DIARY FOR AUGUST.

1. SUN. *10th Sunday after Trinity. Lammas.*
8. SUN. *11th Sunday after Trinity.*
14. Sat... Last day for County Clerks to certify County rates to Municipalities in Counties.
15. SUN. *12th Sunday after Trinity.*
18. Wed. Last day for setting down and giving notice for re-hearing.
21. Sat.. Long Vacation ends.
22. SUN. *13th Sunday after Trinity.*
24. Tue.. *St. Bartholomew.*
26. Thur. Re-hearing Term in Chancery begins.
29. SUN. *14th Sunday after Trinity.*
30. Wed. County of York Term begins.

The Local Courts'
AND
MUNICIPAL GAZETTE.

AUGUST, 1869.

THE PRESS IMPRESSED.

Much is said in praise of the liberty of the Press, and much good has resulted from the freedom which in modern times the Press has enjoyed. But it is not to be forgotten that the liberty of the Press is no more than the liberty of the moral agent who controls it. That which a man has no right to do in a state of society as an individual, he has no right to do because in some way connected with the Press. The Press is subject to the law which binds society together, and whenever it transgresses the law with impunity, the liberty to do right becomes a license to do wrong.

We have been led to make these observations owing to the habit of some newspaper writers in Canada to discuss proceedings pending for decision in courts of justice—a habit which, if our judges were not beyond suspicion, would be most destructive in its influence, and which, even under existing circumstances, ought to be generally discouraged. When a case has been argued and is awaiting judgment, no suitor or other person has any right to approach the judicial mind in order to influence its conclusion. That which is wrong in the suitor is wrong in the newspaper editor. And yet it is not unusual in Canada to find newspapers conducted with considerable ability, abusing parties to legal proceedings, or their witnesses, and attempting to hector the judges towards a particular conclusion. Such conduct is very reprehensible, and in England would not be permitted for a day. While in general proud of our Press, we cannot help stating that conduct such as we have indicated is a foul blot on its otherwise fair escutcheon.

One newspaper of considerable ability in Toronto, of late deemed it necessary to provide its readers with an article on the case of Dr. Allen, on his application to rescind the order for the delivery of his children to the mother, which article was published between the day of the argument and the day for the delivery of judgment. It freely espoused one side of the case that was argued, and roughly commented upon anything that appeared in the case opposed to the views of the writer. No notice was taken of this indecorum, and the writer emboldened by the success of his former effort, deemed it necessary to produce another article in the same case between the day of the argument of the application for process of contempt against the Doctor and the day of the delivery of judgment. The latter article in referring to the affidavit made by a son of the Doctor used this language, "The thing is so monstrous that it is, for the ends of justice, to be hoped there may be no hesitation in at once meting him out his proper reward." While so dealing with one of the witnesses before the judge, it is not to be wondered that language equally unwarranted was used in reference to the conduct of the Doctor himself, which was described as "an attempt to trifle with and defy the majesty of the court." Again: "one can hardly conceive a more gross attempt, or one more apparently ridiculous, to trifle with the court, &c." Considering that the conduct of the Doctor, whether a contempt or not, was the subject of investigation, "one can hardly conceive a more gross attempt, or one more apparently ridiculous, to trifle with the court," than this same newspaper article. It is with pain that we direct attention to it. The writer of it little knew that while endeavouring to prejudice the judge and the public against the Doctor, who was accused of contempt of court, that he, the writer, was guilty of a most gross contempt, and one for which, without doubt or question, he ought to be severely punished. Nothing can be more pernicious than to prejudice the minds of the public against persons concerned as parties in causes before the causes are finally determined. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and to their

characters; and that judges, whether weak or strong, may be allowed equally to discharge their duties without the fear of offending popular writers or popular newspaper publishers.

Such was, in effect, the language of the the celebrated Lord Chancellor Hardwicke, nearly a century since (see 1 Salk., 469), and such is in effect, the language of many eminent judges of more recent times. The present Lord Chancellor, when Vice-Chancellor Wood adjudged the publisher of the *Pall Mall Gazette* guilty of a gross contempt of court, for thus commenting upon affidavits filed in a suit, "many of these are important enough if the deponents can endure cross-examination in the witness box; many are obviously false, absurd and worthless:" *Tichborne* v. *Tichborne*, 17 L. T. N. S. 5. Still later, Vice-Chancellor Malins was equally mindful of the duty which he owed to himself, to the bench, and to the public, by subjecting the proprietor of a local newspaper to costs for animadverting upon the parties to a winding up petition then before the court, and intimated that if process of contempt were asked he would most certainly have granted it: *Re The Cheltenham and Swansea Railway Carriage and Waggon Company, limited*, 20 L. T. N. S. 169. In doing so he said, "whenever it happens that a newspaper, whether on its own motion or at the instigation of others, publishes proceedings in a cause, it does prejudice the cause of justice." Motions of this kind are of late very frequent in England. Vice-Chancellor Malins, in the last reported case of the kind, *Robson* v. *Dodds*, 20 L. T. N. S. 941, said that three or four had occurred before him in a recent period. This learned judge, while alive to the great benefits of a free Press, is no less alive to the necessity of a pure administration of justice. He, in the case to which we have last referred, made an order for the committal of a newspaper publisher who had published an article which was calculated to create a prejudice against one of the parties to a pending suit, and to cast opprobrium upon his solicitor. It is true that he spoke of motions of the kind as of a very embarrassing character, but his firmness in disposing of them is deserving of all praise. No one better appreciates the mission of the Press than this learned judge, but no one less shrinks from the discharge of his duty when it becomes his duty to censure the Press. He is reported in the last mentioned case to have used this manly language, "on the one hand, it is of the highest importance to the public that the Press should be as much as possible unrestricted, a freedom which gives life and vigour to newspaper articles; and it is equally clear that no such comments should be permitted as are calculated to impede the course of justice." Vice-Chancellor James still more recently held a Court near Guildford at which the printer and publisher of a local paper, called the *Poole Pilot*, was called upon to show cause why he should not be committed for contempt of Court for having published an article vindicating in strong terms the claims of a party to a suit pending in Court as to the Tichborne title and estates. Dr. Tristam appeared for the newspaper publisher, and put in an affidavit expressing the deep regret of the publisher for having published the article. The learned counsel by way of excusing his client, said that the strong remarks against the present claimant, which had appeared in other newspapers, had led his client to believe that he had a right to comment on the case. The Vice-Chancellor said, that the press "has no right to comment upon or interfere with a pending suit," that a gross contempt of court had been committed, and at first he was strongly inclined to send the newspaper publisher to prison, but as the latter had expressed his regret he, the learned Vice-Chancellor, would order him to pay the costs of the application. The Vice-Chancellor further intimated, that "in all future cases the full punitive power vested in the Court would be exercised" (*The Law Times*, August 21, 1869, p. 316).

It is to be hoped that we have sufficiently directed attention to the abuse of which we complain, in order to prevent a repetition of it. Most of our newspaper writers are not only men of ability but men of good sense. With such men it is not necessary to do more than point out a legal transgression, in order to remove it. They fearlessly point out what they conceive to be wrong in the conduct of others, and must not complain if others ask them to take "the beam out of their own eye." The misconduct of which we complain is not, we are sure, wilful. It is rather the result of ignorance of the rules of law that govern the conduct of newspaper writers in relation to pending proceedings in courts of justice. But good sense and good taste alike point it out as an abuse, and while

the many discern the abuse, we trust the few who have hitherto acted as if blind to it, will in future discern it, and act accordingly. If not, the courts must be invoked to maintain the majesty of the law. Public opinion is deeply interested in the pure administration of justice, and will abundantly sustain any effort necessary in the direction we have indicated; and the public, in the interest of the laws of decency and propriety, may be compelled ere long to ask if in Canada we have judges of such an independent spirit and unswerving purpose as Lord Hardwicke, Lord Hatherly, or the present Vice-Chancellors, Malins or James.

SELECTIONS.

CAPITAL PUNISHMENT.

The advocates of capital punishment abolition sustained on Wednesday last their customary defeat, and as long as these reformers aim at abolishing capital punishment *in toto* it may be anticipated, and must certainly be desired, that their measure will always meet a similar fate. Last year the defeat took place on a motion made by Mr. Gilpin (the introducer of this year's measure), during the passage of the Capital Punishment within Prisons Bill. On that occasion, Mr. John Stuart Mill argued very forcibly against the abolition, founding his argument on the deterrent effect of capital punishment upon the criminal classes.

The arguments adduced last week did not comprise any addition to those which have been adduced on previous occasions. A large portion of the argument employed usually consists in the recapitulation of particular instances of hardship, real or assumed; here, of course, the instances selected vary from year to year; but, with this exception, there is no novelty.

