous body in the discharge of their several duties, will be our constant aim: with this view the matters which more immediately concern them, such as procedure, &c., will receive attention, and from time to time hints will be given for their assistance and advantage. Officers having large Courts will have large experience, and attention will be given to communications tending to make this department extensively useful." In the course so indicated it is our intention to continue, and we know that Officers are perfectly satisfied. The affairs of the *Journal* have given us large opportunities for forming a correct opinion of Clerks as a class, and we venture to assert that no department in the public service can boast such a large proportion of well informed, respectable men; not a few are gentlemen of very superior attainments, and a great many are Magistrates, Reeves and Postmasters, but at the same time we cannot lose sight of the fact, that with between two and three hundred Divisions, there are many of the Clerks in the small rural Divisions whose attainments are very moderate, and the paltry fees of office hold out little inducement for laborious study to perfect themselves. All need information; we desire to inform and assist all; and in adopting a plain and pointed mode of expressing ourselves, this object will be best served; the writer of these articles has from the first kept this before him. We look more to furnishing timely and reliable information than style of expression, and the intrinsic value of the articles is the criterion by which we claim they should be judged.

ARSENICAL POISONING—THE WOOLER CASE.

We would strongly recommend for perusal the following report of the Wooler case. It comes

from the pen of Professor *Christison*, who is perhaps the best British authority on the subject of poisoning; the statement is clear and concise, and as free as need be from medical technicalities.

We said in our last number that for many years no case had been brought before the Courts involving so many points of interest: it is in fact a typical case of arsenical poisoning, and one well calculated to impress on the mind all the symptoms which may be produced by the continued administration of minute doses of arsenic. *Dr. Christison* justly thinks that "such conclusive investigation and evidence" should have elicited public approbation during the trial, and as a toxicologist naturally glories in the detective powers of that branch of science on which he has written so well. His quotation that "Law seems to have sworn war against Physic," unfortunately is applicable to the state of antagonism in which the professions are too frequently placed.

Towards the close of last June, Mrs. Wooler, wife of a retired mercantile gentleman, residing a few miles from Darlington, died of a tedious illness, which put on the characters of slow arsenical poisoning. A coroner's inquest having been consequently held, a verdict of death by poison was returned, but without pointing at any individual as the guilty agent. Some relatives of the deceased, dissatisfied with the result, petitioned the Home Secretary of State that further inquiry should be made; the petition was granted; and the definitive result of a new investigation, before the magistrates of Darlington, was the committal of the husband to prison on a charge of murder by poison. The trial came on at the Durham assizes on the 7th December last; and after lasting three entire days, terminated in the acquittal of Mr. Wooler.

There has seldom been a criminal trial in this country, and certainly none for the last twenty years, which has involved so many points of interest to the medical profession. I have, therefore, at the suggestion of various parties, been induced to give some account of it; for which, indeed, I have enjoyed peculiar opportunities—having incidentally become a witness in the case, having heard the proceedings during the first two days of the trial, and being supplied with full information, not merely of what passed on the concluding day, but likewise during all the previous inquiries before the coroner's jury, and the bench of magistrates.*

Mr. Wooler, after passing much of his early life in a mercantile capacity in various parts of the world, and last of all in the East Indies, settled at Burdon, near Darlington, about seven years ago. He had been married eighteen years, but had no family. His household consisted of only one servant, or sometimes two, and a gardener, who, however, did not live in the house. During the last illness of Mrs. Wooler there was only one servant; nor had she ever the benefit of a nurse, because it appears that she disliked such attendance. There was no want of proof that at all times, down almost to her very death, her husband and she lived, to all appearance, on terms of sincere, reciprocal affection; and neither on the trial, nor at the two previous inquiries, was there a tittle of evidence produced to the contrary. Not a shadow of proof appeared that the husband could have any motive for getting rid of his wife. Nevertheless, she indubitably died of poisoning with arsenic, frequently administered.

In face of these two great defects in the usual moral proof in charges of murder by poison, it is not easy to see how any circumstances of serious suspicion should arise against a husband. But so it was in this case.

For at least five weeks, no one but the prisoner and the female servant, had such access to the deceased as was necessary to carry on a system of repeated and protracted poisoning. During that period, indeed, her niece, a girl of 15, lived in the house for a short time, and a female friend from the neighborhood also visited her; but their opportunities were not adequate, and every other circumstance rendered it impossible to suspect them. Subsequently, other friends tended her in her illness; but, before they did so, the affection, of which the deceased died, had been completely established. Against the servant not one iota of suspicion attaches from the evidence. Against the prisoner, the only other party who had all along free enough access, there was the evidence of sundry rather contradictory and otherwise suspicious acts, the occurrence of which seemed extraordinary on the supposition of his innocence, but each of which was capable of being individually explained away without any very violent assumption.

