DIARY FOR DECEMBER.

1. Fri. New Trial Day, Q. B. Open Day, C P. Last day of determining by Councils of appeal from value of land. Clerk of every municip. except Counties, to return res. rate-payers.
2. Sat. Open Day.
3. SUN. *1st Sunday in Advent.*
4. Mon. Paper Day, Q. B. New Trial Day, C. P.
5. Tues. Paper Day, C. P. New Trial Day, Q. B. Last day of notice of trial in Co. Courts. Consolidated Statutes came into force 1859.
6. Wed. New Trial Day, C. P. Open Day, Q. B.
7. Thur. Open Day. Re-hearing Term in Chancery com.
8. Fri. New Trial Day, Q. B. Open Day, C. P.
9. Sat. Open Day. Michaelmas Term ends. Last day for Attorneys to take out certificates.
10. SUN. *2nd Sunday in Advent.*
12. Tues. General Sess. and Co. Court Sitt. in each Co.
14. Thur. Grammar and Common School assessment payable. Collector's roll to be returned unless time extended.
17. SUN. *3rd Sunday in Advent.*
18. Mon. Nomination of Mayors, Aldermen, Reeves, Co. and Police Trustees.
21. Thur. *St. Thomas.*
24. SUN. *4th Sunday in Advent.*
25. Mon. *Christmas Day.* Christmas vacat. in Chan. beg.
26. Tues. *St. Stephen.*
27. Wed. *St. John the Evangelist.* Nomination of School Trustees in Toronto.
31. SUN. *1st Sunday after Christmas.* Last day for School Trustees to make half-yr. report to Loc.Sup.

THE

The Local Courts' AND MUNICIPAL GAZETTE.

DECEMBER, 1871.

EXECUTIONS IN DIVISION COURTS.

The case of *Davy* v. *Johnson*, recently decided in the Court of Queen's Bench, will be read with interest by those of our subscribers who are concerned in the administration of justice in Division Courts.

The question involved was in strictness a matter of pleading, but the remarks of the learned Judge who delivered the judgment of the court should be noted by Clerks and Bailiffs. We shall publish the case in full: the head note by the reporter is as follows:

"A declaration against a Division Court bailiff for not levying under an execution, alleged that the plaintiff recovered a judgment in the First Division Court of the county, and thereupon sued out an execution directed to defendant as bailiff of the Second Division Court, commanding him to make the money out of the goods of defendant in the suit, wheresoever the same might be found; and that there were goods of such defendant within the bailiwick of defendant, out of which he could have levied.

"*Held*, that the count was bad: that the writ was not shown to be within the Act 23 Vic. cap. 23, secs. 18, 19, for it was not alleged that the *fi. fa.* was to be executed in the defendant's division or near to it, or that the goods were within such division, the defendant's 'bailiwick' extending to the whole county."

SECURED CREDITORS IN INSOLVENCY.

The right of secured creditors to prove and rank on the estate of their insolvent debtor, has recently been the subject of discussion in the Court of Queen's Bench, and the result has been to upset some of the views entertained by assignees and lawyers on the subject.

The facts of the case we allude to (*In re Hurst*, 31 U. C. Q. B. 116) were, that the insolvent in February, 1866, executed a mortgage on lands and an assignment of goods to trustees for the benefit of R. G. & Co., and other creditors named; and in August following he made a voluntary assignment under the Insolvent Act. The trustees, after this assignment, sold part of the real estate under the power of sale, and received part of the proceeds of the goods. B. G. & Co., then claimed to prove against the estate for the balance due to them above what they had received from the trustees.

The official assignee held that they had lost their right, having elected to look at their security instead of bringing it in under section 5, sub-section 5, of the Insolvent Act of 1864; and his award was confirmed by the County Judge on appeal.

The case was twice argued before the Court. On the first occasion the two Judges then present differed in their view of the law, and the case was re-argued before the three Judges, when it was held by the majority—Mr. Justice Morrison dissenting, and upholding the opinion entertained by the official assignee and the County Judge—that "the mere fact of the sale did not necessarily exclude them from proof, but that the securities sold might yet be valued; and if the estate had not been prejudiced, or were recompensed for any loss thereby, they should still be allowed to prove."

Our Sheet Almanac for 1872, which has become so popular, contains much new and useful information, and is ready for distribution: extra copies can be had at the office of publication at a small price. The Index for the *Local Courts Gazette* for 1871 is in the printers' hands, and will be issued shortly.

SELECTIONS.

LOCAL COURTS, AND THE BOUNDS OF THEIR JURISDICTION.

BY MR. SERJEANT PULLING.

We all now admit the value of local courts, and the necessity of bringing home justice to every man's own door. Our surprise is, how the principle could be so long successfully defied; how, in civil cases, the quibbles, and dishonest fictions, resorted to in Westminster Hall, to bring our ancient system of local courts into contempt, could be suffered to prevail; how, for justice administered on the spot, our forefathers could tolerate the gradual substitution of a compound of law, doled out at a distance, at a great cost, in a very pedantic form, and of so very artificial a character as to almost defy the detection of the *simple* justice as one of its ingredients. We are apt to forget, in considering our legal institutions, and the reforms to which they have been subjected, how much of good is derived from a remote period, how much of evil and abuse from that which has intervened. In dealing with the subject of local courts, the innovations that were gradually introduced, the reforms which have been effected, and the reforms which are still needed, it is usual to dwell only on the question of civil jurisdiction, whereas there is hardly anything that is applicable to this part of the subject which cannot, with equal force, be brought to bear on the question of criminal jurisdiction.

The principle of Alfred's Code of Laws was, that all matters, both of civil and criminal jurisdiction, should be disposed of in the locality in which they occurred, by local judges, and by a jury chosen from the immediate locality. If the County Court, before the innovations of the Norman lawyers, was the universal Court of First Instance in civil cases, its other chamber, the Sheriff's Tourn, had a similar jurisdiction in criminal cases. If it was through the subterfuges of Westminster Hall that the old County Court lost its importance as a civil tribunal, it was by means also of its legal subterfuges that its criminal jurisdiction became a dead letter. The usurpation of the civil jurisdiction of the old County Courts by the Courts at Westminster Hall, was not a greater innovation than the narrowing the criminal jurisdiction of the Sheriff's Tourn by a succession of *judge-made laws*, and the substituting for this jurisdiction the authority conferred by the royal commissions of oyer and terminer and gaol delivery, and that much slighter guarantee for judicial efficiency, the mere commission of the peace. We express wonder at this day how such unwarrantable encroachments on the constitution could have been effectually made; how the Legislature could have remained silent or ineffective in dealing with such innovations; how it could be endured that an arbitrary test of the limit of jurisdiction in civil cases, the amount of 40*s.*, fixed at a time when it represented at least forty times the present value of that sum, should have continued till twenty-five years ago to have been adhered to, in defiance of the notorious changes in the value of money, and how, for the legal recovery of all sums exceeding 40*s.* it became competent to the suitor, if not compulsory, to resort to the cumbrous, costly, and dilatory machinery of an action or suit in the Superior Courts at Westminster. But it is not the less true that during the 568 years which elapsed between the date of the Statute of Gloucester, and the passing the County Court Act of 1846, the only remedy afforded by the Legislature against the abuses that had crept into our system of administering justice in small debt cases, was the institution by special favour in some towns, of *Small Debts Courts*, of a worse description than the old institutions so unnecessarily laid aside, and rapidly productive of so many evils, that the scant and costly justice of the Courts of Westminster Hall was preferred to the injustice which was so frequently the produce of these eccentric tribunals.

The want of an effectual substitute for the old system of local courts of criminal jurisdiction led, as we all know, to that chaos of legal enactments, giving the jurisdiction of justices of the peace, who, originally appointed as conservators of the peace, came at the whim of every fresh Parliament to have gradually heaped upon them judicial functions more extensive and varied, confused and unintelligible, than perhaps have ever been conferred on any honorary official body of men expected by a fiction of law to understand their duties.

Our system of local courts of civil jurisdiction is now thoroughly established. For the success of this institution we are, if the truth must be told, less indebted to Westminster Hall, or the woolsack, than to wholesome public feeling, which has given earnest welcome to an institution, essentially good, based on the ancient principles of our constitution, and, after unwarrantable restrictions placed on it by the Courts at Westminster, revived to make up for their shortcomings. It is quite unnecessary to dwell upon the ordeal the institution of our modern local courts had to go through. Bigotry, prejudice, and selfish interests pointed out nothing but evil from the experiment, the spread of a spirit of litigation and extortion, the deterioration of judicial character, the destruction of the Bar, and the legal profession generally; and whilst the sudden creation of such a large number of new judicial offices brought into the field a little army of candidates, it certainly cannot be said that, as a rule, the most eligible were selected. It came to be a practice in Westminster Hall to speak of the County Court Judges with disparagement; stupid anecdotes, illustrating their inefficiency, were circulated, and if, by any subterfuge, the jurisdiction of the County Courts could be excepted to, it seemed justifiable and right. Whether,

through actual defects in our system of judicial patronage, or the want of confidence which the profession had in the appointments of County Court Judges, these officials were treated for a long time, both in Westminster Hall and St. Stephen's, as if unfit to dispose of any but the simplest cases, involving neither large amounts, complicated facts, or serious questions of law.

The Legislature has now gradually increased the jurisdiction of the County Courts, so as to make them certainly something more than what they were originally called, Small Debt Courts; and the salaries of the Judges have very properly been augmented. We have a right to expect that, with the large number of really eligible men who now are said to aspire to the office of Judge of County Courts, the appointments will be henceforth in every way free from objection.