The position of the abolitionists consists partly in a sort of assumed rule of progress. Capital punishment, they say, has been abolished from time to time for the minor offences, and the result has justified the abolition; hanging for murder now remains the sole remnant of a bygone system; in obedience to the irresistible march of improvement it is time that this too were swept away. If it were an established law that alterations must always proceed in the same direction, that there is no resting place at which reformers can say, "hold, enough," politicians and political economists of the obstructive and antediluvian school would have a very heavy weight thrown in their favor. We should fear to redress even the grossest abuses from dread of committing ourselves to a ceaseless progress which might end by landing us at an extreme ten times more grievous than its opposite. That we abolished hanging for sheep stealing, and, as we believe, with good effect, is no reason why we should do away with hanging for murder. The position starts with a *petitio principii*, that it is expedient to abolish—which is precisely what has never yet been shown

The question is purely one of expediency, but before discussing what is the real gist of it, the question of deterrent effect, we may notice an argument generally urged, and which was urged last week by Mr. Gilpin, that capital punishment is irrevocable. If you condemn a man to imprisonment for life, and it is afterwards proved that he was innocent, you can release him; but you cannot restore him to life if you have had him executed, This is a drawback, a disadvantage attendant on the infliction of death as a punishment. But it is far from being so weighty as the abolitionists seem to fancy. In the first place, it is a drawback which, in a greater or less degree, according to the severity of the punishment, coupled with the sensitiveness of the recipient, applies to all penalties. In no case can you do more than remit the infliction to come; you cannot recall the past. If you have sentenced the convict to ten years' penal servitude, you can remit the nine years to come, but you cannot recall the one year which he has endured, any more than you can compensate him for the shame and the pain of the exposure, the trial, and the unjust conviction. We have never heard it advanced as an argument against flogging garotters, that if a conviction for garotting proves unjust, you cannot unflog the innocent convict. The number of innocent convicts for capital offence is so infinitesimally small that there can be no ground for altering the system on their account.

There is also urged another argument proceeding somewhat in the opposite direction to this. It is said that in consequence of death being the penalty for murder as now defined by the law, many criminals escape altogether, because the juries will not inflict death for certain offences: *exempli gratiâ*, infanticide. The case of infanticide is a peculiar one. It is perhaps scarcely desirable to make any distinction which would amount to enacting that the life of a child is not as valuable as that of an adult. At the same time infanticide proper, that is, the murder of a child at the birth, is certainly considered not so heinous an offence as the murder of an older person, as is shewn by the readiness of juries to acquit in such cases. The rule of law that murder can only be committed of a child completely born and severed from his mother has prevented vast numbers of convictions which otherwise must have taken place, but where mortal injury is inflicted on a child in this position the guilt is really quite as great as if the child had been completely born and the violence inflicted immediately afterwards. It would in our opinion be a great improvement of the law to enact that upon any charge of infanticide—that is, of murder by a mother of her child at the time

of its birth—it should not be necessary to prove that the child was completely born at the time of the infliction of the injury, but that in all such cases the offence should not be capital, but punishable only with penal servitude. If that change were made, convictions would take place of the serious charge in cases where at present their is only a conviction for concealing the birth, an offence of a totally different character.

It is also said that there is much uncertainty in the infliction, in consequence of the Home Secretary's intervention. The jurisdiction of the Home Secretary as to remitting sentences is of course, unsatisfactory, but it is difficult to see how it can be done away with altogether. There must always be in some quarter a discretion as to the exercise of the prerogative of mercy. But the cases in which the Home Secretary is appealed to may be divided into two classes, those in which he is called upon to pass judgment upon the facts proved at the trial, and those where new facts are brought forward. As to the latter there clearly ought to be a means of ordering a new trial. We have protested several times against allowing a universal right of appeal in criminal cases, but it would be much more desirable that the subsequent investigation, which must take place in certain cases, should be a judicial rather than a private one. The former class of cases are more difficult to deal with. We are inclined to think it would be an improvement to refer the question of the remission to a certain number of the judges, say five or six, of whom the judge who tried the case should be one. By this plan there would be more uniformity than at present.

The present defects in the system of capital punishment call for amendment, but are not an argument for abolition.

It is also said, and with apparent seriousness, "But capital punishment cannot operate as a deterrent, for see how many murders are committed." This argument might be advanced against the infliction of any punishment whatever. But another question occurs at once: Is there any likelihood that if we abolished hanging there would be fewer murders? It was stated in last year's debate that in the experience of Tuscany and Switzerland the abolition was followed by a marked increase of crime. It requires no unusual penetration to see that, if hanging for murder were abolished, lesser crimes would be consummated by murder far oftener than at present. Where a ruffian has committed a brutal rape or robbery, which, on conviction, will entail on him penal servitude for life or some long term nearly equivalent,—abolish capital punishment for murder, and how often is it likely that the criminal will shrink, if his escape may be thereby facilitated, from adding murder to the first crime? Nay, in many cases it will be his direct interest to do so, simply by way of destroying the evidence of the victim of his previous atrocity. If he silences that evidence he may evade justice altogether, but even if, after adding that second crime to the first deed, he still falls into the hands of justice, he is no worse off than before, because justice has no further penalty to inflict. His back is against the wall; he has all to gain and nothing to lose. We repeat that this consideration alone imperatively requires that death should be inflicted as the penalty for murder. Further than this, we believe that the fear of the capital infliction does operate with very deterrent effect, and especially so upon the "habitual criminal" class. As we have before observed, the saying "while there is life there is hope," applies to criminals, as well as to other people. Appropriating Mr. Scourfield's quotation of last Wednesday—"By all means let reverence for human life be observed,' '*que messieurs les assassins commencent.*'"—*Solicitors' Journal.*

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

MASTER AND SERVANT — CORPORATION — APPOINTMENT AT ANNUAL SALARY — DISMISSAL DURING YEAR—BY-LAW—29 & 30 VIC. CH 51, SEC. 177.—The property of the Grand River Navigation Company having passed into the hands of defendants, a municipal corporation, plaintiff was appointed manager thereof by an instrument under their common seal, at an annual salary, from 1st January, 1866, an appointment to which he had been previously recommended in a report of a committee of council, and by a resolution of the same body the mayor was authorized to execute the necessary bonds between plaintiff and defendants

Held, a valid appointment, and not necessary to have been made by by-law.

Defendants having dismissed plaintiff in September, 1867, *Held*, that such dismissal, before the end of the year, was wrongful, defendants having recognized plaintiff as their officer after and during the second year, and, until removed, he was to be considered as in office under his original appointment under the corporate seal, and that he was entitled to compensation in like manner as if employed by an individual.

Held, also, that plaintiff was an officer of the corporation under the Municipal Act.—*Broughton* v. *The Corporation of Brantford*, 28 U. C. Q. B. 434.

MARRIED WOMAN'S DEEDS—MAGISTRATES INTERESTED—EVIDENCE AGAINST CERTIFICATE.—Magistrates interested in the transaction are not competent to take the examination of a married woman for the conveyance of her land. The

solicitor of the husband is not as such disqualified.

Where, after the decease of one of the Justices of the Peace by whom an examination was taken, the other, an old man of seventy-three, gave evidence that he did not recollect and did not believe that the wife was examined as the certificate stated, the court gave credit to the certificate notwithstanding the evidence.—*Romanes* v. *Fraser*, 16 U. C. C. R. 97

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

LUNACY—VENDOR AND PURCHASER.—A vendor was insane, but not on all subjects; and apart from his delusions a stranger might not perceive his insanity; in the course of a negociation for a sale of land, he said to the purchaser that he was bewitched, which, it was shewn, was one of his delusions:

Held, that this statement was not sufficient indication of insanity to affect the vendee with notice of the vendor's condition.—*McDonald* v. *McDonald*, 16 U. C. C. R. 37.

WILL—DOWER—ELECTION.—A testator devised to his daughter for life a house and four acres of land; and the will shewed that he contemplated that the devisee should reside on the property so devised:

Held, that, according to the authorities, the testator had thereby sufficiently indicated his intention to devise free from his widow's dower; and that, therefore, the widow could not have dower in either this land or the other lands devised, without foregoing the provisions in her favour which the will contained.—*Hutchinson* v. *Sargeant*, 16 U. C. C. R. 78.

MARRIED WOMAN'S ACT—RIGHTS OF CREDITORS.—The Married Woman's Act does not exempt personal property of a wife, who was married on or before the 4th May, 1859, from liability for debts contracted by the husband before that date.

Where a wife who was married before the 4th May, 1859, purchased after that date property in her own name, and paid for it (as was alleged) with money theretofore given to her by her son, it was *held*, as between her and a creditor of her husband, whose debt was contracted before the 4th May, 1859, that money so given to the wife became instantly her husband's money, and that the land bought with it was liable to the creditor.—*Fraser* v. *Hilliard*, 16 U. C. C. R. 101

MORTGAGE—TWO MORTGAGES FOR PORTIONS OF LOAN.—A. lent B. $2000 and took two mortgages from the borrower each for $1000 on separate property. The mortgagee foreclosed one of the mortgages and then parted with the property:

Held, no bar to a foreclosure of the other mortgage.—*Bald* v. *Thompson*, 16 U. C. C. R. 177.

ONTARIO REPORTS.

QUEEN'S BENCH.

Reported by CHRISTOPHER ROBINSON, ESQ., *Barrister-at-Law, Reporter to the Court.)*

LYNDSAY v. THE NIAGARA DISTRICT MUTUAL FIRE INSURANCE COMPANY.

Policy—Addition to premises insured—Increase of risk—Pleading—Surplusage.

A policy provided that it should be avoided by any additions made to the building insured, unless written notice thereof were given to the secretary and the consent of the Board of Directors thereto endorsed on the policy, signed by the President and Secretary. Defendants in their plea stated an addition without notice or consent, by which they alleged that the premises became materially altered so as to increase the risk. The plaintiff took issue.

Held, that the latter averment being surplusage need not be proved, and that defendants were entitled to succeed on shewing the addition without notice, although the jury found the risk not increased by it.

There was also an equitable replication of parol waiver by an agent duly authorised, but his authority was not proved; and *semble*, that such waiver could be no answer. [28 U. C. Q. B. 326.]

Action on a fire policy on a frame store of the plaintiff, situate in the village of Princeton, insured for $1,100.