Of these, it is unnecessary to notice here any, except a few which appertain, directly or indirectly, to the medical part of the evidence. In the first place, then, besides being constantly with his wife, and administering, or helping to administer, food, drink, and medicine, on numerous occasions—no extraordinary proceeding on the part of an affectionate husband—he likewise frequently administered, or aided in administering, nutritive and astringent injections, a species of service which every medical man must allow to be very unusual for a non-professional husband to render to his wife. Secondly, in one of two syringes used for that purpose, on repeated occasions, arsenic was subsequently detected by Dr. Taylor; but the syringe had lain for a good many days in an open closet, while in the custody of a police officer. Thirdly, the only occasion, on which articles administered by the mouth remained for a continuity of time on her stomach, was during a period of one day, when he was absent from home. Fourthly, he showed, in the opinion of the wife's medical attendants, an unusual acquaintance with the properties of poisons, for one who had no professional reason for making himself acquainted with that subject. Fifthly, he possessed a rather numerous collection of medicines, several of which are also energetic poisons, such as tincture of henbane, bimeconate of morphia, ergot of rye, veratria, strychnia, and Fowler's arsenical solution. It appeared, however, that several of these had been obtained in all probability at Bombay and the Cape of Good Hope, and therefore many years ago; and no evidence was produced of

* I may, perhaps, be allowed to state here, how I came to be concerned in the case; because the part which I had in it at the beginning has been strangely misrepresented in various quarters, and made the subject of groundless animadversion. On the 25th of June, only two days before the lady's death, I received from Dr. Halsewood, Dr. Jackson, and Mr. Henzell, her medical attendants, a statement of her case, with a request for advice as to their proceedings. They had for some time entertained a growing suspicion that the symptoms depended on arsenical poisoning, and latterly they had obtained doubtful indications of arsenic in the urine. But up to the date of the letter, the 22nd and 23rd of June, they had not imparted their fears to any one; and they were in doubt whether the suspicion was so well-grounded as to call on them to declare it, especially as the lady's husband was one of those on whom suspicion might eventually light. I replied that, since the symptoms at that period, though referrable to arsenical poisoning, were such as natural disease might also produce, they should be cautious in divulging their suspicions, until they had either strong general evidence against an individual, or positive proof of arsenic in the urine, vomited matters, or remains of articles administered. I mentioned, at the same time, how I thought they might best obtain satisfactory evidence of the positive presence or positive absence of arsenic in these quarters; and I offered to examine for them some urine, prepared by concentration with pure hydrochloric acid. The urine was sent, and I found arsenic in it unequivocally; but before I could terminate the result, the lady died. Meanwhile, fresh symptoms had rendered the nature of the case more clear; and at her death the suspicions of her medical attendants were made known, and were at once amply confirmed by the morbid appearances, by my analysis of the urine, and by the detection of arsenic in the liver and other organs after death.

the recent purchase of either arsenic or any other poisonous substance. As to the arsenical solution, it was contained in a small ounce phial, in which there remained about one drachm and a half; so that, supposing the bottle had been once full, only three grains and a quarter had disappeared, a quantity too small to produce a protracted arsenical poisoning—not more, in fact, than would suffice for a medicinal course of arsenic of twenty-six days' duration. Sixthly and lastly, the bottle of arsenical solution, which had been seen by two of the medical witnesses, during the life of the lady, in a basket of various medicines and poisons, was the only one which was found to have disappeared from the basket, when sought for by the authorities after her death. But its disappearance was not traced even presumptively to the prisoner. The functionaries of Darlington were plainly remiss in following up the fate of this bottle.

It is undoubtedly very extraordinary how these and other grounds of suspicion of a more purely general nature should have concurred to attach suspicion against an affectionate husband, who had neither interest nor other motive for desiring the death of his wife. But in the face of these two defects of evidence—a motive, and alienation between the parties—even although the grounds of suspicion had really been stronger, no impartial jury, I apprehend, could have brought in any other verdict than the one actually delivered.

There is perhaps no trial on record, in which the general or moral evidence is so contradictory. Not so with the medical evidence of death by arsenical poisoning.

It is now much the fashion with lawyers, whether civil or criminal, to rail, both in season and out of season, at medical evidence. A newspaper critic, on the present occasion, has indeed gone so far as to state, not without some show of reason, that law seems to have sworn war against physic, for some time past, in this country. The accusation is in some measure supported by the fact, that not one word of approbation was bestowed, throughout this long trial, on the most elaborate, difficult, and conclusive medical investigation and evidence, hitherto produced upon any criminal trial in Britain. The proof of poisoning by arsenic was so perfect, in very nice and difficult circumstances, that even the prisoner's counsel evidently surrendered that point, without attempt at dispute, from the very beginning. How different was the case, only five-and-twenty years ago, when the main efforts of counsel were invariably directed to deny and disprove the poisoning!