Since the original Act of 1846, the legislation upon the subject of the County Courts has been great; the limit in amount and character of their jurisdiction, legal, equitable, and extraordinary, the powers of the Judges, the sittings of courts, the amount of costs, &c., have all been dealt with, and if we are to credit the *on dits* as to the Judicature Commission, greater changes are impending. We pause now, only to refer to the propositions of Mr. Daniel,* who, in his paper, recently read before the Social Science Congress, seems to propose that the County Courts for the purposes for which they were really called into existence (viz., the adjudication of cases of small debts and demands, and the administration of justice in the immediate district where the dispute arose) shall now cease; and that the courts, instead of being held, as now, at short intervals in the places at present appointed shall henceforth be established at *convenient centres:* several of the smaller courts being done away with, and a very considerable portion of the Judge's work being delegated to the Registrar.

We give Mr. Daniel's propositions in his own words:

"(1st.) A reduction in the number of the courts, by doing away with several of the smaller courts. (2nd.) The power to obtain judgment by default extended to all cases of money demand above 5*l.* (3rd.) The period of limitation for the recovery of debts for shop goods should be considerably reduced, in the spirit of the obsolete though unrepealed Statute, 7 Jac. 1, c. 12. (4th.) The principal registrars to have jurisdiction to hear all cases of contract up to 10*l.* and all cases of tort up to 2*l.*, and any cases by consent, with power in special cases to refer the hearing to the judge. (5th.) The registrars should hold frequent courts for these purposes, in some places fortnightly, in all others monthly. (6th.) There should be an appeal from the registrar to the judge, whose decision should be final. (7th.) The judge should hear and dispose of all other business, with the assistance, when required, of commercial assessors, after the manner of nautical assessors in the Court of Admiralty. (8th.) There should be an appeal from his original jurisdiction to a Divisional Court of the High Court of Justice. (9th.) The Courts of First Instance should be established in the metropolitan districts as well as throughout the country. (10th.) By a re-arrangement of circuits and concentration of courts, the Courts of First Instance should be established at *convenient centres*, and thus a considerable reduction would be effected in the number of judges and registrars—probably one-half of the judges and three-fifths of registrars. (11th.) There should be a power of removal from one Court of First Instance to another for cause shown. (12th.) The procedure and practice of all the courts should be simple and uniform, and the process of each court should run through all The Court of Probate and Matrimonial Causes might be taken as a model for the procedure and practice of Courts of First Instance. (13th.) The judges should be appointed by letters patent, and *selected for their fitness*, and take rank according to seniority among themselves, and next after the youngest puisne judge of the High Court. (14th.) There should be a chief registrar to each Court of First Instance, an assistant registrar, when necessary, and a sufficient staff of clerks. (15th.) The existing County Court judges, who have served ten but less than twenty years, should be allowed to resign upon pensions equal to two-thirds of their present salaries; those who have served twenty years at their full salary; and the Lord Chancellor should have full power to require any others to resign upon such pensions, (not being less than two-thirds of their present salaries), as he shall deem just. (16th.) The judges and chief registrars should be ineligible for Parliament, but the judges should be eligible for the High Court, and the chief registrars excluded from practice."

Mr. Daniel adds—

"A set of courts established on this basis would, I believe, be more efficient and economical than the present, and the diminution in the number of judges would allow of judicial salaries being paid of an amount which would secure the services of able and experienced lawyers."

These propositions are somewhat startling. It is difficult to see how the number of Judges of County Courts required in 1847, when the limit of their jurisdiction was 20*l.*, can now, when that jurisdiction has been so greatly extended and expanded, be reduced, with any security for the work being effectually performed. Mr. Daniel's proposition, in aid of this scheme, that a portion of the present judges' work should be delegated to the registrars, and a number of the courts now held be discontinued, seems open to the most serious objections. There is hardly any judicial abuse more frequently complained of, and more carefully to be guarded against, than that of the judge abandoning to others the work which he ought to perform himself. When we hear with what bitterness suitors in the Superior Courts complain of the injustice done them, by their being driven to refer to arbitration matters which, at great cost, they had submitted for trial in the ordinary course;

* "Local Courts, their Constitution and Jurisdiction," a paper read before the Jurisprudence Department of the Social Science Congress, held at Leeds, October 9, 1871—V. Vernon Harcourt, Esq., Q.C., President—by W. T. S. Daniel, Q.C., Judge of County Courts Circuit, No. 11.

when we have heard so much of the evil practice too frequently resorted to at Petty Sessions, of leaving much of the work, legally entrusted to the justices, to be dealt with by the magistrate's clerk, how great is the present dissatisfaction of the suitor where the judicial business in a County Court is neglected by the judge, and, as far as the law allows, delegated to the registrar, it is altogether impossible to justify the Judges of the County Courts, being legally allowed to delegate to the registrars so large a portion of their judicial functions as Mr. Daniel here proposes.

The great object of the institution of local courts is to secure the efficient administration of justice as near as possible to the scene of litigation. It would not be tolerated at this early period of the reformed system of County Courts that, under any such pretext as Mr. Daniel affords, the stream of justice should be allowed to flow back from the course of localization to that of centralization—and it is indeed difficult to make out how it would be any compensation to the community for losing the speedy and effectual administration of justice on the spot to have a lesser number of judges sitting in greater dignity, and with more pay, at a distance.

The suggestion that has been of late so frequently made, and is adopted by Mr. Daniel, that the jurisdiction of the County Courts as Civil Courts of First Instance should be extended, is entitled to far more consideration. The number of civil causes tried on circuit is becoming every year smaller. To make the County Court Judges assistant to, if not substitutes for, the judges of assize, in a large number of cases, reducing the number of circuit towns, instead of, as Mr. Daniel suggests, the number of places for holding local courts, would be an unmitigated advantage. The County Courts, with all the defects inherent in a system built up by patchwork legislation, are a valuable institution—let us increase their jurisdiction, but not on any pretence take away the boon conferred on the public of supplying justice in small cases, as in large, speedily and effectually, in the very district where the litigation arises.

The justice now administered in civil cases, however, forms but an inconsiderable part of that which the community require To really bring home justice to every man's own door it is necessary to look beyond this. The wrongs that are every day suffered, the grievances to be redressed, especially among the humbler classes, can be but ineffectually dealt with by any mere improvement in our forms of actiou and civil procedure. The complaint may involve a criminal charge, the character, the happiness, the well-being of individuals or of classes, to whom the redress, by a formal action at law, is a mere mockery. Wherever a criminal charge is involved, the parties who stand as accusers and accused have a more serious issue raised than that which arises in ordinary civil actions. To each of them the dealing with the charge legally, justly, and at once, and on the spot, is of far more importance than the having civil remedies supplied for mere debts or money demands. To the mass of the people the only justice they are accustomed to look to now, is that which is dealt out to them in the magistrates' courts. If the jurisdiction in criminal matters, and in the large range of cases which are now entrusted to the magistrates, were as carefully legislated for as the recovery of debts, the humbler classes would feel more respect for the law, and would more rarely seek to be their own avengers; and the whole community would be altogether more benefitted than by any mere reforms in civil procedure. Is it not practicable to effect reform equally efficacious in the local procedure with respect to the one branch of justice as to the other?—so to reform our system of administering justice in the great range of matters which now come within the jurisdiction of justices of the peace, and in matters of a kindred character, as to make dealing out law to the masses seem more like the simple administration of justice.

It would be a work of interest to show how the old Anglo-Saxon system of local justice, which in civil cases has in our times been, to a great extent, restored by the revival of the County Courts, and which existed in no less force, certainly with respect to criminal cases, came step by step to give way to innovations, more or less, of Norman growth—how, long after the newer institutions had been generally established, the earlier plant continued to be cherished in our ancient cities and towns, whose charters and ancient customs upheld the privilege of having justice in criminal as well as civil cases administered in local courts; and how, in spite of the spasmodic efforts of the Legislature to provide, by a heap of Statute Law, for the difficulties which the substituted institutions have occasioned, the administration of justice in criminal cases and in our magistrates' courts is still left altogether uncertain, confused, and unsatisfactory. It is not practicable to pursue this topic now—we have only to point out that there seems no good reason which is applicable to the question of reform in the administration of justice in civil cases, which does not, with at least equal force, prevail with respect to criminal cases; no reason why, if the revival of the ancient system of County Courts has answered in the case of the one, a similar reform might not be advantageously effected with respect to the other; why we could not have tribunals of First Instance, for the speedy and satisfactory disposal of the whole criminal business of the country within each of the present County Court districts, as well as the County Courts in their present form; why a County Court Judge sitting alone, or as president of the assembled magistrates, could not do all this (with a jury, of course, in those cases where a jury is now required), as effectually as a judge or commissioner on circuit, as the chairman of Quarter Sessions, or a Bench of Justices at Petty Sessions. It

would, of course, require the appointment of additional County Court Judges, but if the advantage of this were not deemed sufficient to make up for the cost, the deficiency would be amply made up by the saving in the expenses of trial, and the keep of prisoners waiting to be tried, without taking into calculation the personal cost to prosecutors, witnesses, the police, the complainants, and the accused, under the present system. Were such local courts established, there would be no difficulty in leaving to them not only the jurisdiction now entrusted to magistrates, but in many cases this jurisdiction might be enlarged. A summary jurisdiction and power might with great advantage be given to the Court in many cases where magistrates have now no power. Thus it might with advantage be provided that, in case of a criminal charge, the Court should at once dispose of the question of compensation, for a wrongful accusation, prosecution, or false imprisonment, subject, of course, to appeal in certain cases. In the case of disputes between master and servant it would be a great advantage to give the Court power in all cases to finally adjudicate, without restricting, as at present, the jurisdiction to the case of servants in husbandry. It might also with advantage be entrusted to such courts to deal summarily in case of slander and false accusstion, to assess the compensation to the injured person, or to adjust all differences, as in the case of assaults.