The declaration was in the usual form, setting out in full the conditions endorsed on the policy, and among them those set out in the pleas hereafter mentioned. Seven pleas were pleaded, but at the trial all were given up except the 3rd, 4th, and 5th pleas.

The third plea, referring to the conditions of the policy, stated that one of them was, that if any alterations, erections or additions be made in or to any building insured by the defendants, the policy thereon shall become vitiated and void, unless written notice containing full particulars be given to the Secretary of the Company, and consent of the Board of Directors obtained thereto, endorsed on the said policy, and signed by the defendants' President and Secretary. Then it averred that after the making of the policy, and before the loss, the plaintiff erected and built and attached to the rear of the store, an addition consisting of a wooden building, whereby the premises became materially altered so as to thereby vary and increase the risk, without giving written notice, &c. to defendants, and without their consent, &c., indorsed on the said policy, &c.

The fourth plea set out, referring to the third plea, that owing to the fact of such addition being built and attached to the building, &c, the distance between the end of said new addition farthest from the store and the next building was much lessened, whereby the risk was permanently increased, &c: and although a reason-

able time elapsed before the fire and loss, &c., for such notice of the happening of the said erection or addition to be allowed by the endorsement on the policy, yet the plaintiff did not give such notice to the Secretary, &c., nor was the same allowed, &c. and the policy became void, &c.

The fifth plea was, that before the making of the policy an application was made by the plaintiff for the insurance, and in such application the situation of the store, &c., was represented and described, &c; and that after the making of the policy new and additional buildings were erected, which were adjacent to and around the said building or store, &c.; and although the risk to the store was changed thereby, yet the plaintiff did not make to defendants any new representation in writing of such new and additional buildings, or of the change of risk thereby, whereby the policy became void, &c.

The plaintiff took issue on these three pleas, and he replied on equitable grounds to them, that the condition in the said pleas mentioned is as follows: By-law 14. The following circumstances will vitiate a policy, unless written notice containing full particulars shall be given to the Secretary of this Company, and the consent of the Board obtained thereto, endorsed on the policy, and signed by the President and Secretary, the Board reserving to themselves the power to approve or reject such:—1st. Of the removal of goods or other personal property insured in this company. 2nd. Of alienation by mortgage or otherwise, or any change in title or ownership of property insured in this Company. 3rd. Of any insurance subsisting, or that shall be effected in any other Company, on property insured in this Company, without the consent of the Board. 4th. Of any alterations or additions to the building insured in this Compony. 5th. Of the erection or alteration of any building within the limits described in the application. 6th. Of any misrepresentation in the answers given to the several queries in the application. 7th. Any change in the occupancy of the premises assured.

By-law 15. That when any alterations or additions are made to any building insured with this company, notice of the same shall be forthwith given to the Secretary, in writing; and the agent shall, if so directed, survey the same and report to the Board whether such alterations or additions have increased the risk: and if so, an additional premium note shall be taken for such amount as shall be determined upon by the Board; and it may be optional with the Company to reject such alterations, and to cancel the policy. And in the event of any alterations to any adjacent buildings, or be the erection of others, or of any other thing deemed dangerous, within the limits described in the application of the insured, a similar notice shall be forthwith given, and the Company may in like manner cancel the policy, the same to be recorded on the policy by the Secretary; but no such alterations or additions to form a part of the original claim in the event of any loss by fire. And the plaintiff further says, that after the making of the said alterations in the 3rd, 4th, and 5th pleas mentioned, which consisted in building a wooden shed next adjoining to the said premises so insured, and before any breach by the plaintiff of the said condition, the plaintiff did forthwith give verbal notice thereof to the agent of the defendants, one Thomas Ryal, he being the proper person to receive the same, and having the power and authority from the defendants to receive the same, and to make the representations and agreement hereinafter mentioned; and the said agent did then inspect the said alterations so made, and did then for and on behalf of the said Company represent to the plaintiff that the same was not an alteration or addition to the building so insured within the meaning of the said policy, and that the same did not increase the risk of the said insurance, and that the same was not required to be notified in writing to the said Company, or the consent of the Board obtained thereto to be endorsed on the said policy; and the said agent did then, as did also the said Company, waive, exonerate and discharge the plaintiffs from giving the said written notice, or procuring the consent of the said Board to the said alterations to be endorsed on the said policy.

The trial took place at Woodstock, in October, 1868, before Morrison, J.

The policy was admitted and put in, also the plaintiff's application for the insurance. The loss was also admitted:

The plaintiff called Thomas Ryal, who stated that he was an agent of the Company for that part of the country: that he knew the store and its situation, that he had built it and sold it to the plaintiff. He also stated that after the insurance the plaintiff called on him to inspect a shed and root-house he had built in the rear of the store insured: that before the erection of these additions the store was seventy-six feet from the Town Hall, as described in the plaintiff's application, and set out on a diagram produced, and that the new erections caused the building to be nearer the Town Hall. He also said that in his opinion the erection did not increase the risk, although the shed and root-house adjoined the store, and that the plaintiff called his attention to the alteration with a view to his giving notice to the Company, but that he believed he told the plaintiff it was not necessary to do so. He further said, he was only an agent for the purpose of obtaining risks and collecting assessments, and for which duties he was paid by fees, and that he understood the fire originated in the shed.

With this testimony the plaintiff closed his case, and *M. C. Cameron*, Q. C., for defendants, submitted that the plaintiff should be non-suited, as no notice of the alterations and addition was given to the Secretary, &c., as provided for.

J. H. Cameron, Q. C., for the plaintiff, contended that as the pleadings stood the plaintiff was entitled to recover. The defendants' counsel urged that Ryal was not an agent of the Company for the purpose of inspecting, or of waiving any right of the Company: that he had no power to bind the Company, nor was any proved: that he (Ryal) was the agent of the plaintiff, and that the notice must be to the Secretary: that the defendant's pleas were proved and the plaintiff's replication was not proved but negatived.

The learned Judge, although his opinion was against the plaintiff, would not stop the case, but allowed it to go to the jury, reserving leave to

defendants to move to enter a non-suit on the case as it stood.

The defendants then called witnesses, who gave evidence that the fire originated in the shed, and that the buildings were within fifteen or twenty feet from the Town Hall, and adjoining the insured premises; and two of the witnesses stated that the addition increased the risk. The plaintiff called in reply the agent of the Western, another Company, who was of opinion that it did increase the risk materially.

The learned Judge asked the jury to say whether they were of opinion, from the evidence, the additions increased the risk, and whether the plaintiff had proved the equitable replication. If they found on these two points affirmatively, to say the amount of damages; if otherwise, as to both points, or one of them, to say so, with a view to a verdict being entered and reserving leave, as the case might be. Defendant's counsel renewed his objections taken at the close of the plaintiff's case. The jury found the risk not increased and the equitable replication proved, and a verdict was entered for the plaintiff for $1,201.75 damages, and leave was reserved to defendants to move to enter a non-suit, if the court should be of opinion that the learned Judge should have ruled the plaintiff was not entitled to recover.

During last Michaelmas Term *McMichael* obtained a rule *nisi* to enter a non-suit, pursuant to leave reserved, or for a new trial, the verdict being contrary to law and evidence, and for misdirection, &c; and for non-direction, in not telling the jury that the evidence having established that additions had been made and not notified to the Secretary, the plaintiff was not entitled to recover, and in not telling the jury that the defendants had not waived notice of the additions, &c.

During this term *J. H. Cameron*, Q. C., shewed cause.

McMichael supported the rule, citing *Reid* v. *Gore District Mutual Ins. Co.*, 11 U. C. R. 345; *Merrick* v. *Provincial Ins. Co.*, 14 U. C. R. 453; *Lomas* v *British America Ins. Co.*, 22 U. C. R. 310; *Scott* v *Niagara District Ins. Co.*, 25 U. C. R. 119; *Stokes* v. *Cox*, 1 H. & N. 320, 533.

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

We are of opinion that the defendants are entitled to our judgment. The conditions set out in the equitable replication are those appearing on the policy as By-laws 14 and 15. The evidence established the defendant's pleas, that an addition to the insured building was erected, that the same was not notified to the Secretary and the consent of the Board obtained thereto endorsed on the policy, and signed by the President and Secretary. That circumstance, under by-law 14, would vitiate the policy, and render it void. The building was afterwards destroyed by fire, which originated in this very additional erection. That fact, although of itself not material, only shows that the addition was an element of danger.

As to the equitable replication, we think there was no evidence to go to the jury in support of the main allegation, that Ryal was an authorized agent to make the agreement relied on. See the remarks of Draper, C.J., on this matter in *Scott* v. *Niagara District Ins. Co.* (25 U. C. R. 126.)

On the trial I thought it better to take the opinion of the jury as to whetner the addition in question increased the risk, with a view to the subject being discussed, as it was then contended, as pressed on us during the argument on this rule, that the defendants by their pleas made the question of risk the material question in issue, so that if the jury found the risk was not increased, the plaintiff was entitled to recover. It is true that the pleader has introduced into the pleas a statement which may be considered as surplusage and redundant; but *utile per inutile non vitiatur*, for if we reject the words "whereby the premises became materially altered so as to thereby vary and increase the risk," the plea would still be good; and, as said by Tindal, C. J., in *Palmer* v. *Gooden* (8 M. & W. 894,) "A party does not make an issue upon the substantial matter to be tried by the jury bad, merely because he includes in it something of total surplusage and immateriality." The real defence pleaded and set up by the defendants is, that by the act of the plaintiff in erecting the additional building, and his not complying with the conditions of the policy by giving notice of the same to the Secretary, &c., the policy was vitiated and void. To avoid that defence the plaintiff sets up, that by a parol agreement made through an agent of the defendants, compliance with the conditions was waived and dispensed with, an answer which if proved would not it seems be a good one, for according to the case of *Scott* v *Niagara District Ins. Co.*, in this Court, above cited, a parol waiver by the defendants' Managing Director and Secretary would be no answer to a plea such as here pleaded, as it would be setting up a substituted parol contract in answer to the sealed policy.