The history of the poor lady's sad illness is one of the most instructive cases of poisoning with arsenic, that has ever been published; and well deserves record in medical literature, were it for no other reason. But it possesses a rare interest, also, inasmuch as it shows, in these days of growing refinement in crime, that the secret poisoner is not to expect to produce, by slow poisoning with arsenic, the obscure pining, the imperceptible progress, and nameless death, which, in the age of Secret Poisoning, arsenic was supposed to occasion in the hands of the skilful; but that, on the contrary, he will in all probability excite the most characteristic and aggravated symptoms which that poison is known to create; that he may, in short, produce a typical case of arsenical poisoning. It appears that, in the beginning of May, Mrs. Wooler, a rather delicate woman of 38 years of age, was attacked with pain and vomiting soon after an ordinary dinner. The kind of symptoms that ensued for a week, were not particularly inquired into at the trial. The servant, the only person to supply direct evidence on the subject, gave no farther information than that she continued ill, but did not vomit again. On the 8th of May Dr. Jackson was sent for, as her medical attendant. He found her labouring under symptoms of gastro-intestinal irritation, and treated her accordingly, with light bitters and bismuth. She had a sickly look; a small, frequent pulse; flatulence; a frequent slight tickling cough, or rather hawking, without expectoration; an occasional discharge of mucus from the bowels, accompanied with tenesmus and griping, and of some days' standing; redness of the eyelids and lining membrane of the nostrils; loss of appetite, and great failure of strength. In three or four days more, there was anxiety, restlessness at night, and greater weakness; increased griping, tenesmus, and mucous discharge, now also streaked with blood; dryness or tightness in the throat, with hoarseness of the voice; and she had again begun to vomit. The treatment, at this time, consisted principally of bismuth as a sedative, hydrocyanic acid to allay vomiting, and astringent opiate injections to check diarrhœa. Mr. Henzell, Dr. Jackson's assistant, first saw her on the 16th May, and also found her labouring under these symptoms. The same sytpoms continued, with little change, except a progressive exacerbation, in spite of appropriate treatment, till 28th May, when the mouth was ascertained to be sore, and the throat was so uneasy as to impede swallowing. Two days later the stools, previously bilious, assumed a fatty appearance owing to the presence of pus, as proved by microscopial examination. The vomiting and purging were now worse than ever, and the vomiting seldom occurred except after the taking of food or medicine. The tongue was red and fiery, the mouth and lips excoriated, the anxiety and restlessness very great.

On the 4th June there were the same symptoms, and a farther aggravation of them; but the stethoscope on this day, also betrayed slight tubercular infiltration at the summit of both lungs, most advanced in the right side; indolent, however, in both. Naturally tuberculosis, affecting the abdomen as well as the chest, was for a time suspected, and cod-liver oil, with opiate injections, constituted the treatment. Mr. Henzell, however, on this day, "began to conjecture that the symptoms he saw were such as slow arsenical poisoning might produce."

On the 8th June Dr. Halsewood was called into consultation. The conjunctivæ were much injected. The nostrils were very red. The mouth and lips were much excoriated, and a source of great distress. The tongue was also red and sore. There was uneasiness in the gullet, some sore throat, a tickling irritation at the top of the windpipe, and hoarseness. The anus was excoriated. The patient complained of pain in the stomach, urgent thirst, want of appetite, and frequent vomiting; of tenesmus, griping, and diarrhœa; of hiccup: of intense anxiety, restlessness, and general distress. The pulse was usually above 130, and feeble. The stools had been ascertained, by the microscope, to contain pus-globules and blood-discs for three days before. On the 10th June, the urine, which was scanty, high-coloured, and high in density, was ascertained to be albuminous, and to deposit blood-discs and casts of the uriniferous tubes of the kidneys. On the 13th June, the face and arms presented an eruption, which gradually put on the character of eczema. The symptoms otherwise continued much the same; and still, as from the first, they presented a paroxysmal tendency in point of severity.

On or about the 17th of June the three medical gentlemen—who had all independently begun, for some days before, to entertain a lurking idea that the lady might be labouring under the effects of arsenic, frequently administered in small doses—came to an understanding with one another, and agreed that there was such ground for suspicion of poisoning with arsenic, so as to call upon them to regulate their treatment accordingly. This suspicion, originally deduced from the symptoms, was strengthened by an examination of the urine on the 14th and subsequent days, by Mr. Henzell, who, by means of Reinsch's process, obtained upon copper, a metallic deposit, which, however, he could not satisfactorily make out at that time to be arsenic. The ammonio-citrate of iron freely administered, first by injection, and afterwards also by the mouth, as an antidote, seemed for a time to be of service in mitigating the symptoms. The pulse which had reached 160, fell towards the 20th to 120. But the countenance appeared more sunk, and the restlessness was excessive in spite of frequent doses of opium. On the 23rd she became again worse; the restlessness