The progress of law reform, like the building of the projected Palace of Justice, appears at present to be slow. It may be that the plan of so distinct a change as that here proposed may meet with obstacles—that the institution of an unpaid magistracy is one which, whether it work well or ill, Parliament would hesitate to do away with. There is still a great deal to be done without trenching on such delicate ground.

If we look at the present constitution of our unpaid magistracy, we shall find a great deal which might be remedied, without introducing any serious innovation. The Commission of the Peace for every county, including the names of gentlemen whose legal qualifications consist in the possession of 100*l.* a-year in land, has still the *quorum* clause in it, by virtue of which, in old times, Blackstone informs us, the presence of one of a select number of efficient men was required at every sitting, a requirement which, as he explains, was, and is, evaded by a sort of trick, the names of one and all being repeated in the quorum clause. This quorum clause is still efficacious in other commissions from the Crown, as the Circuit Commissions, where the quorum is constituted, not of the grandees named in it, but only of the judges, serjeants-at-law, and Queen's counsel of the circuit. By simply following the same course with the Commission of the Peace, one substantial improvement would be easily effected; and, in truth, very little is required to make our ordinary magistrates' sessions, if not perfect, at least as efficient as tribunals at once exceptional and honorary can be.

There is hardly a single instance where the Commission of the Peace does not contain the names of men with higher legal qualifications than those legally required of, or ordinarily possessed by, the stipendiary magistrates appointed for the metropolis and elsewhere; *e. g.* men who have served as judges of the Superior Courts at home or in the colonies, Queen's counsel and serjeants-at-arms, judges of County Courts, chairmen or deputy-chairmen of Quarter Sessions, recorders of cities, &c. The existing state of the law tends, in a great degree, to discourage such men from acting as magistrates under the Commission.

By the Statutes now in force, no single magistrate (not being a stipendiary) can, alone, transact the ordinary judicial business of a justice of the peace; any unpaid magistrate, whatever his judicial aptitude, is simply placed on a par with the other justices in the commission. If he attends Petty Sessions he may have to sit under a chairman in whom he has no confidence, and find his brother justices wholly depending on the clerk for knowledge of their duties; and yet he may find himself outvoted in the ordinary business and decisions of the court. After such experience, he may probably be induced to absent himself for the future and to leave the magisterial work wholly to the care of those whom he knows to be less competent, who may be very estimable in private life, perhaps even distinguished in society and in public, but who, being without legal education or experience, are necessarily as much out of place on the judicial bench as men without medical education would be to decide cases at a hospital or an infirmary.

By a very easy amendment of the modern legal provisions which have been referred to, the advantage might be gained, of securing, in every district, magistrates at least as efficient and serviceable as stipendiary magistrates, without their cost, and all this without disparagement to other magistrates in the Commission. Thus, on every justice of the peace, possessed of the judicial qualifications already referred to, let there be conferred the powers and jurisdiction now attaching to the office of stipendiary magistrates. Let a return be at once obtained from each county of the names of all persons in the Commission of the Peace so specially qualified, and their names be included in a new commission as presiding magistrates. It might, without any fear of inconvenience, be provided that such presiding magistrates shall have precedence of all other magistrates, and that one shall act as chairman at every magistrates' court they attend. By a few simple rules as to the time and place of holding Petty Sessions, the attendance of one of such presiding magistrates could always be secured, and thus, without any very radical change, the existing machinery could be made to work till a better were substituted.—*Law Magazine.*

Notice of Action.

King v. *Chamberlain*, C.P., 19 W.R. 931.

It is not, perhaps, to be wondered at that, in interpreting clauses in Acts of Parliament which provide for the protection of those acting in pursuance of the statute, by requiring notice of action, the analogy of action for malicious prosecution should have been often though erroneously followed, and a similar test applied. Of course, if the thing done were in reality in pursuance of the statute, no action would lie, and therefore no notice of action would be required, or, at least, not for the same reason. On the other hand, if the statute were made a mere pretence, and the act were really one of wilful malice, the clause would obviously have no application. Assuming then, a wrongful act, but the existence of an honest and *bona fide* belief in the defendant, what must be the contents of that belief: Not, certainly, that he is acting by virtue of such and such a chapter of such and such a volume of the statute book; but, upon the other hand, not merely a general belief that he is acting legally; an error as to the law will not help him here more than elsewhere. It remains, therefore, that the error must be an error as to facts; and, putting together right law and wrong facts, it results that he must have thought facts to exist which, if they had existed, would have made his conduct lawful under the statute in question. The only question that remains is, whether, in addition to this *bona fide* belief in the facts, there must have been reasonable and probable grounds for the belief. It has been for some time settled that this need not be proved, although the existence of such grounds may be an argument in favour of, and their absence an argument against, the existence of the belief. *Downing* v. *Copel*, L. R. 2 C. P. 461, however, and *Lester* v. *Hart* L. R. 2 C. P. 322, have apparently misled some people, although both cases were really illustrations only of the proposition that it is not enough for a man to believe generally that he is acting legally, and that his error must be not in the law but in the facts. In the latter case, however, it must be admitted expressions are used which might mislead; it is useful, therefore, to have the principle so affirmed and those expressions explained, as was recently done in *King* v. *Chamberlain*.—*Solicitors' Journal.*

POSTAL CARDS.

May a person with impunity make use of the new postal cards to send his neighbour defamatory and scurrilous language concerning him? According to the daily papers, this question has been answered by a metropolitan magistrate in the affirmative; but we cannot but think there must be some inaccuracy in the report. It is said a tradesman applied to Mr. Newton for a summons against a man who had sent him a libel on a post-card, and that the learned magistrate refused to grant it, on the ground that there was no more a publication of the contents of the card than there would have been had it been a sealed letter. We would caution any evil-disposed person from relying on this supposed decision as providing a safe and cheap mode for abuse and defamation. The first point to be noticed is, that ever since the time of Lord Mansfield it has been admitted law, that the sending a letter containing a libel to the party against whom it is made is a sufficient publication to sustain an indictment, although it would not support an action. In the case of *Reg.* v. *Burdett* (3 B. & A. 717), the court held that a delivery of a sealed letter containing a libel at the post-office is a publication there. The reason why an action will not lie on a libel when the only publication has been to the party libelled is, because the plaintiff could sustain no injury unless he himself communicated the libel, but this reason does not excuse the libeller from being prosecuted for the offence, the gist of the crime being not the injury to the individual, but the provocation and tendency to a breach of the peace. This is no obsolete doctrine. Within the last two years a man was sentenced at the Old Bailey for writing a libellous letter to and of the prosecutor. But we go a step further, and contend that there is a great difference between sending a letter in an envelope and writing a libel on a post-card, which can and probably will be read by clerks, letter carriers, domestic servants and others. It must be remembered that the annoyance caused to the recipient of the libel will arise from the suspicion that others have seen it, and in this way a nervous person's life might be made a perfect burden to him, although in fact he alone might have read the imputations upon his character. If a man wishes to abuse you, and is not anxious that others should see it, it is surely not too much to require him to pay a penny for a stamp, and put the abuse under cover. It was held by Lord Ellenborough that where it was proved that the defendant knew that a clerk of the plaintiff opened his master's letters in his absence, there was evidence for the jury to consider whether the defendant did not intend the letter to come to the hands of a third person: *Delacroix* v. *Thevenot*, 2 Stark. 63. Surely in the same way the fact that a person wrote on a post-card would be some evidence of a desire that the contents should be known by others than the plaintiff. It was only last year that an attorney recovered damages in an action for libel, where the libel was part of the direction of a letter addressed to him, as "Old Perjury Jones, of Goring Place, Llanelly, South Wales:" *Jones* v. *Bewicke*, L. Rep. 5 C. P. 32. It is true that the letter carrier was obliged in the course of his duty to read the direction, but still we submit that the case has a bearing upon the question before us.—*Law Times.*

Residence.—A. had lodgings at E., where his family resided; but, being employed at M., he was furnished lodging there and slept there, though not obliged to do so, with the exception of one or two nights a week, when he slept at E. *Held*, that A.'s residence was at E.—*Taylor* v. *Overseers of St. Mary Abbott*, L. R. 6 C. P. 309.

MAGISTRATES, MUNICIPAL, INSOLVENCY & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

GOVERNMENT AID TO RAILWAYS.—*Held*, that the defendants, who had contracted merely for the *grading* and *fencing* of a portion of their road before the date specified in sec. 3 of 34 Vic., ch. 2, were not entitled to aid under that section, as having contracted for the *construction* of such portion of their road.—*McRae* v. *Toronto and Nipissing Railway Co.*, 22 U. C. C. P. 1.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

INTERIM ALIMONY.—On an application for interim alimony, the validity of the alleged marriage cannot be tried. If a marriage *de facto* is proved, it is sufficient.

But to obtain an order for interim alimony, the plaintiff must shew she is in want of means of support.

When the parties had been living separate for four years, and the wife did not allege she was in want of means of support, and the husband swore she was in better circumstances than he was, an order was refused.—*Bradley* v. *Bradley*, 3 Ch R. 329.