We think the defendants are entitled to have this rule made absolute to enter a non-suit. The result of this case may be hard on the plaintiff, from his being led into error by an agent of the Company; but, as I have felt it to be my duty to tell jurors in several cases tried before me against this Company, if the insured does not pay attention to or comply with the conditions of the policy he has himself to blame, as the Company take special means to warn the insured of his duty by conspicuously printing in large colored letters at the top of the policy, "Be sure and read the conditions on the inside hereof, as any deviation therefrom will render the insurance void," and by appending at the end a similar admonition in case of omitting to give any of the notices; and by printing on the back of the policy as follows: "N. B.—Be particular in reading the within policy and its conditions, and observe that notice in writing must be given to the Secretary of all changes in the risk by alterations, erections, or otherwise."

The rule must be absolute to enter a non-suit.

Rule absolute.

In Re Miles and The Corporation of the Township of Richmond.

The Temperance Act of 1864—By-law—Publication.

A By-law to repeal a By-law prohibiting the sale of intoxicating liquors, under the Temperance Act of 1864, was first published on the 2nd of October, 1868, with a notice for a meeting of the electors on the 4th of November, at two p.m. On the 9th, 16th, and 23rd, it was again published, with a notice for the meeting at 10 a.m., on the 4th, when the poll was held.

Held, that the first notice was bad, for the statute requires the meeting to be at 10 a.m., and the meeting in consequence was not held within the week next after the fourth week of publication, as directed by the act. The by-law was therefore quashed.

The clerk was not present at the meeting, and the reeve acted both as presiding officer and poll clerk, certifying the proceedings in both capacities. *Quære*, whether the By-law would have been bad on this ground.

Held, that the By-law, upon the facts stated below, was sufficiently certified under the seal of the corporation.

[28 U. C. Q. B. 534.]

Osler obtained a rule in last Michaelmas Term, calling on the corporation to shew cause why a by-law submitted to the electors for approval in November last, under the Temperance Act of 1864, should not be quashed, on various grounds; among others—that the by-law was not duly notified and published for four consecutive weeks, with the notice required by the statute, sec. 5, sub-sec 1: that the reeve, who presided at the meeting of electors, improperly assumed to act as the poll clerk, and took the votes of the electors, and that the poll book at the close of the poll was not certified as required by sec 5, sub-sec. 8 of the act. The rule was drawn up on reading a certified copy of the by-law, and the by-law repealed by it, and on affidavits.

The by-law in question was one repealing a by-law adopted by the electors of Richmond in February, 1865, passed under the provisions of the Temperance Act of 1864, prohibiting the sale of intoxicating liquors in the township, and was as follows:

"Whereas thirty of the electors of Richmond have required that the by-law prohibiting the sale of intoxicating liquors and the issuing of licenses therefor be repealed:

"Be it therefore enacted by the Municipal Council of the Township of Richmond, that said by-law be and is hereby repealed; and that this by-law be submitted to the electors for their approval or rejection.

(Signed) "Thos Sexsmith, *Reeve*."
(Signed) "O. D. Sweet, *Clerk*"

It appeared from the affidavits and papers filed that this by-law was published in a weekly paper, called the *Weekly Express*, published in Napanee, as follows: In the issue of the 2nd of October, 1868, this notice was published:

"Notice is hereby given to the electors of the Township of Richmond, that a meeting of the municipal electors of said municipality will be held in the Town Hall, Selby, on Wednesday, the 4th day of November next, *at the hour of two in the afternoon*, for the taking of a poll to decide whether or not *the above* by-law is approved by said electors.

"O. D. Sweet, *Town Clerk*."

Underneath, in the same column, was published a copy of the by-law. In the issue of the 9th of October appeared the by-law, and below it a similar notice to the above, with the hour stated to be at ten in the forenoon. On the 16th and 23rd of October were published notices the same as that of the 9th of October, and on the 30th of October the notice above was published, but *no copy* of the by-law; and the poll was held on the 4th of November—when 144 votes were given in favor of, and 138 against the by-law, the relator alleging that six were improperly allowed.

It appeared also that the reeve of the township presided at the meeting for taking the poll: that the clerk of the township, or secretary-treasurer, was not present, and did not act as poll clerk, nor was any person in his absence named to act as poll clerk, but that the reeve himself acted both as presiding officer and as poll clerk; and the reeve after the poll closed certified the number of votes by appending his name to the certificate as returning officer, and countersigning it also as poll clerk.

During last term, *McKenzie*, Q C., shewed cause, taking several preliminary objections, and among others, that the by law was not properly certified, as to which he cited *Re Croft and The Municipality of Brooke*, 17 U C. R. 269; *Buchart and The Municipality of Carrick*. 6 C. P 131

Osler supported his rule, citing *Baker and the Municipal Council of Paris*, 10 U. C. R. 621; *Hamilton* v. *Dennis*, 12 Grant, 625; *Coe and The Corporation of Pickering*, 24 U. C. R. 489.

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

The only preliminary objection we think it necessary to notice is, that the copy of the by-law was not certified by the seal of the corporation. The relator swears that the copy annexed to his affidavit "is a certified copy, with the seal of the said corporation, received by me from the clerk of the municipal council of the said township." Underneath it is a certificate at length, signed by the clerk, certifying it to be a true copy, and in the margin is the seal of the corporation; that is, one stamped and impressed on the paper, leaving a circular impression in ink, with the words "Municipal Township of Richmond" It is sworn to be the seal, and as such received from the clerk with his certificate Such a certificate was deemed sufficient in *Kingborn and the Corporation of Kingston*, (26 U. C R. 133); and so as to the seal itself, the case of *The Queen* v. *The Inhabitants of St. Paul, Covent Garden*, (7 Q. B 232), supports it.

As to the by-law in question, we are of opinion that it must be quashed In the case of *Coe and The Corporation of Pickering*, it was held that the four weeks' notice required by the statute commences and must be computed from the day of the first publication of the notice, and the poll taken within the week next after the fourth week. If we could hold the first notice, published on the 2nd of October, to be a good notice, the first week would have commenced on that day; but that notice cannot be taken to be a good one, as the statute requires the notice to be for the hour of *ten* o'clock in the *forenoon*, and not two in the afternoon. The first regular notice under which the meeting was held to approve or reject this by-law, was that of Wednesday, the 9th of October, and which was the commencement of the four weeks.

The notices of the 16th and 23rd of October, were also regular, the one of the 30th October omitted the by-law altogether, and the poll was

taken on the following Wednesday, the 4th of November. Assuming that the defective notice of the 30th was good, the poll was not taken as required by the statute, "on some day within the week next after such four weeks'" notice, but on the 4th of November, a day of the third week, the 4th week ending on the 6th of November; and upon the authority of *Coe and the Corporation of Pickering* (24 U C R. 439) the objection that due notice was not given must prevail.

Such being the case, it is not necessary to consider whether the poll was properly taken by the reeve acting as poll clerk as well as presiding officer, and certifying the proceedings in both capacities. It is, however, quite evident the Legislature intended that the duties of presiding officer and poll clerk should be performed by two distinct persons, and it is equally clear that in the absence of the clerk the provisions of subsec 4 of sec 5 were never intended to authorize the presiding officer to name himself to act as poll clerk.

Rule absolute.

COMMON PLEAS.

(Reported by S. J. VanKoughnet, Esq., *Reporter to the Court.)*

Royal Canadian Bank v Kelly.

Mortgagor and Mortgagee—27 & 28 Vic ch. 31—Distress for interest—Goods of third parties—Pleading.

To an action of replevin, charging a distress of plaintiff's goods, defendant avowed setting out a mortgage made to him by one D., and which was pleaded as having been executed in pursuance of the act respecting short forms of mortgages, and averred that under the proviso therein the mortgagor was possessed of the premises, and occupied and enjoyed same as tenant of the mortgagor, and so continued to do until at and after said distress; that mortgagor made default in payment under the terms of the mortgage, but mortgagee did not enter by reason thereof, but permitted mortgagor to continue in occupation as his tenant as aforesaid, avowing the taking of plaintiff's goods as distress for arrears of interest:

Held, on demurrer, good; for that the occupation of the mortgagor under the terms and conditions of the mortgage set out constituted the relationship of landlord and tenant between the parties at a fixed rent, being the interest on the principal sum secured; that so long as such occupation continued with the will of the mortgagee he had the right to distrain for such interest "by way of rent reserved," and incident to that right was the distraining upon the property of third persons on the lands mortgaged: that the continuance of the mortgagor in possession, after the day named for payment, with the permission of the mortgagee, constituted him thereafter tenant at will of the mortgagee, and on the terms of distress contained in the mortgage.

[19 U. C. C. P. 430.]