and weakness were extreme; the pulse feeble and intermitting; the edge of the tongue ulcerated, and the palate covered with papulæ or pustules; the hands cold and moist; the vomiting severe: the diarrhœa less so. On this day the patient first mentioned to her attendants a sense of stiffness, numbness, and tingling, which she had felt in the arms for two or three days before. Prior to the 23rd, the urine had presented very much the character formerly described, but on this day what was presented for examination abounded in oxalate of lime crystals, and showed neither albumen, blood, nor tube-casts. This was obviously a different urine substituted accidentally or intentionally. Next day it presented its usual character, except that the albumen had disappeared. In that of the 22nd I found arsenic unequivocally by Berzelius' modification of Marsh's process.

On the 26th, all the symptoms got worse, especially the vomiting, and the tingling, and numbness of the hands. The pulse was 144 or 150, and very small and weak. She was evidently sinking. In the subsequent night, she was seized with paroxysms of tetanic spasm, gradually increasing in severity and duration, and at length becoming almost incessant. At half-past ten on the morning of the 27th she died, retaining possession of her mental faculties to the last. I have withheld from this narrative the account of the treatment. Various sedatives, astringents, and tonics, were tried. The only important point requiring notice here respecting these remedies, was that they all failed to procure any lasting relief, and in general even a temporary amelioration.

The body was examined on the morning of the day after death. There was slight tubercular infiltration in the apex of each lung, and, in the left, a small cavity. The trachea and large bronchial tubes were much injected and red. The heart was small, pale, otherwise healthy. The liver was slightly enlarged, saffron-coloured, friable, fatty. The interior of the stomach was slightly vascular in its greater curvature; but the smaller curvature presented groups of small vessels gorged with blood, so numerous at its larger end, as to render the redness almost universal, and like a sheet of blood under the mucous coat—which was soft and friable. The duodenum was vascular internally, and full of black matter. The jejunum was much in the same state. The ilium was redder still, and throughout the lower third denuded of its mucous coat in many patches, varying in size from a shilling to a crown, and here and there involving its whole circumference. At the latter points the peritoneal coat was bare, thin, and very easily torn. Many mesenteric glands were prominent and black. The colon was everywhere vascular; numerous small ulcers pierced the mucous coat in the ascending and transverse portions; and the rectum was similarly but less extensively affected. The pancreas was somewhat vascular; kidneys congested; spleen congested; uterus healthy.

Mr. Henzell found arsenic in the liver. Dr. Taylor, of Guy's Hospital, London, found it also in the liver, and in the heart, the lungs, the intestines, the rectum separately, and in a dirty bloody liquid from the peritoneal sac. Mr. Richardson, an analytical chemist of Newcastle, found it in a mass of viscera, consisting of portions of the stomach, liver, spleen and kidneys.

All the medical witnesses agreed that the lady's illness and death had been caused by arsenic given repeatedly. I was asked whether the symptoms could have been produced by natural disease, and replied that "I could not venture to assign a limit to the liability of the human body to a combination of diseases which might produce similar symptoms; but that I had neither seen, or read, or heard of such a case as this, unless from the effects of arsenic." In fact, it is scarcely possible to imagine a more graphic or typical case—irritation or inflammation of the conjunctivæ—of the nostrils—of the mouth and throat—of the glottis and trachea—of the stomach—of the small and great intestines—of the kidneys—the eczematous eruption—the excessive prostration, restlessness, and anxiety—and the remarkable nervous affections towards the close—numbness, stiffness, and tingling of the arms—ushering in tetanic spasms of the muscles before death.

ERRATUM.—Page 91, line 17 from the top, for "Editors" read "Editions."

MONTHLY REPERTORY.

COMMON LAW.

EX. BROWN *v.* OVERBURY. *Jan.* 18.

Race—Stakes—Decision of Stewards.

By one of the conditions of a race, in case of dispute the decision of the stewards was to be final. The stewards could not agree among themselves as to which horse was the winner, but some of them made an award, which was invalid. The owner of the horse in whose favor the invalid award was made, brought an action against the treasurer to recover the stakes, and proposed to show that his horse was the winner.

Held, that such evidence could not be received, and that the plaintiff was properly nonsuited.

EX. JONES *v.* POWELL. *Jan.* 18.

Practice—Jury—Misconduct—Affidavit of Juryman.

The affidavit of a Juryman is receivable to explain away an imputation of misconduct.

EX. HERMANN AND ANOTHER (assignee &c.) *v.* BOWKER.

Practice—Execution Fi. Fa.—Sale to execution creditor.

A sale of goods taken in execution under a *fi. fa.* by delivering them up to the execution creditor upon a fair valuation is a valid sale.

C.P. TOMLINSON AND ANOTHER *v.* STRAIGHT. *Jan.* 21.