SALE OF WHEAT—CONVERSION INTO FLOUR—SHIPPING RECEIPT.—M. & Co., at Guelph, bought a car-load of wheat on commission for C. They paid for it themselves, and shipped it by the defendants' railway, taking the railway receipt in their own name as consignees. The car was addressed to the care of C. at Waterdown, M. & Co. being aware that it was intended to be ground there for C., and the receipt was endorsed by them to the Canadian Bank of Commerce. Through this bank they drew upon C. at 15 days' sight for the price, with their commission and bank charges, and discounted the draft with the receipt attached as collateral security. At Waterdown the wheat was delivered by defendants, upon C's order, to his brother, who had a mill there. It was mixed by him with other wheat and ground, and fifty-five barrels of flour, the equivalent for it, was delivered by him to the defendants for C. C. became insolvent before the draft matured, and M. & Co. took it up and got the railway receipt re-indorsed to them. C.'s assignee having sued the defendants in trover and detinue for the flour, they, in privity with M. & Co. denied the plaintiff's right to it, and set up the title of M. & Co. The case having been tried without a jury:

Held, that M. & Co., on the re-indorsement by the bank to them, were in as of their former title, not as assignees of the bank, with the rights given to the latter by the statute, and that their rights must be considered as if the bank had never intervened.

2. That the defendants were entitled to set up the title of M. & Co. as a defence.

3. *Wilson*, J. dissenting, that as between M. & Co., and C., the insolvent, the property in the wheat did not pass to C. until paid for, it being the reasonable presumption from all the circumstances that this was the intention of the parties.

4. That the conversion of the wheat into flour made no difference, for, looking at the usual course of business in such matters, this flour, though not made from the identical wheat, should be regarded as the produce of it.

The defendants, therefore, were held entitled to succeed.—*Mason, Assignee of F. D Cummer*, v. *The Great Western Railway Company*, 31 U. C. Q. B. 73.

DISTRESS FOR RENT—SEIZURE OF SHEEP—LIABILITY OF LANDLORD—TRESPASS.—It is illegal to distrain sheep when there are other goods upon the premises sufficient to satisfy the claim; and trespass was therefore held to lie against a landlord for the act of his bailiff in so distraining, it appearing that he had spoken of making the sale, and had received the proceeds thereof, and no evidence being offered of his non-complicity therein.—*Hope* v. *White et al*, 22 U. C. C. P. 5.

LIABILITY OF CO-TRUSTEES—AGENTS—INTEREST.—A trustee is bound to exercise a prudent supervision over the acts of an agent, or a co-trustee appointed or acting as agent or manager, for his co-trustee; and where he neglects this duty he makes himself liable for losses occurring through the acts of such agent or manager.

But a trustee in this position was not held liable for moneys received by his agent or co-trustee acting as manager, which were not entered on the books (to which the trustee charged had access) and which he could not have discovered by any vigilance he might have used.

A trustee is liable for the acts of an agent in whose appointment he has concurred, and whose defalcations would have been discovered by an ordinary inspection of the books kept by him.

Where compensation was given to trustees by the trust deed, not in a lump sum, and they had failed in some points of their duty, the Master

did not consider that he could deprive them of compensation, but held that he could determine on the value of the work done, and make a corresponding allowance.

Interest held to be allowable on a preferred debt, consisting of drafts and promissory notes from the date until paid, and pending suit.—*City Bank* v *Maulson*, 3 Ch. R. 334.

RAILWAY—NEGLIGENCE.—A. travelled daily between L. and. H The train stopped before arriving at the station of H., so as to bring the carriage in which was A. opposite a pile of rubbish. "H." was called out, and shortly after, "Keep your seats." The train then moved on to the station. A., who was very near-sighted, got out when the train first stopped, fell, injured himself, and died in consequence. *Held*, (Kelly, C.B., Willes, and Keating, JJ., dissenting) that there was no evidence of negligence in the railway company to be left to the jury. Even if there were such negligence, the conduct of A. must be considered in deciding whether there was a proper case to be submitted to the jury. (By the whole court)—calling out "H." was not of itself an invitation to alight.—*Bridges* v. *North London Railway Co.* L. R. 6 Q B. (Ex. Ch.) 377.

The Plaintiff took a ticket from defendant railway company, from A. to C. At B., between A. and C., said company's line joined the line of another company, over which the defendants had, by act of Parliament, running powers to C. on payment of tolls, the traffic arrangements being with the second company by said act. Defendants' train ran into a train of the other company, through negligence of the latter, and the plaintiff was injured. *Held*, that the defendants were liable for such negligence. *It seems* the contract is that reasonable care shall be exercised by all by whom such care is necessary, for reasonably safe conveyance to the end of the journey —*Thomas* v. *Rhymney Railway Co.* L. R. 6 Q. B. 266; s. c. L. R. 5 Q. B. 226.

If a person enters the saloon-car of a freight railway train, and, when the train starts, without being requested or directed to leave, remains there as a passenger, contrary to the rules of the company, but with the knowledge of the conductor, who receives from him the usual fare of a first-class passenger, the corporation incurs the same liability for his safety as if he were in their regular passenger train —*Dunn* v. *G. T. R. Co.* (U. S. case), 7 C. L. J. N.S. 329.

SURETY.—The sureties on a bond covenanted that they or either of them should not be released by any arrangement which might be made, with or without their consent, between the principal and obligee for continuation or alteration of time of payment, or additional security. On failure by the principal to pay an instalment due on the bond, W. undertook to pay the whole amount due in case the principal should be unable to discharge the bond in a manner provided. W. had to pay the whole amount. *Held*, that each surety was liable to W. for a moiety thereof.—*Whiting* v. *Burke*, L. R. 6 Ch. 342; s. c. L. R. 10 Eq. 539.

ARBITRATION.—RECEPTION OF IMPROPER EVIDENCE.—On applications to set aside awards for misconduct of arbitrators, the facts which are relied upon to establish charges of partiality and unfairness on the part of an arbitrator must be clearly averred.

Quære as to right on such application to show cause on last day of term.

The decision of an arbitrator being binding on the parties in matters of law as well as in fact, an award will not be set aside because letters are put in as evidence by one of the parties, which are not legal evidence, if the circumstances and the conduct of the arbitrators are consistent with the supposition that they only read the letters for the purpose of judging of their admissibility as evidence, and it not appearing that they actually received them as evidence.—*In re Hotchkiss* v. *Hall*, 7 C. L. J. 320.

PATENT.—Where a patentee had a manufactory in both England and France, it was *held* that a purchaser buying in France had an implied license to sell in England. A patentee, bringing suit for infringement, must prove both that the article was sold, and that it was not manufactured by himself. — *Betts* v. *Willmott*, L. R. 6 Ch. 239.

INSOLVENCY ACT—DISCHARGE—CONFIRMATION—DIVIDENDS.—It is optional with an insolvent whether he will proceed under sec. 97, or under sec. 101 of the Act of 1869; and when there is reason to anticipate that the discharge will be opposed, the latter course is more expeditious. Where a deed of composition and discharge has been duly executed and filed with the assignee, *it seems* notice of the filing and of the insolvent's intention to apply for a confirmation of his discharge may be given at once under section 101, although the month allowed by sec 36 (Form I.) for creditors to file their claims has not expired.

The assignee may declare a dividend at any time within one month after his appointment, and therefore at intervals of not more than three months.—*In re E. D. Tucker, an Insolvent.*

CANADA REPORTS.

ONTARIO.

QUEEN'S BENCH.

CHARLESWORTH v. WARD.

Collection of Taxes—Extension of Time— C. S. U. C., ch. 55, secs. 103. 104, 177—27 Vic. ch. 19—Neglect to pay over—Issue of Warrant under sec. 177—Computation of time—"Within twenty days after."

One M. was collector of a township for 1864 and 1865.

By the C. S. U. C., ch. 55, as amended by 27 Vic., ch. 19, sec. 12, the roll was to be returned to the township treasurer by the 14th December in every year, or on such day in the next year, not later than the 1st May, as the County Council might appoint; and in case of his neglect to collect by the day so appointed, the County Council might, by resolution, authorize him to continue the collection; but this was not to affect his duty to return the roll, or the liability of his sureties. It was also enacted that on his neglect to pay over or account, the treasurer should, "within twenty days after the time when the payment ought to have been made," issue a warrant to the Sheriff to levy the sum not paid or accounted for, on his goods or lands.

In January, 1865, he was authorized to continue the collection of the taxes for 1864, until the 1st May then next; and in January, 1866, to continue the collection of taxes for the township "so long as he should be recognised by the municipality of said township." He did not return the rolls until April, 1867, when a large sum of the taxes for each year appeared not to be accounted for. On the 2nd of that month, the treasurer, under a resolution of the Council, demanded payment, and on the 6th he issued his warrant, under which the sheriff, in May, sold the land in question.

Held, that the sale was unauthorised, and that the sheriff's deed conveyed no title.

Per Richards, C. J.—The extraordinary remedy given by the issue of a warrant applies only when the collector neglects to pay over by some time fixed within the period allowed by law; but if the municipality authorize him to continue the collection beyond that period, his liability, and that of his sureties, must be enforced by the ordinary means.

Per Wilson, J.—The demand on the 2nd of April made that the day on which the payment ought to have been made, but under the Statute the warrant could not be issued until the expiration of twenty days from that time, and was therefore premature.

On the 1st January, 1867, the Acts above mentioned were repealed, "saving any rights, proceedings, or things legally had, acquired, or done under them." *Quære*, whether the right to issue the warrant still existed?

[31 U.C. Q.B. 34.]

Ejectment for lot No. 18, in the first concession north-east of the Toronto and Sydenham Road, in the township of Artemisia in the county of Grey.

The following case was stated for the opinion of the Court:

One Thomas Moore was the owner of the said lot, in fee simple, as grantee of the Crown.