This was an action of replevin, the declaration in which will be found reported in 19 C. P. 190

Avowry and cognizance. that before the alleged taking, and at the time of making the mortgage hereinafter mentioned, the mills, lands and tenements in the declaration mentioned were the soil and freehold, and were in the actual possession, of Dewey, and said Dewey executed to defendant Kelly a mortgage in fee, in pursuance of the Act respecting short forms of mortgages, of the mills, lands and tenements in the declaration mentioned, subject to a proviso for redemption on payment of $25 000 and interest, on or before 1st February, 1867, and containing the clauses in the first schedule of the said act, numbered respectively 4, 5, 6, 7, 8, 14, 15 and 17 (setting them out as in the schedule). The avowry then went on to allege that Dewey, in pursuance of the last mentioned proviso (clause 17), entered and was possessed of said mills, lands and tenements, and had held, used and so continued to have, hold, &c., until and at and after the said alleged taking; that said Dewey made default in payment of the interest reserved by said mortgage, and did not at any time pay any interest, and said Kelly did not enter said mills, lands or tenements by reason of such default, but permitted said Dewey to continue to have, hold, &c., as his tenant as aforesaid; and at time of alleged taking, and while said Dewey so continued to hold and possess said mills, lands and tenements, a large sum for interest was still due and in arrear from said Dewey to said Kelly, wherefore said Kelly well avowed, &c.:

Demurrer:

1. That the only demise or tenancy shewn in or by said avowry or cognizance was that created by the mortgage, and it appeared by said avowry and cognizance that default had been made in payment of the mortgage money, and the demise thereby determined more than six months before the distress in the declaration mentioned.

2. That although it appeared that the alleged demise to Dewey had been determined by default in payment of mortgage before distress, yet it was not alleged that said Dewey was in fact actually in possession of the premises, where the distress was made, at time of making thereof.

3. That no other demise or lease than that implied from the covenants in the said mortgage was set out or shewn in said avowry or cognizance, and that defendants had no legal right or authority under any circumstances to distrain after six months from default, nor at any time after default, unless said Dewey (the mortgagor) was at the time of the distress in actual possession, which was not shewn.

4. That at all events the covenant or power to distrain, contained in said mortgage, constituted a mere license by said Dewey, the mortgagor, and did not authorize or legally empower the mortgagee, his bailiffs or agents, to distrain the goods of a stranger or third party on the lands.

5 That it was not shewn that the terms of the pretended power of distress contained in the covenant in the said plea set out, were followed or pursued, in this, that it was not alleged in said plea that defendant Kelly ever issued a warrant of distress, or that the other defendants acted under any such warrant.

6 That it was not sufficiently shewn by said plea that said goods were in and upon said lands or any of them at time of seizure and taking thereof in declaration mentioned.

7. That if any tenancy whatever could be implied or be held to have been created or arisen after default in the mortgage, it was not averred or shewn in, nor did it appear from said avowry or cognizance, that any specific rent was agreed upon between Dewey and defendant Kelly, or any specific (or any) rent was reserved on such supposed tenancy, which could legally authorize defendants to distrain plaintiff's goods.

R A Harrison, Q C., for the demurrer, cited *Doe Dixie* v *Davis*, 7 Ex 69; *Morton* v *Woods*, L R 3 Q B 658; *Knight* v *Bennett*, 5 B. & Al. 322; *Doe Rogers* v *Pullen*, 2 B N. C. 749; *Chapman* v *Beacham*, 8 Q B. 723.

Patterson, contra, cited *Gray* v. *Bompas*, 11 C. B. N. S. 520; *Doe Thomas* v. *Field*, 2 Dowl. 542; *Turner* v. *Barnes*, 2 B. & S. 435; *Marquis of Camden* v. *Butterbury*, 5 C. B. N. S. 808.

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

The avowry and cognizance here demurred to has been pleaded in pursuance of the judgment in this case, reported in 19 U. C. C. P. 196.

The mortgage is pleaded as having been executed in pursuance of the Act respecting short forms of mortgages (27 & 28 Vic ch. 31), and it contains the clauses in the first schedule of the act, numbered respectively, 2, 4, 5, 6, 7, 8, 14, 15 and 17. The avowry avers that, in pursuance of the proviso in the mortgage, the mortgagor was possessed of the premises, and occupied and enjoyed the same as tenant of the mortgagee, and so continued to occupy and enjoy the same until and at and after the distress levied; that at the time limited in the mortgage for payment of principal and interest the mortgagor made default, but that the mortgagee did not enter by reason of such default, but permitted the said mortgagor to have, hold, occupy, possess and enjoy the same as his tenant, as aforesaid; and the mortgagee avows, and the other defendants acknowledge, the taking of the goods and chattels on the premises mortgaged, as a distress for arrears of interest on the principal sum secured by the mortgage, for two years next ensuing the date of the mortgage.

The occupation of the mortgagor, under the terms and conditions of this mortgage, constituted, in my opinion, the relation of landlord and tenant between the mortgagor and mortgagee at a fixed rent, such rent being the interest named in the mortgage as the interest accruing on the principal sum secured That such was the intention of the parties appears to me to be the true construction to put upon the instrument as pleaded in the avowry So long, then, as such occupation continued in accordance with the will of the mortgagee, he has, in my opinion, the right to distrain for the interest secured by the mortgage, "*by way of rent reserved*," and incident to that right is the right of distraining upon the property of third persons on the lands comprised in the mortgage. The authorities, which have led me to this conclusion, are collected in my former judgment in this case, to which I add *Hitchman* v. *Walton* (4 M & W., p 413) Assuming the tenancy, created by the mortgage, to have been for a determinate time, *until* the day named for payment of principal and interest, the continuance of the occupation of the mortgagor, by the permission of the mortgagee, constituted the mortgagor a tenant thereafter at will of the morgagee, and such tenancy must be held to be on the terms of distress contained in the mortgage. It seems to me to be the interest of the mortgagor, as well as of the mortgagee, that this should be the construction to be put upon the instrument In that case the statute 8th Anne, ch. 14, does not apply: *Beaven* v *Delahay*, (1 H. Bl. 5), and *Knight* v. *Benett* (3 Bing 361)

I am of opinion, therefore, that the demurrer to the avowry should be overruled.

Judgment for defendant on demurrer.

ENGLISH REPORTS.

COOPER v. GORDON.

Dissenters—Ministers—Dismissal of—Majority of Congregation—Rights of.

In the absence of special usage, rules, or agreement, a Dissenting minister, appointed by his congregation, is not entitled to hold office for life or good behaviour against the will of the majority of such congregation.

[17 W. R. 908]

The object of this suit was to obtain a declaration that the defendant, the Reverend Samuel Clarke Gordon, a Dissenting minister, had, by a resolution which had been passed by a majority of his congregation, being duly dismissed from his office, and to restrain him from continuing to act as the minister of such congregation.

Previously to the year 1707, a congregation of Protestant Dissenters, known by the name of Independents or Congregationalists, were in the practice of assembling for religious worship in a building called the Presbyterian Meeting House, in Broad-street, Reading In the year 1707 this building became vested in certain members of the congregation, twenty in number, in trust for such congregation "during such time as the assembling of Protestant Dissenters for religious worship should be permitted at the said meeting-house."

About the year 1808, three messuages and other premises adjoining the meeting-house were purchased, the meeting house was pulled down, and a new meeting-house and vestry-room erected on the site of the old meeting-house and part of the newly-acquired premises, the remainder of which, with the exception of a house and garden, were used for the meeting-house, yard, and burial ground, and as a passage to the vestry-room. All these premises were vested in trustees upon the following trusts, as to the meeting-house, vestry-room, yard, burial-ground, and garden—"Upon trust for the use and benefit of the said society or congregation of Protestant Dissenters from the Church of England then belonging thereto, commonly called Independents, and which should from time to time resort to and frequent the said meeting-house and premises, and become members of the said society for the exercise of divine worship therein, and peaceably and quietly to permit and suffer them, and every one of them, to exercise their religion therein, and freely to enter and bury their dead therein, or in some part or parts thereof, under and subject to such orders, rules, regulations, and restrictions as had been and were or should be made and observed in the said society or other religious institutions of the like nature" And as to the house, which was the residue of the premises, "upon trust to permit and suffer the minister or pastor, for the time being, of the said society or congregation of Protestant Dissenters, called Independents, who did or should from time to time meet in the said meeting-house for the exercise of divine worship as aforesaid, to have the use and occupation of the same, or otherwise to receive and pay the rents and profits thereof to such minister or pastor, as the same should become due and payable, for so long a time as such minister or pastor should from time to time be and continue minister or pastor of the said society or congregation, and officiate

as such, and no longer, to and for his and their own use and benefit."

The plaintiffs and the defendaut Christie were, at the date of the filing of the bill, the sole trustees, and recognized as such by the congregation.

In the year 1865, the congregation considered it desirable that the Reverend William Legg, who had for more than twenty years officiated as their sole pastor, should have some assistance in his duties, and that another minister should be appointed to assist, and act with him. In the following year, Thomas Barcham, one of the plaintiffs, who was then acting deacon of the chapel, on behalf of the congregation, and in accordance with a resolution which had been passed by them, invited the defendant, Mr. Gordon, who was a candidate for the co-pastorate, to become co-pastor with Mr. Legg. Mr. Gordon shortly afterwards accepted such invitation; and entered upon his duties. No arrangement was made with Mr. Gordon as to the duration of his co-pastorate.

About a year after the appointment, a portion of the congregation became dissatisfied with Mr. Gordon, and two deacons who were then in office requested him to resign, assigning for their request the eight following reasons:—

1st. That his sermons were too argumentative, containing trains of reasoning which the people could not carry away with them.

2nd. The sermons were above the level of the great mass of the people, not being sufficiently simple.

3rd. They were too Arminian in doctrine.

4th. They set up too high a standard of Christian life, not taking sufficient account of the influences of trials, &c.

5th. There was a deficiency of unction, Gospel power, and Christian experience.

6th. The motives from which Christians were exhorted to act were not those of Christian love, but of dry, rigid duty.