Statute of Frauds, sec. 17—*Acceptance and receipt of goods "so sold."*

Where goods are sold for cash and delivered at the premises of the vendee, who, immediately after the delivery, insists that the contract was on other terms than for cash, but refuses to give up the goods, there is a sufficient acceptance and receipt (to take the case out of the Statute of Frauds) of the goods "so sold."

EX. JINKS *v.* EDWARDS AND ANOTHER. *Jan.* 11.

Landlord and Tenant—Lease—Action for not giving possession.

Where there is a demise of premises for a term, to commence on a day certain, the lessee may maintain an action against the lessor for breach of the agreement in not letting him into possession, and is not driven to bring ejectment.

EX. GLYNN *v.* THOMAS. *May* 10, *Feb.* [illegible].

Landlord and tenant—Distress for more rent than due—Pleading—Duress of goods—Voluntary payment.

The fact of making a distress for rent, some being due, accompanied by a claim or pretence, that more is due than really is due, is not actionable. In an action for distraining more rent than was due, a count alleged, that the defendant wrongfully distrained the plaintiff's goods as a distress for alleged arrears of rent—to wit: £6 3s. by the defendant, then pretended to be due and in arrear, and wrongfully remained in possession of the goods under colour of the distress,

until the plaintiff was compelled to pay, and did pay, the said pretended arrears, and a further sum for costs of the distress in order to regain possession of the goods, whereas in truth a small part only—to wit: £1 11s. 9d. of the pretended arrears was in arrear, whereby the plaintiff and his family were annoyed and disturbed in the peaceable possession of the premises.

Held, reversing the judgment of the Court of Exchequer that the count was bad after verdict. (Crompton, J., *dissentiente.*)

The course for the tenant to pursue under such circumstances is to tender the amount really due, and if it is refused proceed by replevin.

C.P. SIMPSON AND ANOTHER *v.* LAMB. *Jan.* 14.

Principal and agent—Authority to sell, revocation of liability for work already done.

Where an agent is employed to sell property for his principal and the principal revokes the authority before sale, whether or not, the agent is entitled to be remunerated for work already done, or expenses incurred, depends on the terms of the employment.

Q.B. FULTON *v.* WATERSON. *Jan.* 28.

Bill of exchange—Endorsement.

Where a party put his name on a bill at the instance of the drawer for the purpose of giving it currency, and afterwards took it up.

Held, that notwithstanding he never had possession of the bill until it had arrived at maturity he was not precluded from suing the acceptor.

EX. RE. C. AND W. DENNEHEY (Petitioners) *v.* HAMILTON (Respondent.) *Jan.* 22.

Practice—Attorney—Liability of country agent for negligence.

The agent, (an attorney) in the country, of a Dublin attorney is liable to be made answerable, on a summary application by a plaintiff, for negligence or misconduct in the discharge of a duty undertaken by him in his professional capacity, even though he act gratuitously.

Q.B. WOOD *v.* BELL. *Nov.* 17, *Jan.* 12.

Ship—Contract for building—Property—Bankruptcy—Special damage.

A., a shipbuilder, contracted in March 1854, to build a ship for B., according to the specifications of B.'s agent, C., at a price to be paid by instalments on certain days; the first four instalments being independent of the progress of the ship, but the fifth and sixth, being only payable on the days specified for them, provided the ship were then in certain stages of progress. The building of the ship having been commenced, was carried on, under the superintendence of C., who, on B.'s behalf, from time to time objected to materials used, and caused others to be substituted and alterations to be made. The ship, shortly after her commencement, received a name from B., by which she was known by A. and his workmen, and B.'s name, together with the name of the ship, was by the direction of A. punched on her keel at the request of B.; this being done between the parties, to secure her to B. In November, 1854, B., having advanced sums of money to A., exceeding in the whole the price of the ship, requested A. to execute a deed of transfer to him of the ship and the materials prepared for her, but this A. refused to do, at the same time, however, admitting that the ship belonged to B. On the 11th December, 1854, A. became bankrupt, when his assignees took possession of the ship and materials, the ship being then on the slip, unfinished and not having arrived at that state of progress which by the contract was a condition precedent to the fifth instalment becoming payable.

Held, that the intention of A. and B., as evidenced specially by the punching of B.'s name on the ship, and by the admission of A. that she belonged to B., was that the ship, although incomplete, should be B.'s property, and that the property had passed to him before the bankruptcy.

Held, further, that the property in the materials specifically prepared for the ship, had likewise passed to B.

Held, lastly, that B., in an action against the assignees for the ship and materials, or their value, was entitled also to recover special damage for their detention.

CHANCERY.

C. of A. OLLIVER *v.* KING. *Feb.* 14, 15, & 26.

Fraudulent assignment—Statute 13 *Eliz., chap.* 5*—Acquiescence of creditor.*

A debtor, with the knowledge of his creditor, made a voluntary settlement of a portion of his estate. The creditor became the executor of the debtor, whom he survived nine years, and during that time he took no steps to dispute the validity of the settlement.