The said Thomas Moore, by three several mortgages, made and executed respectively on the 12th of April, the 8th of May, and the 21st of August, 1867, conveyed the said lot of land to the plaintiff, who, it is admitted, is entitled to the possession thereof, unless under the following facts a better title to the said land became and is vested in one John W. Armstrong, through whom the defendant claims as tenant, and on whose title the said defendant has a right to rely to maintain his possession.

The said Thomas Moore was collector of taxes for the said township of Artemisia for the years 1864 and 1865. He, as such collector, did not return the collector's rolls of the said township for the years 1864 and 1865 until the beginning of April, 1867, when the same were returned in compliance with a resolution of the municipal council of the said township, dated 5th of March, 1867. When the said rolls were returned, it was found on examination thereof, that the said Thomas Moore had collected and not accounted for, and neglected to pay over to the treasurer of the said township for the year 1864, the sum of $1,764.04, and for the year 1865 the sum of $3.857 94.

The Assessment Act, Consol. Stat. U.C., ch. 55, as amended by 27 Vic., ch 19, was in force until the 1st of January, 1867, when the Assessment Act 29-30 Vic., ch. 53, came into force. By sec. 103 of said Consol. Stat. U.C. ch 55, as amended by sec. 12 of 27 vic., ch. 19, it is provided that on or before the 14th of December in every year, or on such day in the next year, not later than the 1st of May, as the council of the county may appoint, every collector shall return his roll to the treasurer of the township, and shall pay over the amount payable to such treasurer.

On the 28th of January, 1865, the County Council of the said county of Grey passed a resolution, that the said Thomas Moore "be authorised to continue until the 1st day of May next (1865) the levy and collection of rates and taxes for the year 1864, of the township of Artemisia."

On the 26th of January, 1866, the said county council passed a resolution, that "the said Thomas Moore be authorized to continue the levy and collection of taxes for the said township of Artemisia so long as he should be recognized by the municipality of the said township."

On the 5th of March, 1867, the township council of the said township passed the resolution above referred to, in the words following: "Resolved, that Mr. Thomas Moore, collector, be notified if he have not his rolls of 1864 and 1865 duly returned in accordance with the 106th and 107th sections of the Assessment of Property Act of Upper Canada of 1866, by not later date than the 11th day of the present month, the council will take immediate steps to enforce the return; and in such case it be an instruction to the treasurer to demand the said rolls from the said collector on the 12th instant, and on receiving the same he shall examine them, and find out what amount is collected and what uncollected, and submit the same to the auditors, and report to the reeve at the earliest possible date all the information in the premises."

On the 16th March, 1867, the collector promised in writing that if permitted to continue the collection of rates yet unpaid on the rolls for 1864 and 1865, he would immediately and continuously proceed with the collection thereof, and would, on or before the 5th April, 1867, collect and duly pay over to the treasurer of the corporation, the whole and every part of the rates of the said years that were collectable, and which he had collected, and return the rolls, duly verified, with schedule, as directed by the Assessment Act.

On the 1st of April, 1867, the said township council passed the following resolution: "That, according to the report of the audit of the collectors of 1864 and 1865 by the township treasurer, there appears to be a large amount collected on the said rolls and not paid over; but in view of the possibility of some error in the premises, it be our instruction to the treasurer to take his books down to the residence of the said collector,

and compare his receipts with the credits given and the respective dates thereof, and to obtain any other pertinent information available in the premises for the information of the council. It further appears that the collector has failed to comply with the requirements of previous resolutions of the council as to duly returning his rolls, with schedule, and certified as the law directs; it be therefore an instruction to the said treasurer to demand the immediate custody of the said rolls and of all moneys received by him, the said collector, by virtue of his office on account of the said rolls, and not already paid over, and report immediately to the council or reeve what may have been done in the premises.

The treasurer, on the 2nd of April, 1867, demanded of the said Thomas Moore the amounts above mentioned as the amounts collected and not paid over for the years 1864 and 1865.

On the 6th of April, 1867, the treasurer of the said township issued his warrant, claiming and assuming to act under the authority of sec. 182 of the Assessment Act of 1866 above mentioned, directed to the sheriff of the county of Grey, commanding him to levy of the goods, chattels, lands, and tenements of the collector and his sureties, the respective sums above mentioned. These warrants were on the same day placed in the sheriff's hands.

On the 8th of April, 1867, the said sheriff, under the said warrants, levied upon certain goods and chattels, and upon the said above-mentioned lands of the said Thomas Moore, and afterwards, on the 7th of May, 1867, sold the said land to the said John W. Armstrong, under whom the defendant claims; and on the 15th of May, 1867, the sheriff executed a deed of the said land, in pursuance of the said sale, to the said John W. Armstrong, as a trustee, the said John W. Armstrong being then, and at the date of the said warrants, treasurer of the said township. (Copies of the said warrants and deed were annexed to the case.)

The said Thomas Moore had duly entered into bonds for the due performance of his office of collector for the years 1864 and 1865, respectively, with two sureties.

The question for the opinion of the court is, whether the title of the plaintiff under the said mortgages is entitled to prevail over the said warrants of the treasurer of the said township, and the said sale of the sheriff, and the deed executed by him in pursuance of such sale. If the court shall be of opinion that the title of the plaintiff is entitled to prevail, their judgment to recover the said land shall be entered for the plaintiff, with costs.

But if the court shall be of opinion that the title of the plaintiff is not entitled to prevail, their judgment shall be entered for the defendant, with costs.

The case was argued during Easter term last.

M. C. Cameron, Q. C., for the plaintiff. The sale cannot be supported. The Consol. Stat. U. C. ch 55, had been repealed by 29 & 30 Vic. ch. 53, when the warrant issued, "saving any rights, proceedings, or things legally had, acquired, or done under the said Acts, or any of them." This gives no right to continue pending proceedings, or to issue the warrant: *Bryant* v. *Hill*, 23 U. C. R 96; *McDonald* v. *McDonell et al*, 24 U. C. R. 424. This power to levy summarily is an extraordinary one, and it must be exercised strictly within the statute. Here no definite time was named for the return of the roll or for payment. Moreover, the warrant was premature. It must be issued "within twenty days after the time when the payment ought to have been made," and this, according to the true construction, means after the expiration of twenty days. There was no demand until the 2nd April. The payment could not be due until then, and the warrant issued on the 6th. [Morrison, J., referred to *O'Meara* v. *Foley*, Ir. L. R. 4 C. L. 116] The conveyance, moreover, is void. It is made to the treasurer for the corporation, but the corporation cannot hold it for any acknowledged or avowed purpose under the Municipal Act

Harrison, Q. C., contra. The limitation of time for returning the roll is for the benefit of the Corporation. They can give further time, and their rights should not be prejudiced by so doing. So long as the Township Corporation allow the roll to remain in the collector's hands, neither he nor his sureties can say that he should have been called upon sooner to return it; only the Corporation or the School Trustees can be prejudiced or can complain. Here the roll was legally in his hands, and when the demand for payment was made upon him it was his duty to comply with it. Not having done so, the warrant and the sale after it were authorized: *Newberry* v. *Stephens*, 16 U. C. R. 65; *McBride* v. *Gardham*, 8 C. P. 296; *In re McLean* v. *Farrell*, 21 U. C. R. 441; *Coleman* v. *Kerr*, 27 U. C. R. 5. As to the position of the sureties, *The Corporation of Whitby* v. *Harrison*, 18 U. C. R. 603; and *Todd* v. *Perry*, 20 U. C. R. 649, may be referred to, but here there is no question as to the sureties, for the land sold was the collector's, not theirs. The Statute authorizing the warrant does not say that if not issued within the time it shall be void: *Dwarris* on Statutes, 606, 611.

RICHARDS, C. J.—When the Collector's Rolls of 1864 and 1865 were given to Moore, he being collector for those years, sec. 103 of the Consol. Stat. U.C. ch 55, as amended by 27 Vic. ch. 19, sec. 12, was in force, and is as follows, as far as relates to townships and counties:—

"On or before the 14th day of December in every year, or on such day in the next year, not later than the 1st of *May*, as the council of the county or city may appoint, every collector shall return his roll to the treasurer of the township, town, or village, or to the city chamberlain, and shall pay over the amount payable to such treasurer or chamberlain, specifying, in a separate column on his roll, how much of the whole amount paid over is on account of each respective rate."

Sec. 104.—"In case the collector fails or omits to collect the taxes, or any portion thereof, by the 14th day of December, or by such other day appointed by the council of the county or city as aforesaid, such council may, by resolution, authorize the collector, or any other person in his stead, to continue the levy and collection of the unpaid taxes in the manner and with the powers provided by law for the general levy and collection of taxes; but no such resolution or authority shall alter or affect the duty of the collector to return his roll, or shall in any manner whatsoever invalidate or otherwise affect the liability of the collector or his sureties."

Under sec. 177, "If the collector refuses or neglects to pay to the proper treasurer, or other person legally authorized to receive the same, the sums contained on his roll, or duly to account for the same as uncollected, the treasurer or chamberlain shall, within twenty days after the time when the payment ought to have been made, issue a warrant under his hand and seal, directed to the sheriff of the county, * * * commanding him to levy of the goods, chattels, lands and tenements of the collector and his sureties, such sum as remains unpaid and unaccounted for, with costs, and to pay to the treasurer or chamberlain the sum so unaccounted for, and to return the warrant within forty days after the date thereof."

By 29-30 Vic, chap. 53, passed 15th August, 1866, and which came in force upon and from the first day of January, 1867, the Acts amending the Assessment Act passed in 1860, 1861, and 1863, and the Assessment Act, ch. 55, of the Consolidated Statutes of Upper Canada, "are hereby repealed, saving any rights, proceedings, or things legally had, acquired, or done under the said Acts, or any of them."