7th. The work of the Spirit was not sufficiently dwelt upon.

8th. In some of the sermons there was nothing said to unconverted sinners.

A want of harmony between Mr. Gordon and Mr Legg, led to great unpleasantness, and steps were taken to ascertain the feeling of the congregation on the subject of the dismissal of Mr. Gordon from his office. Accordingly, on the 8th September, 1868, a meeting of the congregation was duly convened, with full notice to Mr. Gordon.

The congregation consisted of 212 persons, a majority of whom, consisting of 116, were present at the meeting. A resolution was passed dismissing Mr. Gordon from his office; the resolution was carried by 115 votes, all the persons present voting in favour of it, with the exception of one, who remained neutral. Notice of the resolution, and notice not to continue to officiate as co-pastor of the congregation, were served upon Mr. Gordon, but he disregarded them, and continued to officiate as before. He also appointed the defendant Pike to receive the pew-rents arising from the chapel, and Pike accepted such appointment, and it was alleged that he had received certain of such rents accordingly

Mr. Gordon and his supporters, who had protested against the regularity of the meeting, and had not attended it, held meetings of their own, at which resolutions were passed in Mr Gordon's favour. It was alleged that the conduct of Mr. Gordon, by calling irregular meetings of his partisans among the congregation, and professing them to be of equal authority with the church meetings, and by holding communion service for his own friends at a different hour to established usage, promoted dissension in the congregation, and that his conduct before referred to was very injurious to and brought much scandal upon the church and congregation, and had then already diminished the revenues arising from the pew-rents.

It was admitted that Independents universally hold as fundamental principles that each congregation of persons in church-fellowship, assembling at a particular chapel with their pastor, constituted a church complete in itself, independently of all other congregations of persons professing the same belief and that mere seat-holders, who were not in communion with the church, were not considered to be in church fellowship, or entitled to vote as members of such congregation; and that (in the absence of any special usage, rules, or agreement to the contrary) the power of electing their minister resided entirely with such first mentioned congregation. The bill alleged that it was the well established usage among Independents, that each congregation might at any time at their discretion dismiss their pastor from his office, and that in the absence of any special circumstances the will of the congregation was ascertained and such power exercised by a vote of the majority of the members. It was admitted that in the present instance no special rules or usage had at any time been adopted by the congregation, but Mr. Gordon contended it was a fundamental principle among Independents that (in the absence of special usage, rules, or agreement) all appointments as pastor to such a congregation were for life, so long as the pastor should abstain from preaching unorthodox doctrines, and should not be guilty of immorality or other similar gross misconduct, and that, excepting in those cases, there did not exist in any person or body a power to dismiss such pastor.

The defendant Christie, who was one of the trustees, declined to concur with the plaintiffs in the institution of the suit, upon the ground that he considered such suit uncalled for.

The bill prayed for a declaration that Mr. Gordon had been duly dismissed from his office of co-pastor, and that he might be restrained from preaching or officiating in the chapel referred to; and that both he and the defendant Pike might be restrained from collecting or receiving the pew-rents; and for an account.

Hardy, Q.C., and *Higgins*, for the plaintiffs, contended that in the absence of any special rules, the case must be governed by the invariable practice of the body, which was that a majority of the congregation had a right to dismiss their minister. Without such a power, a congregation might be saddled for an indefinite time with a minister who was unacceptable to them.

Greene, Q.C., and *Yate Lee*, appeared for the defendants Gordon and Pike, and on behalf of the former contended, that in the absence of any rules or agreement with Mr Gordon on the sub-

ject, he was entitled upon his acceptance of the office to hold it for life, excepting he were guilty of immorality or heterodoxy, neither of which, however, had been imputed to him It was also contended that he was *cestui que trust* under the settlement, and had a life interest in the endowment They cited Lewin on Trusts, 402, s. 17; *Doe d. Jones* v. *Jones*, 10 B & C 718; *Doe d Nicholl and Others* v. *McKaeg*, 10 B. & C 721; *Attorney General* v. *Pearson*, 3 Mer 354, 357, 402; *Foley* v *Wontner*, 2 J. & W 246; *Daugars* v. *Rivaz*, 8 W. R 225; 28 Beav. 233; *Attorney General* v. *Drummond*, 1 Dr & War. 353

Whitbread appeared for the defendant Christie, and submitting that he ought not to have been made a defendant, asked for his costs

Greene, Q C, for the defendant Pike, urged that he ought not be made a party to the suit; that he was only agent of the defendant Gordon, and that he was entitled to his costs. He cited *Pope* v *Everard*, 1 Russ. & M. 231; Calvert's Parties to Suits, 301.

Hardy, Q C, in reply, urged that at law the defendant Gordon was a mere tenant-at-will to the trustees, and was removable by a majority either of such trustees or of the congregation. He cited *Perry* v. *Shipway*, 1 Gif. 1; *Attorney-General* v. *Aked*, 7 Sim 321; *Doe d. Earl Thanet* v. *Gartham* 1 Bing. 357; *Rex* v *Giskin*, 8 T. R. 209; *Porter* v. *Clarke*, 2 Sim. 520; *Davis* v. *Jenkins*, 3 Ves & B. 151.

At the conclusion of the arguments his HONOUR said that he would not deliver judgment until next term He strongly exhorted the parties to come to some arrangement in the interval.

(*To be continued.*)

UNITED STATES REPORTS.

SUPREME COURT OF PHILADELPHIA.

HALL v RULON.

(*From the Legal Gazette.*)

1. A contract not to carry on a particular business in a particular place is in restraint of trade, and although valid if made, its existence must be proven by clear and satisfactory evidence, and will not be inferred from the fact of the sale of the *good will* of a business.
2. After making such a sale, however, good faith requires that the vendor shall not hold himself out as *continuing* his former business, and he will be restrained from so doing.

Appeal from the decree of the Court of Common Pleas of Philadelphia County

Opinion by WILLIAMS, J., July 6th, 1869.

We have no doubt of the validity of such a contract as is alleged in the bill, if founded on a sufficient consideration; or of the power of the court to restrain its breach by injunction Our doubt in this case arises from the insufficiency of the proof to establish the existence of the alleged agreement. It cannot be inferred from the sale of the good will of the business, and it is expressly denied in the answer. The sealed agreement between the parties, given in evidence by the plaintiff, contains no stipulation or covenant on the part of the defendant, either to retire from the business, or not to resume it again in the city of Philadelphia; and in this respect it fully corroborates and sustains the answer. Nor is there any sufficient evidence that such a stipulation was omitted through the fraud of the defendant, or the mistake of the parties. The only evidence from which such an inference could possibly arise is the testimony of Joseph R. and Alexander Black, but neither of these witnesses proves that it was one of the express terms and conditions of the sale that the defendant was to retire from the business, and not to resume it again in the city of Philadelphia. On the contrary, their testimony amounts to no more than a declaration of the defendant's intention not to go into the business again in Philadelphia, on account of the state of his health, which had compelled him to give it up The fair inference from their testimony, in connection with the blank left in the agreement, is that while the defendant declared it to be his intention and purpose not to resume the business, he was unwilling and refused to bind himself by a positive stipulation not to resume it at any time thereafter This inference is greatly strengthened by the plaintiff's admissions to Balderston and Fogg after the defendant had resumed the business, and by the fact that he furnished him, without remonstrance or objection, goods to carry on the business for two or three months after he had resumed it. As the alleged agreement is in restraint of trade, its existence should be established by clear and satisfactory evidence, in order to justify the court in restraining its breach by injunction. There should be no doubt or uncertainty in regard to its terms, or the consideration upon which it was founded Here the parties have put their contract in writing, and it must be allowed to speak for itself unless it is clearly shown that the stipulation in question was omitted through fraud or mistake. Under the proofs in this case a court of equity would not reform the agreement as written and sealed by the parties; and if they had not reduced their contract to writing, the evidence would be wholly insufficient to establish it as alleged by the plaintiff.

But there is more of substance in the complaint as to the manner in which the defendant is carrying on the business of an undertaker. He sold the good-will of his business to the plaintiff for a valuable consideration, and good faith requires that he should do nothing which directly tends to deprive him of its benefits and advantages The bill charges and the evidence shows that he is holding himself out to the public by advertisements as having removed from his former place of business—No 1313 Vine Street to his present place of business No 1539 Vine Street—where he will continue his former business It is clear that he has no right to hold himself out as *continuing* the business which he sold to the plaintiff, or as carrying on his former business at another place to which he has removed. *Hogg* v *Kirby*, 8 Ves Ch Rep. 214; *Churton* v. *Douglas*, 1 Johns. Eng Ch. Rep. 174. While, therefore, the appellant is entitled to have the decree of the court below, restraining him from conducting or carrying on his business of undertaking, &c., within the limits of the city of Philadelphia, reversed, it must be so modified as to restrain him from holding himself out to the public by advertisements or otherwise, as continuing his former business, or as carrying it on at another place.

Let the decree be drawn up under the rule.

Collins v. Collins.

(From the Legal Intelligencer.)

1. Duress may avoid a marriage.
2. Arrest under void process or under a warrant issued upon a false charge, will avoid a marriage which is constrained by the duress of the imprisonment.

Opinion by Brewster, J.