Held, that the executors of the creditor were not entitled to set aside the settlement as fraudulent.

CLARKE *v.* MCNALLY. *Feb.* 11 & 12.

Champerty—Contract to advance money to carry on a suit.

Money was advanced on the security of a bond with warrant to enter judgment theron. The purpose to which the money was applied, was in carrying on a suit, by a person claiming a wife's share of her deceased alleged husband's property, and the bond was also to stand as a security for further money advances for the same purpose.

Held, that this contract was illegal on the ground of maintenance.

NOTICES OF NEW LAW BOOKS.

COMMENTARIES ON THE CRIMINAL LAW: *by* JOEL PRENTIS BISHOP, *Author of "Commentaries on the Law of Marriage and Divorce."*—Little, Brown & Co., Boston, U. S., 1856.

We are greatly pleased with this work; it is really an original production; the pains-taking author has well executed a most laborious task; with a vast amount of material to arrange, he has presented to the public a Commentary on the Criminal Law, in which "the truly practical and the truly scientific" are skilfully interlaced; with clearness and brevity has he treated his subject, giving so much and so much only of decided cases in England and the United States, as was necessary to elucidate the legal principles laid down. He has "explained a scientific matter, in a way to be intelligible to a man of business," and, while we are not prepared either to admit or deny some of the peculiar propositions advanced, we perceive in the book ample evidence, that the author "apprehends his particular topic," and has qualified himself by laborious research to speak with some confidence on the important subject he treats of.

The uses for which the author designed the volume are briefly as follows:—

To do as far as it goes the ordinary service of a Treatise for Judges and Practitioners in the Criminal Courts;—to be read and consulted by Lawyers whose duties are in the Civil Courts, and who need, as all do, to have some acquaintance with the Criminal Law;—to be read by Law Students, Magistrates, and non-professional Statesmen and Legislators, and by others who may wish to discipline and inform their minds by such an acquaintance as it will give them, with the nature of Common Law and the science of Law in general. From its excellence as a text-book, the new ground it covers, its elementary character, and its general plan, we have no hesitation in saying, that it is in our judgment eminently adapted for the uses to which it was designed, and we strongly recommend it to the notice of our Canadian readers.

Of the style and method of reasoning which the learned author employs, every reader will form his own opinion; perhaps there are some passages where metaphor and simile might, by the English critic, be said too much to abound; but Mr. Bishop's whole heart is evidently in his subject, and the deep thought has the warm utterance. Venerating the "noble Common Law," filled with admiration at the astuteness and justice which guided "the antient resolutions of the Courts given at times when precedents were few, and truth and justice were young and vigorous," the Christian jurist has not failed to recognize the great truth which underlays all—that human laws are without vitality unless sustained by the religious principle, and that human happiness is only to be secured by following the laws set forth on the great authority of "the wonderful counsellor—the Prince of peace."

If there be any who would urge that the writer has not dug up truths unknown before, such an one must at least admit that the novel and attractive reproduction of familiar subjects will always invite the mind to a second, a closer and more intelligent view; and the author will find many minds to whom his turn of thought and expression are congenial.

In a general point of view, the work will, we are convinced, tend to dissipate false and injurious notions respecting jurisprudence—for "the advancement of knowledge is the only effectual way of decomposing error."

For the present we leave Mr. Bishop's Commentary, subjoining a couple of paragraphs, taken at random, as specimens of the work: in our next number we hope to find room for more.

BOOK II., CAP. 6, *SECS.* 110, 111 & 112.

The Elasticity of Statutes.—A part of the last chapter was occupied with showing how the various principles of the common and statutory law operate upon, and expand and contract, one another. The object of the present chapter is apparently similar, yet essentially different, namely, to show how statutes are restricted and extended in their meaning, to meet the general purpose and intent of the legislature, and the demands of justice. We have already seen, that courts look beyond the letter into the sense of written laws; yet that they ascertain this true sense only by an examination of the words, variously compressed and enlarged by the surrounding circumstances, and by the operation of the common law rules of interpretation. Some statutes are, therefore, more elastic than others; and it would seem to be the general tendency of the law, in modern times, to adhere more closely, yet less captiously, to the letter, than formerly. Courts, also, are less ready to extend statutes, so as to include cases within the mischief but not within the words, than to restrain them, so as to exclude cases within the words but not the mischief.