When the Act of 29-30 Vic. ch. 53, came in force, the following was the position of matters in relation to the collector and the municipality. He had in his hands the assessment rolls for the years 1864 and 1865. the county council of Grey having, on the 28th of January, 1865, authorized him to continue the levy and collection of the taxes for 1864 until the 1st of May, 1865

And on the 26th of January, 1866, he was, by resolution of the same council, authorized to continue the levy and collection of taxes for Artemisia "so long as he should be recognised by the municipality of the said township."

Sections 104 and 105 of 29-30 Vic, ch. 53, differ very little from sections 103 and 104 of Consol. Stat. U. C, ch. 55, except that the council of the township may appoint a day not later than the 1st of April, instead of the 1st of May, as in the repealed statute, for the return of the collector's roll, and paying over of the money; and in case of the failure of the collector to return the roll and pay over the money, the council of the township may by resolution authorize the collector, or some other person in his stead, to continue the collection of the unpaid taxes, as in the former Act.

Sec 182 of the Act of 1866 is in the same words as sec. 177 of Consol Stat. U. C., ch. 55.

The cases referred to by Mr. Cameron in the argument shew that the Courts have held that the sheriff, in conveying land sold for taxes, exercises a statutory power, and that he must exercise the power under the statute; and when the statute is repealed, and no provision made for the exercise of that power, the sheriff cannot, after the repeal of the statute, convey the lands he may have sold under that very statute, and which, by its terms, he could not have conveyed to the purchaser until a certain time had elapsed, and before the expiration of that time the statute was repealed. The statute imposing the rate and authorizing the sale of the land, in the cases referred to was repealed, "except in so far as the same may affect any rates or taxes for the present year, or any rates or taxes which have accrued and are actually due, or any remedy for the enforcement or recovery of such rates or taxes, not otherwise provided for by this Act.

The cases referred to by Mr. Harrison decide that the collector, whilst he retained the roll, had power to collect the taxes unpaid that were to be levied under it after the time mentioned in the statute, 14th of December, for the return of the roll, when the time had not been enlarged by the council of the municipality when the distress for the taxes was made. The effect of the decisions seems to be, that as long as the collector retained the roll, and was an officer of the municipality, he might collect the taxes mentioned in it, and having collected the taxes, he and his sureties were liable on their bond for not paying them over.

The question here is, whether the warrant authorized by the 182nd section of the Statute 29-30 Vic., ch. 53, and Consol. Stat. U. C, ch. 55, sec. 177, can be issued at any time when more than twenty days have expired after the collector was bound to return the roll and pay over the money by the provisions of the 103rd section of the last mentioned Act, or the 104th section of the other statute, to wit, the 14th of December, or the 1st of April or May of the year for which the taxes were to be collected, or in the following year as to the last mentioned days.

The section speaks of the collector refusing or neglecting to pay to the proper treasurer, or other person legally authorized to receive the same, the sums contained in his roll, or duly to account for the same, as uncollected. Then the treasurer or chamberlain shall, *within twenty days after the time* when the payment ought to have been made," issue a warrant to levy such sum as remains unpaid and unaccounted for.

What is the *time* when the payment ought to have been made, to enable the municipality to exercise the large and unusual powers conferred on them by the section referred to? The only *time* mentioned in the statute then in force was the 14th day of December, or such other day as the municipal council of the county may appoint, not later than the 1st day of May in the next year. Now here no other day than the 14th of December was appointed for the return of the rolls or the paying over of the money, and the power contained in the section to issue the warrant was not exercised within twenty days of that time.

The late Chief-Justice McLean, in *Newberry v. Stephens*, 16 U. C. R 73, referred to a similar provision in 16 Vic. ch. 182, and says, "There must, of course, be a certain time for the payment over of moneys, and *that* time, as it appears to me, is the 14th of December in each year, under the statute, unless the time is extended by the county council, or authority given by the municipality interested to continue the collection. When the time for collection was extended to the 1st of August, the time of payment was fixed for that day, and the collector and his sureties might have been proceeded against for neglect in paying over the amount of the roll, or to account for the same as uncollected."

The extension of time first obtained had reference to the taxes of 1864, and the county council authorized the collector to continue until the 1st of May, 1865, to levy and collect the rates and taxes for the year 1864. The practical effect of

this probably was to enlarge the time for paying over the money or returning the roll to that date, which they were authorized to do as the law then stood.

The subsequent resolution of the township council, passed in 1866, authorized the said Thomas Moore to continue the levy and collection of taxes so long as he should be recognized by the municipality of the township. Here no time is fixed within which he is to pay over the money, and things continued in this state until the law under which they were then acting was repealed.

At that time, then, *the time* when the payment ought to have been made was not fixed, unless it was the time named in the statute, and the twenty days within which the warrant ought to have issued had then long passed.

Another question to be considered is, what do the words "within twenty days after the time when the payment ought to have been made," mean? Are they to be interpreted literally, or is the true meaning that the warrant is not to issue until the expiration of the twenty days from the time?

If the latter be the true meaning, as I understand was urged on behalf of the defendant on the argument, then if the collector can only properly be considered to have been in default after the money was demanded from him on behalf of the council, which was on the second day of April, then twenty days did not elapse before the issuing of the warrant, and in that view it would be void.

I do not, however, feel inclined to put that interpretation on the section. I think the safest rule to lay down, and the one more in accordance with the true meaning of the statute and the general doctrine as to the view taken of extraordinary and unusual remedies given to enforce the collection of money, is to hold the parties to the strict letter of the law on the subject.

I think this may be carried out by deciding that when the time of returning the roll and paying over the money is fixed within the period allowed by law, and the collector neglects or refuses to pay over the money by that time, that the treasurer of the corporation may within twenty days from that time issue his warrant to collect the amount from the collector and his sureties; but if that is not done within such time, and the municipality authorizes the collector to continue the collection of the unpaid taxes, though it does not alter or affect the duty of the collector to return his roll, or invalidate or otherwise affect the liability of the collector or his sureties, yet the usual legal remedies must be resorted to to enforce those liabilities.

The whole scheme of the assessment law is based on the prompt collection and paying over of the taxes; and when these taxes were imposed, the Legislature considered the inconvenience resulting from a delay in the return of the assessment rolls so great, that they would only allow the time fixed in the Act for the final return to be extended by the county council, and that body also allowed the collector to go on collecting after those dates.

The Act of 1866 only allowed the time of returning the roll to be extended to the 1st of April, instead of the 1st of May, as in the former Act; and by the same Act, sec. 116, the treasurer of the local municipality was bound to furnish a statement of the arrears of taxes and school rates, &c., on the roll to the county treasurer within fourteen days after the day appointed for the return and final settlement of the collector's roll, as in the Consolidated Statute; but the further words were added, "and before the eighth day of April in every year" At the end of the section it was further provided, and not in the former Act, that the county treasurer should not be bound to receive any such statement after the *eighth day of April* in each year.

Suppose the county council had authorized some person other than the collector to continue the levy and collection of the unpaid taxes, could the municipality not proceed to enforce its remedy against the collector and his sureties by issuing the warrant against them within twenty days from the time he ought to have paid over the money? I should think they could. If so, why not against them when they had authorized the collector to continue to collect the unpaid taxes; and if they could, and the twenty days elapsed before the issue of the warrant, I think they could not do so afterwards, and particularly after the statute under which all the prior proceedings had been had was repealed, and when it did not appear that Moore held the office of collector of taxes for the township.

It is not necessary, in the view we take of the matter, to decide how far the repeal of the Consolidated Statute, with the saving of rights under it contained in the repealing Act, affects the right to issue the warrant under which the land was sold. If it were necessary to decide that question, I should desire further time for consideration and reflection.

It certainly seems to me that the great delay which took place in compelling this collector to return the rolls or pay over the money he had collected, should have suggested to the municipality, under the peculiar wording of the statute, the propriety of pursuing the ordinary remedy, by action against the collector and his sureties, rather than the extraordinary one of issuing the warrant.

It will be observed that under the Consolidated Statute, whilst the county council could enlarge the time for returning the rolls, and could authorize the collector to continue the collection of the unpaid taxes, it was the township municipality that could issue the warrant against the collector and his sureties for not paying over the money within twenty days after the time when the payment ought to have been made When that was the law, how was the township municipality to know the *time* the collector ought to pay over the money, unless it was that fixed by the county council within the time prescribed by the statute?

On the whole, I think the verdict should be entered for the plaintiff.

WILSON, J.—The collector should have returned the rolls for 1864 and 1865 by the 14th December of these respective years, or by some day not later than the 1st May thereafter, as the county council might appoint.

The county council did for the roll of 1864 give time for the levy and the collection of the taxes till the 1st May, 1865. And the county council did afterwards, for the rolls of both 1864 and 1865, give time for the levy and collection of the taxes "so long as he (the collector) should be recognized by the township"

Notwithstanding the return of the roll, by

sec. 103, as amended by 27 Vic. cap. 19, sec. 12, is to be not later than the 1st May, yet, by section 104, the county council may by resolution authorize the collector or any person in his stead to continue the levy and collection of the unpaid taxes, in the manner and with the powers provided by law for the general levy and collection of taxes. But this shall not in any manner invalidate or otherwise affect the liability of the collector or his sureties, nor shall alter or affect the duty of the collector to return his roll.

Whether this levy and collection after the 14th December or the 1st May can be effectively made without the possession of the roll by the person who is empowered to collect, may be questioned. But whether it can be made or not without the roll, it does not appear to me it would be illegal if the council left the roll still with the collector, to finish his work after the 14th of December or the 1st of May, when he was merely empowered to continue his levy, and had not the time extended for returning the roll.