The record in this case was handed to us some weeks since upon the usual rule to show cause why a divorce should not be decreed We then ordered it upon the argument list, and after hearing from the libellant's counsel we suggested the propriety of taking further proof. The libellant has, accordingly, subpœnæd and examined the respondent, and her deposition along with the other proofs have been carefully considered

The libel prays for a divorce upon the ground that the marriage was procured by fraud, force and coercion. It alleges this fact, and that the marriage has not been confirmed by the acts of the petitioner. Jurisdiction in such cases was conferred by the Act of May, 8, 1854 (P. L. 644; Br. Dig. 346. s. 7)

The facts as developed by the record appear to be, that on the fifth day of December, 1868, the libellant was arrested and taken before Alderman Pancoast, of this city, upon a charge (preferred against him by the mother of the respondent) of fornication with the respondent, and begetting her with a child with which she then alleged herself to be pregnant. The libellant declared his innocence, but was unable to give the required bail, and to save himself from imprisonment he married the respondent. They then separated and have never lived together as man and wife. It would seem that the prosecution was set on foot to secure this marriage, and the libellant argues that the evidence shows that the charge made against him was false

A number of witnesses testify to these different matters.

Mr. Bartlemas, who made the arrest, says that they told libellant at the alderman's office, "he must either marry respondent or go to prison, and to avoid imprisonment he married her. I know he was compelled to marry her or go to prison He was *intimidated and in fear at the time of the marriage, and it was done to save himself from imprisonment.* * * * He told me he was not guilty "

The libellant's father testifies to the same facts. He says the respondent threatened imprisonment if libellant did not comply with their demand. "They told him he would be sent to prison forthwith if he refused to marry her. I was not able to go his bail, and *he was compelled to marry her* to save himself from imprisonment."

The respondent's account of the transaction is to the same effect. She says in her answer to the third interrogatory: "The libellant was arrested on the oath of my mother charging him with fornication and bastardy with myself. When he was brought to the alderman's office he was told that if he did not marry me he would be sent to prison. *He at first refused to marry me*, but finally consented, rather than go to prison. *He was threatened, of course, and put in fear. He had no bail and would have gone to prison* " As to the falsity of the accusation upon which the libellant was arrested, he has submitted several depositions.

Mr. Bartlemas says, that since the marriage he has been informed by a member of the family that the respondent "was mistaken as to her pregnancy "

The libellant's father says: "I have seen respondent repeatedly since the marriage, and she is not in the family way, and was not to the best of my knowledge at the time of the marriage. Respondent told me she was sorry she had been so hasty in having libellant arrested, that she had made a mistake in reference to her pregnancy. I have frequently seen her on the streets with different men, and one in particular. * * At the time of the marriage my son was a minor.

Officer Spear says: "I have seen the respondent two or three times since the marriage. I believe to my knowledge she is not pregnant. I am her first cousin."

The respondent, in answer to the third interrogatory, says: "I have discovered that these proceedings were rather hasty, and I have been sorry that they were ever instituted. It was a mistake as to my condition, and I was not in the family way I was advised by others to have him arrested, and if I had had my own way I would never have had him arrested."

Our first duty is to ascertain from these proofs what are the facts of this unfortunate case, and secondly, to apply the law to the facts thus found.

This is in conformity to the practice of the ecclesiastical courts in England. There, if the parties to a matrimonial contract are *infra annos nubiles*, the Judge passes upon the assent—his certificate is the proof required, and where he has cognizance, courts of law give the same credit to his sentence, as he is bound to yield to their judgment upon matters within their jurisdiction. 2 Lilly's Dbr., 244 c. Here then we have a libel regularly sworn to by the libellant, and wholly unanswered by the respondent. The fact of the arrest, the threat, the consequent fear, the refusal at first to marry, and the subsequent assent as the only means of escape from imprisonment, would seem to be clearly established.

Our principal difficulty has been, on the question of truth or falsity of the charge preferred against the libellant. Had he married the respondent simply of his own motion, or upon her request, the presumption would have been that he was guilty It is possible, too, that the law would have drawn the same presumption from his act even though it had been preceded by a threat of imprisonment, but here there is no place for presumption. We have direct evidence upon this point. Passing by the statement of Mr. Bartlemas, as to the remark made by a member of the family, we have two witnesses who have seen the respondent since, and who say that she is not pregnant. One of them adds, that she admitted "she made a mistake." And the respondent confirms all this. She, too, calls it a "mistake," and emphatically says she "*was not in the family way.*"

It must, therefore be conceded that the libellant was arrested upon a false charge, and while operated upon by the terror of that duress and the threat of imprisonment, he married the party who had assisted in setting on foot those proceedings.

Having thus found the facts, let us endeavor to apply the law to them

If this question were *res nova* it would appear to be o. easy solution.

The familiar maxims of the law applicable to such a case would lead the mind to a speedy conclusion.

That no party shall profit by his or her wrong is a principle of universal acceptance. It would be conclusive against his respondent. To come nearer to the point, we find the elementary maxim of the civil law upon this subject, "*Consensus non concubitas faciat nuptias*," or, as it has been transposed, "*Nuptias non concubitas sed consensus faciat.* Dig. L. 50; tit. 17, s. 30.

This has been adopted by the common law. Co. Litt. 33; 1 Black Com. 434.

Applying this principle the libellant would be entitled to a decree of dissolution—for the law will not tolerate for a moment the enforcement of a contract obtained by the duress of personal arrest; putting in fear and the threat of future imprisonment. A party so operated upon cannot in any true sense of the expression be said to be a free agent. He is *in vinculis*. The Roman law avoided contracts, not only for incapacity, but for the use of force or the want of liberty. *Ait Prœcor quod metus causa gestum erit, ratum non habebo.* Dig. Lib. 4. tit. 2. It is true, that it was added, that the force must be such as would overcome a firm man; *in hominem constantissimum cadat;* but Pothier deems the civil law too rigid herein, and states, that regard should be had to age, sex and condition. (Pothier on Obligations, n. 25.)

And Mr. Evans thinks, that any contract produced by actual intimidation of another ought to be held void. (1 Evans; Pothier on Oblig., n. 25, note [a] p. 18)

The same principle has been recognized in the chancery of England. "Courts of Equity watch with extreme jealousy all contracts made by a party while under imprisonment, and if there is the slightest ground to suspect oppression or imposition they will set the contracts aside." (See the cases cited in note 5 to 1 Story's Eq., sec. 239.)

In *Robinson* v. *Gould*, 11 Cush. 57, the Supreme Court of Massachusetts says, that duress by menaces which is deemed sufficient to avoid contracts includes a threat of imprisonment inducing a reasonable fear of loss of liberty.

In Louisiana, any threats will invalidate a contract if they are "such as would naturally operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation or fortune."

(Civil Code Louisiana, Art. 1845.)

The contract is equally invalidated "by a false report of threats, *if it were made under a belief of their truth.*" (Id., Art. 1846, 1847.)

The same principle has been recognized in *Hawes* v. *Marchant*, 1 Curt. 136; *Kelsey* v. *Hobby*, 16 Pet. 269; and in the Pennsylvania case of *Gillett* v. *Ball*, 9 Barr, 13, where the fact that a note was given under duress in settlement of a charge like that preferred against this libellant was held to be a full defence. Indeed, the authorities upon this point might be almost indefinitely multiplied, for wherever the voice of the law has been heard, no man has been held to a contract extorted from him by force.

So, too, fraud has always been deemed the equivalent of force and as equally operative in annulling a compact obtained through its agency. So sternly has this principle been applied, that it has been wisely extended to fraud arising from facts and circumstances of imposition. In *Neville* v. *Wilkinson* (1 Bro. Ch. R 546), Lord Chancellor Thurlow remarked; "It has been said, here is no evidence of actual fraud on R. but only a combination to defraud him. *A court of justice would make itself ridiculous if it permitted such a distinction.* If a man upon a treaty for any contract, will make a false representation, by means of which he puts the party bargaining under a mistake upon the terms of the bargain, it is a fraud. It misleads the parties contracting on the subject of the contract."

The rule has been applied in all its rigor even where the misrepresentation was innocently made by pure mistake. (1 Story's Eq, s. 193, cases cited, note 2.) And a contract of partnership was recently set aside in England upon this principle, although the defendant was free from fault, and the plaintiff had been guilty of laches in not examining the books for four years (*Rawlins* v. *Wickham*, 28 Law J. Rep. Chan. 188; 3 De Gex and Jones, 304; 1 Giffard, 355).

In a still more recent case, a wife having been guilty of adultery, in order the more easily to carry on the illicit intercourse, induced the husband (who was ignorant of her crime) to execute a deed of separation, whereby he covenanted to pay her an annuity and to allow her to live separate. The adulterous intercourse was continued, discovered by the husband, and a divorce was obtained. The husband then filed a bill to set aside the deed of separation. It had not been obtained by any misrepresentation, and the Vice-Chancellor dismissed the bill. But the Lord Chancellor reversed the decree below, and held, that the deed must be set aside, on the principle that none shall be permitted to take advantage of a deed which they have fraudulently induced another to execute. *Evans* v *Carrington*, 30 Law J. Rep. Chan. 864; 2 *De Gex, Fisher and Jones*, 489; 1 Johnson and Hemming, 598.

It must be plain, therefore, that if this proceeding were a bill in equity to set aside a note or bond obtained from this libellant under the circumstances presented by this record, we should be compelled to order its cancellation. It remains only to be seen whether the contract of marriage is an exception to the general principle. Mr. Bishop informs us that there is no difference in this respect between marriages and other contracts. He says, "Where a consent in form is brought about by force, menace or duress, a yielding of the lips but not of the mind, it is of no legal effect. This rule, applicable to all contracts, finds no exception in marriage." Bishop on Marriage and Divorce, s. 210. He cites in support of this a number of decisions, and amongst others the leading case of *Harford* v. *Morris*, 2 Hag. 423, where the guardian of a young school girl, having great influence and authority over her, took her to the continent, hurried her there from place to place, and married her substantially against her will. The marriage was held to be void.