It has been said, that cases out of the letter of a statute, yet within the mischief or cause of making it, should be brought within the remedy by construction; the reason assigned being that the lawmakers could not possibly set down all cases in express terms. But it is evident, that if this doctrine were too freely acted upon, it would prove dangerous, substituting the will of a judge for that of the legislature; therefore it is to be greatly limited, and it is subject to so many exceptions as to be, perhaps, itself the exception, rather than the rule. What its limits are we shall not have occasion in these chapters fully to consider. It clearly does not apply to criminal statutes, except in favor of the accused; and there, as we shall see further on, it has a force perhaps greater than is given it anywhere else in the law. On the other hand, it is a doctrine of very extensive applicability, in the construction of statutes of every kind, that cases are to be excepted out of their operation, if clearly not within the mischief intended to be remedied.

We have seen, how we are to penetrate beyond the words to the true sense of statutes; and have called to mind some of the principles that should guide us in so doing. But in applying these principles, we are obliged to make use of two dissimilar kinds of interpretation, and of various shades and admixtures of the two, namely, strict, which is sometimes called close; and liberal, otherwise termed open. The former is where the sense is permitted to go no further than the exact words; the latter is where it is suffered to reach beyond the words, seeking after justice and their true intent. For example, in applying the rule, that each specific clause be made to harmonize, if possible, with the general purpose of the entire act, we may be obliged to employ, in respect to the several clauses, either a close or an open interpretation; or one of these to one clause, and the other to another clause; or resort to a middle course, or blending of the two, as will best accomplish the object. Then, to expand the same idea, when we are called to construe a particular statute, we are to look, as we have seen, not at this one alone, but at the entire body and spirit of the law, statutory and common.

BOOK IV., CAP. 19, *SECS.* 405, 406.

How the Criminal Law Protects Individuals.—But it is necessary, in this mutual conflict, that the combatants should stand on an equal and fair footing. So much the government does undertake to secure, by its own arm, to its subjects; and therefore, if one gets off this ground, and injures another, the common law holds it to be an offence against the government itself, punishable as a crime. What is an equal and fair footing is matter on which there may be much diversity of opinion: we are about to inquire what the common law thinks of it. The old common law, originating in an age of strong minds, iron sinews, and semi-barbarous manners, demanded less than is required by the superior culture and finer moral sentiment of more modern times. And the demands to fairness will still increase as we progress in civilization. The consequence is, that the common law itself expands by slow and insensible gradations; while a more rapid expansion is carried on by legislation, which both increases the number of crimes, and enlarges the boundaries and augments the punishments of the old ones. Statutory enactments, therefore, have added more to the department treated of in this chapter than the last; and although it does not embrace so many distinct classes of offences, yet it gives occasion for more

criminal prosecutions, and encumbers the reports with more decisions.

The three leading objects of private regard are:—1st. Personal Preservation and Comfort. 2nd. The acquiring and retaining of Property. 3rd. The same of Reputation. Let us see how the criminal law stands in respect to these objects generally. We shall go over these heads premising, that but a single individual is employed in the wrongful act; and afterward look a little at the matter of, 4th. Combinations. Because the very act of combining may place numbers on unequal and unfair ground one, when a single individual with, singly, the same intent, would stand only in equality. We shall then close this chapter with a word concerning, 5th. Protection to the lower Animals.

ENGLISH REPORTS IN LAW AND EQUITY—Volume XXXI: *Containing Reports of Cases in the House of Lords, Privy Council, and the Courts of Queen's Bench, Common Pleas and Exchequer, during the year* 1855. Edited by CHAUNCEY SMITH, Counsellor-at-Law. Published by Little, Brown & Co., Boston.

This volume contains one hundred and eleven cases—the typography and material is very creditable to the publishers, and the book is got up in very good style.

The Law and Equity Reports will be continued on the same plan as heretofore—the number of volumes being reduced to four per year: and Digests will be published from time to time as the convenience of the profession demands. The price is $2 per annum.

INDEX TO THE STATUTES IN FORCE IN UPPER CANADA AT THE END OF THE SESSION OF 1854-5—*Including a Classification thereof, a Revision of the Public General Acts, and an Index to the Statutes not in force: prepared by order of the Legislative Assembly, on motion of* J. W. GAMBLE, Esq., *by* G. W. WICKSTEAD, Q. C., *Law Clerk of the House. Printed by the Queen's Printer,* 1856.

We are indebted to a friend for a copy of the above. This was a much needed work; it has been most satisfactorily accomplished by Mr. Wickstead: only a person who had the Statutes already in some order could have produced in the short time allowed a work *involving a critical examination of the whole Statute Law of the Province.*

We have examined the work with some care, and find that the "Law Clerk" has contrived very skilfully to render the arrangement as clear and intelligible to the non-professional man as the lawyer. The classification and references are all that could be desired; for considering the objects in view we think a *strictly technical* classification would have been objecttonable.

Great care in digesting and arranging the materials is shown in every part. "I fear least of all," says Mr. Wickstead in his notice, "the judgment of those who have themselves undertaken, or are competent to undertake, a like task"; with some knowledge of the subject, we say he has nothing to fear from just criticism, however close. Apart from the value of the Index in itself, the labor of the Revisors of the Statutes will, by its friendly aid, be reduced more than one half, and thus an immense saving will be effected to the country.