If the return be not made by either of these days, the collector and his sureties are guilty of a default, and are to be still answerable for that default, notwithstanding the resolution of the council authorizing the levy being continued.

The last extension of time for the continuation of the levies was, I think, a general extension so long as the township recognized the collector.

The powers for extending the time for return of the roll, or for continuing the levy, were by the Act of 1866 transferred from the county to the township council.

The township council, then, under the Act of 1866, by resolution of the 5th of March, 1867, authorized the treasurer of the township to notify him that if the rolls for 1864 and 1865 were not duly returned by the 11th March, the Council would take immediate steps to enforce the return, and to demand the rolls from him on the 12th of March, if Moore should not have returned them.

Moore returned the rolls under the resolution of the 5th March, but not verified. Large defalcations were found against him on examination of his rolls.

By *township* resolution of April, 1867, setting out these defalcations, and that the collector had failed to return the rolls, with schedules, &c., it was directed that it be an instruction to the treasurer to demand the immediate custody of the said rolls, and of all moneys received by the collector and not paid over, and to report to the council.

And on the 2nd April the treasurer demanded the taxes collected and not paid over from the collector.

On the 12th March a demand was made for the rolls by the treasurer, and the collector returned the rolls either before or on or after demand upon him

On the 2nd April the treasurer demanded payment from the collector of the unpaid money collected. The money was not paid.

After the long delay permitted by the county council without taking proceedings against the collectors, it would seem only proper, before enforcing by so summary a process the payment of the arrears as section 182 of the Act of 1866 gave to the township, that the council should make a demand upon the collector—who may have believed he was duly employed to continue the collections, even although he may not have been formally employed by resolution to do so—to pay over the amount he had collected, before issuing a warrant against all the property of the collector and his sureties.

Without such a demand, and a refusal or neglect to pay, it may be contended, as no specific day had been fixed for the payment of the collection by the last general extension of time, that summary process cannot be legally issued.

It is provided by 29–30 Vic. ch. 53, sec. 182, that if a collector refuses or neglects to pay the proper treasurer the sums contained in his roll, the treasurer shall "within twenty days after the time when the payment ought to have been made" issue a warrant.

Here, no precise day being fixed for paying over the collections, a demand was required to be made on him to pay over before he could be considered as in default.

The demand on the 2nd April fixed the time for payment. For the first time properly under the two rolls the collector made default in payment, according to the extended time.

On the 6th of April, 1867, the warrant to sell the goods and lands of the collector and his sureties, for defalcations under both rolls, issued, and was delivered to the sheriff.

The Statute says, "The treasurer shall, *within twenty days* after the time when the payment ought to have been made, issue a warrant." It issued *within twenty days* after the demand on the 2nd of April. Is that the time when the payment ought to have been made?

I think the party would be entitled to a reasonable time after the demand within which to pay. Perhaps three days would be a reasonable time. If so, the warrant on the 6th of April, 1867, is all right, if the warrant is to be issued not later than twenty days from the time of default.

But does the statute mean that the warrant is to issue only within the twenty days? If so, this warrant may issue the very day after the payment should have been made, and cannot issue after these twenty days have expired. Or does it mean that the warrant shall not be issued for twenty days after the default was made?

In *Rex* v. *Ireland*, 3 T. R. 512, the words on which the question arose were as follows: "that the prosecutor, for the recovery of such costs, shall, *within ten days* after demand made of the defendant, and refusal of payment, have an attachment granted against the defendant." Only *eight* days had elapsed since the demand.

The Court said, "Though the words of the Statute were '*within* ten days,' they had always been understood to mean that the ten days must elapse before the attachment could be granted; otherwise, instead of the indulgence of the ten days supposed to be offered by the Legislature, the party would be liable to an attachment *immediately* after a demand and refusal." And they refused the motion for an attachment.

"Upon" may mean *before*, or *simultaneously with*, or *after*, as reason and good sense require the interpretation with reference to the context and the subject matter of the enactment: Per Tindal, C. J., in *Regina* v. *Humphrey*, in Error, 10 A. & E. 370

It is said, that if a new trial be granted *upon* payment of costs, that means *on condition* of paying the costs.

So as to the payment of a sum *upon* conviction of the offender: *Ibid* 346, 362.

So also as to amending on payment of costs: *Levy* v *Drew*, 5 D. & L. 397

Paynter v. *James*, L R 2 C P 348, is to the same effect Payment *on* right delivery of the cargo means the payment to be concurrent with the delivery, and not after the delivery.

In *O'Meara* v. *Foley*, Ir. L R, 4 Com. Law 116. it was held that, the words of the C. L. P. Act, judgment might be marked and execution issued "on the fifth day in term after such verdict, whichever shall first happen," meant that "within fourteen days" should be construed *upon* the expiration of fourteen days.

Whiteside, C J., adopting the language of Parke, B, in *Young* v. *Higgon*, 8 Dowl. 217, "Reduce the question to the case of a single day, and then see what hardships and injustice must ensue," said, "*So I say here*"

I am of opinion the collector had until the 2nd of April, 1867, within which to pay, the demand on that day determining his right to any further day, and upon the authorities the warrant by way of execution, which issued on the 6th of April, having issued before the twenty days after default to pay had elapsed, was improperly because prematurely issued.

MORRISON, J., concurred with Wilson, J.

Judgment for plaintiff.

COMMON LAW CHAMBERS.

REGINA v. MCNANEY.

Con. Stat. U. C. cap. 76—29-30 Vic. cap. 45—Apprentice—Execution of contract—Amendment of return to certiorari.

Upon an application under 29-30 Vic. cap. 45, for the discharge of a prisoner, committed under the Apprentices' and Minors' Act for disobedience to his masters, on the ground, *inter alia*, that the indenture of apprenticeship was not a binding contract, it having been executed by one only of the employers, in the name of the firm.

Held, that the indenture must be considered to be sufficiently executed, as it was binding at all events upon the apprentice and the partner who had signed it, and there was nothing to show that his co-partners had not been present and assented to the execution.

Held, also, that where a *certiorari* simply requires a return of the evidence, the magistrate need not return the conviction or a copy of it.

Semble: If material evidence is unintentionally omitted from such a return, an amendment may be allowed for the purpose of obtaining such omitted evidence, but only with the concurrence of the parties and of the witness by whom the deposition was signed in the correctness of the additions.

[Chambers.—July 27, 1871.—*Wilson, J.*]

O'Donohoe obtained a writ of *habeas corpus* to bring up the body of one Owen McNaney, who had been committed to the common gaol of the county of York under the provisions of the Apprentices' and Minors' Act, Con. Stat. U. C. cap. 76, sec. 10, for disobedience to the orders of Messrs. Beard Bros., his masters; and also a writ of *certiorari*, directed to Alexander MacNabb, police magistrate for the city of Toronto, to send up the evidence had before him, and upon which the warrant of commitment had been founded.

Both writs having been returned, on the 26th July last, *O'Donohoe* moved for the discharge of the prisoner, under 29-30 Vic. cap. 45, on the grounds:

1. That there was no legal contract of service, as the indenture of apprenticeship was not signed by the prosecutors, and was therefore bad for want of mutuality: *Lees* v. *Whitcomb*, 5 Bing 34.

2. That the contract, being signed by the employers under the name of "Beard Brothers," could not be properly executed by one partner alone without the production of a written authority under seal from the remaining partners: Addison on Contracts (Ed 1869), 1052; *Gould et al* v *Barnes*, 3 Taunt. 505.

3. That even if the contract had once been binding, it was terminated by the change in or dissolution of the partnership which had taken place since its execution: *Brook* v. *Dawson*, 20 L. T. N S 611.

4. How and in what particulars the apprentice disobeyed the orders of his employers, must be stated: Paley on Convictions, 210; *Colborne* v. *Stockdale*, Str. 493.

5. That the commitment was bad, as no conviction appeared to have been made: *Reg* v. *Rhodes*, 4 T. R. 220; 32-33 Vic cap. 31, sec. 42.

M. C. Cameron, Q. C., for the Crown, opposed the discharge of the prisoner, on the grounds:

1. That the *certiorari* did not require a return of the conviction, and therefore the fifth objection must fail.

2 That there was no return of any evidence showing a dissolution or change of partnership, if any had taken place.

3. That there was a valid execution of the indenture of apprenticeship by the member of the firm who had actually signed it, and therefore a binding contract existed between the parties.

He referred to *Ball* v. *Dunsterville* 4 T R. 313; and *Bowker* v. *Burdekin*, 11 M & W. 128.

ADAM WILSON, J.—As to the evidence which it is said was given of the change in or dissolution of the firm of employers after the making of the articles of apprenticeship in question, I cannot of course act upon it, as if it had in truth been given before the police magistrate, because no such evidence has been returned by him, and there is no affidavit before myself stating that such evidence was given. It may probably have been given in fact before the police magistrate, and he may have omitted to note it, either unintentionally or because he may have thought it at the time to have no particular bearing on the case If the evidence were given, but not noted, I think the magistrate might be allowed to amend his return by setting it out as a part of the written evidence, if he remembered what it was, and if both parties concurred in the correctness of the addition. I am not quite clear that the magistrate can amend the notes from his own recollection after the evidence has been returned, but I am disposed to think he might be allowed to do so. It could be done only with the concurrence of the witness, if he had signed the deposition.

If the magistrate did not truly return the proceedings, he would be liable for making a false return. If he omitted to return some matter which he should have returned, I have no doubt he might be allowed to amend his return. Here he has returned truly all he intended and all he had it in his power to return; and now it is suggested he might amend the evidence which he took by adding to it a fact which was deposed to, but which he did not note at the time. I think, as I have said, that may be done. I do

not think the omitted evidence can be supplied by affidavit, though an affidavit is allowable in some cases, to show what has actually occurred before the magistrate: *Re Thompson*, 6 H. & N. 193; *The Queen* v. *Bolton*, 1 Q. B. 66; *Ex parte Baker*, 3 Jur. N. S. 937.

I think the want of the conviction cannot be complained of, as the terms of the *certiorari* do not call for it. If the magistrate should have returned it, and had not done so, I should still allow him an opportunity of doing so; for no doubt there is such a proceeding. If he had already returned it to the clerk of the peace, he might show that fact, or he might transmit a copy of it instead, stating why he could not return the original: *The King* v. *Eaton*, 2 Q. B. 285.

This reduces the objections to the one relating to the mode of execution of the instrument of apprenticeship. The execution, though in that informal manner, is sufficient if all the partners were present at the time and assented to its being so executed: *Ball* v. *Dunsterville*, 4 T. R. 313.

In *Bowker* v. *Burdekin*, 11 M. & W. 128, it was held that the partner who executed an assignment of his goods and effects, though it was intended that his co-partners should also have joined in it, and they were named in it, had passed his own estate, although his partners had not signed it.

It has been argued here that this instrument is binding in that view upon the partner who actually signed it, even if it be not binding on his co-partners, and so there is a valid contract with that partner. That partner, I presume, is bound; but whether the contract produced is therefore valid, is another question.

The case referred to shows the individual share of the partner would pass, so long as he delivered the deed as complete on his part, and not as an escrow. In this case the apprentice bargains for the partnership responsibility to him, and he has not got it unless all the partners were present and assented to the execution by their co-partner. The infant cannot therefore sue them, though he may sue the partner who executed the deed.

In some cases the question has been, whether a person who has not executed the deed can sue the one who has executed it. The rule seems to be that in leases, the lessor who has not executed, and who has not therefore conferred the estate on the other party contemplated and bargained for by him, cannot sue him for not repairing, or for non-payment of rent, or for any such cause, which assumes and is based upon an estate having been granted; but with respect to other covenants in the lease, not depending on the interest in the land, the covenantee may sue the covenantor though the covenantee has not executed the deed, and although the covenant sued on is stated to have been entered into in consideration of the covenants which the other should have executed: *Pitman* v. *Woodbury*, 3 Exch. 4; *Morgan* v. *Pike*, 14 C. B. 473. See also *Millership* v. *Brookes*, 5 H. & N. 797, where the same point as to an apprentice was argued, but no judgment given on it.

I am not prepared to say that this indenture, though it had not been executed by the employers at all, would not have been binding on the apprentice, although he could not have sued upon it. He might, however, have compelled the master to execute it on a proper case for relief made out: *Brown* v. *Banks*, 7 Jur. N. S. 1273. I cannot, therefore, give less effect to this indenture, which has been executed by one partner, and must therefore bind him, than if it had not been signed by any of the members. An agreement of this kind, if not beneficial to the infant, will not be binding on him: *Reg* v. *Lord*, 12 Q. B. 757. But this agreement is just as beneficial to him as it would be to a person of full age.

It appears that notwithstanding this conviction, the party may be prosecuted a second time under the same agreement, if any further cause of complaint arise; but if the fact be, as has been stated, that the partnership in force at the time has been since dissolved, it may be of very little consequence to the prosecutors that the evidence on that point does not now appear on this return; for it will be sure to be brought out and noted on any future occasion, if that should unhappily arise * The case of *Brooke* v. *Dawson*, 20 L. T. N. S. 611, referred to by Mr. O'Donohoe on this point, I have not referred to, for the reason already given.

On the only exception which I have been at liberty to consider, I think the application fails; and that the prisoner must be remanded for the residue of his time of imprisonment.

ENGLISH REPORTS.

COURT OF PROBATE.

(Reported by W. LEYCESTER, Esq., *Barrister-at-Law.)*

PEAT v. PEAT.

Administration—Personal estate insolvent—Grant to widow in preference to next of kin, who was also heir at law.

The heir at law and next of kin of an intestate objected to the grant of administration being made to the widow, and on the ground that the personal estate was insolvent. The evidence of insolvency was not very conclusive either way, and the court declined to depart from the usual custom, and made the grant to the widow.

[25 L. T. N. S., 108, May 9, 1871.]

The intestate died possessed of both personal and real estate, and it was alleged on the part of the defendant that the debts and liabilities of the deceased exceeded the value of the personal estate, and that they could not be discharged without a sale of some portion of the real estate. The defendant's solicitor filed an affidavit in which he stated, "I believe and my London agents inform me this will be the proper course, the real estate, or a portion of it, will have to be sold to discharge the debts."

Inderwick, for the plaintiff, moved that administration be granted to the widow.

Dr. *Swabey* (*Bayford* with him), for the defendant, the heir-at-law and next of kin, contended that in granting administration, the court should regard the interest. The personal estate is insolvent, and the person most interested in its economical administration, is the heir at law, who is also next of kin. The court has the discretion to make a grant either to the widow or to the next of kin. It is true that the usual practice of the court has been to exercise its discretion in favour of the widow, but where the widow has no interest she must be passed over. They referred to Williams on Executors, vol. 1, pp. 402, 420, 6th edit., and the cases cited there.

Inderwick in reply.—Those cases only apply to where the widow has given up all interest, or has misconducted herself.

LORD PENZANCE.—There ought to be a very strong case to justify the exclusion of a widow from the administration. The cases which have been cited apply only to the proposition that where a widow has by a deed of settlement, or any other legal method, virtually stripped herself of all interest in the personal property of the husband, the court, by reason of her want of interest, may pass her by to make a grant to the next of kin. The present case depends simply on a question of figures. It is stated on the one side that the estate is insolvent, but notwithstanding that, no very affirmative statement to the contrary has been made on the other side. It may still be otherwise, and it seems to me that it would be difficult to determine positively whether the estate is insolvent or not. The question therefore in the present case is whether the court, by acting on a presumption that the personal estate will turn out to be insolvent, and consequently that the real estate will be charged partly with the payment of the debts should place the plaintiff in the position of a widow who has voluntarily and legally resigned all share she might have in her husband's personal estate. It seems to me that this would be going too far. I cannot be certain that there will be no surplus for her benefit. The defendant's attorney says there will be none, and his statement is partly confirmed by the letter of the plaintiff's attorney, in which, while writing on another subject he asserts that the real estate or a portion of it will have to be sold to pay the deceased's debts But I do not see my way to an affirmative conclusion that the estate will be absolutely insolvent. There may be a surplus, and if so the widow will be entitled to one half Under these circumstances, she is entitled to administration. The order may be made peremptory, so that if she does not take the grant within fourteen days, the nephew may claim it for himself.

CORRESPONDENCE.

Fees to Counsel in Division Courts.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—Perhaps you will allow me to utter, through the columns of your paper, a few thoughts on what is styled "the poor man's courts," viz., the Division Courts.

The question occurs to me, Are they the poor man's courts? They are supposed to be so constituted as to be more favourable to the poor man's litigation than any other court. Now, this is the theoretical part. Let us look at some of the workings of the practical part of the Division Court.

A., a poor man, works for B., a rich man: and in settling for the time A. has worked, B., either through a desire to overreach, or may be through a misunderstanding, will not allow A., as wages, within ten or twelve dollars of what A. thinks he is entitled to. They disagree; and B. will not pay A. anything, unless A. accept what B. is willing to give him as payment in full. How is A. to get his wages? The clerk of the Division Court expects his fees in advance. A. is unwilling to go to a lawyer, as he would have to pay him five dollars or may be ten dollars, none of which he can recover as costs in the cause. Or, if the clerk will advance the first costs for A., and he is too poor to fee a lawyer, which B. does, it is ten chances to one that B. beats A., and A. has to pay the costs of suit out of what he gets judgment for. There are many other cases in which the poor man may be engaged, as, if he have a claim for damages, goods sold, &c., in which his inability to fee a lawyer operates greatly to his disadvantage.

Now, I think it would be far more to the interest of the poor man, and the public generally, if a small tariff of costs were allowed the successful party in suits in Division Courts, where professional men are employed by such party. These costs, of course, should not be heavy; say $1 counsel fee where the claim is less than $5, a $2 fee where the claim is less than $10, a $3 fee where the claim is less than $20, a $4 fee where the claim is less than $40, and a $5 fee in all cases over $40; said fees to be increased in special cases by judge to a sum not exceeding $10. This would, I think, be a fair tariff, and would very likely lessen the amount of litigation, as many delay paying for the simple reason that they have only costs of court to pay.

I should like to have your opinion on this question. Do you not think there ought to be a Division Court scale of costs, and more especially since none but lawyers can now practice in Division Courts?

Hoping you will give an answer, and that others may be drawn in to discuss it.

I remain yours truly, B.

[We shall refer to this subject again. There may be and are some cogent reasons why fees to professional men should be taxed to successful suitors, but we cannot say that we agree altogether in the reasons or examples given above. The policy of the Division Court system would seem to be opposed to a change of the law in this respect, but at present we are not prepared to say that the change would not in many respects be beneficial. We see there is a Bill before the Legislature pointing the way our correspondent refers to, and for aught we know our correspondent may have some correspondence with the framers of the Bill; but that proposed measure goes entirely too far, and in some respects is vicious in its tendencies. But we will discuss the matter more at length hereafter.—EDS. L. C. G.]

INDEX.