It is to be regretted that time would not serve to have added a table of the Statutes in chronological order—the materials for which are collected, but we hope the House will order it to be printed when it is ready for the press.

As Lawyers, we feel indebted to the author of the Index for "separating," as he somewhat quaintly says, "the living from the dead," and assigning to the living appropriate places on a simple, systematic, and intelligible plan.

For many years the country has had the benefit of Mr. Wickstead's services in the office he now holds, and we know not what higher encomium we can pass on the Index than to say Mr. Wickstead has done all in his power to render the work complete.

APPOINTMENTS TO OFFICE, &c.

CLERK OF THE PEACE.

HUGH JAMES MACDONELL, of Whitby, Esquire, to be Clerk of the Peace for the County of Ontario, in the room of B. F. BALL, Esquire, deceased.—[Gazetted 26th April, 1856.]

NOTARIES PUBLIC.

JAMES PATERSON, of Toronto, Esquire, Barrister-at-Law, BARTHOLOMEW CLIFFORD GALVIN, of London, Esquire, Barrister-at-Law, JEREMY PURDON CUMMINS, of Brampton, Esquire, Attorney-at-Law, THOMAS MATTHIESON, of Mitchell, in the County of Perth, Gentleman, and WILLIAM SLADDEN, of Toronto, Esquire, Attorney, Solicitor, &c.: to be Notaries Public in U. C.—[Gazetted 26th April, 1856.]

JOHN DAVIDSON, of Goderich, Esquire, Attorney-at-Law, and DAVID CHALMERS, of the village of St. Jacobs, County of Waterloo, Gentleman, to be Notaries Public in U. C.—[Gazetted 3rd May, 1856.]

REGISTRAR OF SURROGATE COURT.

ANDREW J. PETERSON, of Berlin, Esquire, to be Registrar of the Surrogate Court for the County of Waterloo, in the room of C. ENSLIN, Esquire, deceased.—[Gazetted 3rd May, 1856.]

ASSOCIATE CORONERS.

JOHN D. CLINDINNEN, of Pembroke, Esquire, M.D., to be an Associate Coroner for the United Counties of Lanark and Renfrew.—[Gazetted 26th April, 1856.]

CHARLES LAROCQUE, of Plantagenet, Esquire, to be an Associate Coroner for the United Counties of Prescott and Russell.—[Gazetted 3rd May, 1856.]

JACOB WALROTH, *of the village of Scotland, Esquire,* M.D., to be an Associate Coroner for the County of Brant.—[Gazetted 3rd May, 1856.]

THE DIVISION COURT DIRECTORY.

Intended to show the number, limits and extent, of the several Division Courts of Upper Canada, with the names and addresses of the Officers—Clerk and Bailiff,—of each Division Court.†

COUNTY OF PERTH.

Judge of the County and Division Courts, READ BURRITT, Esquire.

First Division Court—Clerk, Raby Williams,—Stratford P. O.; *Bailiff,* John A. McCarthy,—Stratford P.O.; *Limits*—All North Easthope west of latitude 25 inclusive, and south of the 9th concession; all south Easthope west of side line between lots 25 & 26; all that part of Downie and Gore north and east of *concession* line between 10th and 11th concessions and the Oxford road, and all Ellice from 1st to 13th concessions inclusive.

Second Division Court.—Clerk, Thomas Mathieson,—Mitchell P. O.; *Bailiff,* James Black,—Mitchell P.O.; *Limits*—All Fullarton, not included in Division *three,* and Hibbert and Logan.

Third Division Court.—Clerk, James Coleman,—St. Marys P. O.; *Bailiff,* Richard Box,—St. Marys P. O.; *Limits*—All Downie west of Oxford road and south of line between the 10th and 11th concessions; all Blanshard; all that part of Fullarton composing the 13th and 14th concessions, and south of road leading from Mitchell road between lots 24 and 25 east to lot 3 in the 10th concession: thence east along the line between 10th and 11th concessions to the town-line.

Fourth Division Court—Clerk, William Cassey,—Shakspeare P. O.; *Bailiff,* John Helmer, Shakspeare P. O.; *Limits,*—Part of North Easthope east of line between lots 25 and 26, with the 9th and 10th concessions: and all south Easthope not included in Division number *one.*

Fifth Division Court—Clerk, Samuel Whaley,—West Corners P. O.; *Bailiff,* John Coulter,—West Corners P.O.; *Limits*—Township of Mornington, Elma and Wallace, and concessions 14, 15 and 16 of Ellice—and concessions 11th, 12th, 13th and 14th, of North Easthope.

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† *Vide* observations *ante* page 196, Vol. I., on the utility and necessity for this Directory.