So, too, in the Wakefield case, the marriage of Miss Turner was set aside by Act of Parliament. The fraud there employed was the representation of her father's bankruptcy, and that the only escape for her parent was her marriage with one of the conspirators.

The law has not always been so favorably applied where the man was the injured party.

In *Jackson* v. *Winns*, 7 Wendell, 47, Enoch Copley had been arrested under the Bastardy Act. He was taken to the house of the father of the prosecutrix, and from thence he went in company with her, her parents and the constable, to the office of the Justice, who performed the marriage ceremony, although the *groom refused to take the hand of the bride and said nothing.* It was insisted that there was no consent, and that there was duress, but the Supreme Court of New York sustained the legality of the marriage, declaring, that they could "not say that the mere circumstances that Copley had involved himself in difficulty with the Overseers of the Poor, and that he took the step he did with some reluctance, were enough to show that he did not yield his full and free assent to the marriage solemnized before the Justice."

Mr. Bishop, commenting on this and other cases, says (s. 212), "Perhaps the result would be otherwise if the arrest were under a void process; and a doubt may be entertained, whether it would not be, if shown to be both malicious and without probable cause."

This doctrine is fully sustained by the case of *James* v. *Smith*, where Judge Dewey, of the Supreme Court of Massachusetts, declared a marriage null and void which had been solemnized whilst the libellant was in custody upon a charge similar to that preferred in this case. Bishop, s. 213, note. It is true, the arrest of James was without warrant, and that there can be no duress in lawful imprisonment. *Stauffer* v. *Latshaw*, 2 W. 167; and *Winder* v. *Smith*, 6 W. & S. 429; but no court could pronounce the duress lawful which was the result of a warrant obtained by a false information.

In *Scott* v. *Shufeldt*, 5 Paige, 43, Chancellor Walworth said, that the statute authorizing the court to annul a marriage when the consent was obtained by force, was never intended to apply to a case where the putative father of a bastard elects to marry the mother instead of contesting the fact. But he yet decreed that the marriage was null, because, the parties being both white, and the child being a mulatto, it was evident that the complainant had been made the subject of a gross fraud.

It will be seen, that in *Jackson* v. *Winns*, and *Scott* v. *Shufeldt*, there was no solicitation of marriage on the part of the prosecutrix, nor was there any threat of imprisonment. In the first case, there was no proof of the falsity of the charge. The same remarks apply to *Hoffman* v. *Hoffman*, 6 Casey, 417, where there was not even an arrest. Mr. Justice Thompson, in his able and learned opinion, says: "Nor was there even a threatened prosecution by the respondent for the alleged wrong. The case was clear of actual or constructive force." Nor has there been, in this case, "a child born during wedlock, of which the mother was visibly pregnant at the time of marriage," as in *Page* v. *Dennison*, 5 Casey, 420, 1 Grant, 377.

Here we find:—

1. An arrest upon a false charge.
2. The assertion of innocence by the libellant.
3. The threat to imprison him upon "process sued out maliciously and without probable cause" 2 Greenleaf on Evi., s. 302.
4. The assent of the lips but not of the mind or heart to the performance of a ceremony whilst under this illegal duress.
5. The repudiation of the alleged contract by both parties from that time forth.
6. The refusal of the respondent to deny any of these matters by filing an answer, and, on the contrary, her admission under oath, as already noted.

No case can be found, in which any contract thus extorted was enforced, and every instinct of humanity clamors for its abrogation.

The language of Mr. Justice Agnew, in his clear and convincing opinion in *Cronise* v. *Cronise*, 4 P. F. Smith, 264, has peculiar application to these facts. He says: "The three procuring causes, to wit, fraud, force and coercion, are linked together in the same clause, equally qualify the same thing, to wit, an alleged marriage, and have a like operation as causes of dissolution. Force and coercion procure not a lawful marriage, but one only alleged, where the mental assent of the injured party is wanting. Fraud has a like effect; it procures, not a marriage fully assented to by both of the parties and duly solemnized, but one where the unqualified assent of the injured party is wanting, and where the very act of marriage itself is tainted by the fraud."

Decree for libellant.

GENERAL CORRESPONDENCE.

Remarks on the new Division Court Rules.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—Allow me to offer, through your columns, a few remarks on the "new rules" just come in force from the "Board of County Judges." I find upon examining them many valuable and much needed amendments and additions to the old rules, and doubts as to the construction and meaning of many of the sections of the Division Court Act heretofore left in uncertainty, or decided in different ways by different judges in Division Courts, are cleared up. The new forms by these rules are, although altered from the old ones (thus, of course, giving clerks considerable extra trouble), much better, more *court like*, and simpler than the old ones. The Division Courts, by the rules and forms (although these are so voluminous) as to practice and efficiency are more respectable and responsible to the public. It is evident that much thought, skill and learning have been brought to bear in the compilation of the new rules. The rules from 93 to 100 inclusive, were loudly called for by the public, and "the Board of Judges" deserve the thanks of suitors everywhere for them.

The rules allowing the renewal of *warrants of commitment* are very judicious, but it is a pity that they had not allowed (as indeed is the case in England in County Courts war-

rants to be countersigned by judges, or even by clerks of other counties, when the debtor may have moved from his own county into another during the currency of the warrant. It is a pity too that the judges had not allowed *clerks fees* for filing papers on Chamber applications and new trials. The business would have been done more orderly and carefully then. And the applicant for a new trial should have been made to pay for all affidavits used to oppose his application if unsuccessful, or if new trial should be granted for his benefit.

I cannot see the necessity in these rules of increasing witness fees to 75 cents a day, leaving *poor jurors* with only 10 cents a day. The garnishee rules are also very good, and I observe that clerks are now given forms, as to procedure, when under the Common Law Procedure Act, they are obliged to carry out the orders of County Court or Superior Court Judges.

The contested point as to the validity of a Division Court judgment over six years old, is set at rest, and the manner of its revival is fixed by rules 156 and 157. The rule 160, as to framing transcripts to the County Courts, is well timed. So is the rule 125 as to parties leaving their place of residence or address with the clerk. The rules as to infants (126) and as to the statute of limitations (127) are admirable, and meet the wants felt in thousands of cases, and assimilate the practice of these courts somewhat with the Superior Courts. Sub-section "F." of rule 142 is very good. If it was within the power of the judges, it is a pity they had not made it clear that a judge granting a new trial might impose on the party applying and obtaining his desire a condition that he should pay the successful litigant all his costs, such as affidavits and attorney's fees on opposing new trials. Rule 144 was very necessary. Judges (in many cases) have been prone to interfere at the solicitation of friends of suitors with their own orders *ex parte!* For instance, a man obtains at great trouble an order to commit against a dishonest debtor, and the debtor when arrested is taken to the judge, his story and wrongs heard—*ex parte*—and the creditor next sees him in the street at large laughing in his face. The judge has taken upon himself to nullify his own order, and to say that the creditor shall not collect his debt! A pretty power surely for any judge to assume! Rules 90, 91, 92 and 93, as to the duties of Bailiffs, and giving them an attendance fee at Court in default suits, are very necessary.

Rule 95, which has reference to clerks of foreign counties principally, is very admirable.

Rules from 41 to 50 inclusive, on *Replevin process*, are just what were required.

In interpleader matters the rules might have been more explicit and enlarged. For instance, one original interpleader summons should have been made to answer, where many claimants arise as to goods seized under one execution, each claimant being served only with a copy. Bailiffs, as the law and practice now are, can make a dozen original suits out of as many claims, all arising from one seizure. It is a pity that more had not been said in the rules as to the conduct of Bailiffs in executing writs of execution.

Might not something have been said as to Bailiff's returns of "*Nulla bona*?" as to whether executions bind the goods as soon as the bailiffs receive them? Perhaps not this last. I think it would have been better had a rule been made requiring clerks in outer counties to forward monies or returns on all transcripts sent them, charging the costs of transmission to the defendant who caused it.

I will not further extend these remarks in this letter. C. M. D.

Toronto, 25th August, 1869.

APPOINTMENTS TO OFFICE.

ASSISTANT COMMISSIONER OF CROWN LANDS.

THOMAS HALL JOHNSON, Esq., to be Assistant Commissioner of Crown Lands, in the room and stead of Andrew Russell, Esq., resigned. (Gazetted Aug. 21, 1869.)

CROWN LANDS' AGENT.

ANDREW RUSSELL, Esq., to be Resident Agent for the sale of Public Lands in the County of Wellington, in the place of James Ross, Esq., resigned. (Gazetted August 21, 1869.)

STIPENDIARY MAGISTRATE AND REGISTRAR.

JOHN DORAN, of the Town of Perth, Esq., to be Stipendiary Magistrate and Registrar for the District of Nipissing, in the room and stead of Thomas H. Johnson, Esq., resigned. (Gazetted August 21, 1869.)

NOTARIES PUBLIC.

PETER McCARTHY, of the Town of St. Catharines, Esq., Barrister-at-Law. (Gazetted July 3, 1869.)

CORONERS.

JAMES WALLACE, of the Village of Alma, and JAMES McCULLOUGH, of the Village of Everton, Esquires, M D., to be Associate Coroners, within and for the County of Wellington. (Gazetted June 19, 1869.)

WESLEY F. ORR, of the Village of Lynden, Esq., to be Associate Coroner, within and for the County of Wentworth. (Gazetted July 31, 1869.)

JOSEPH DIX, of Garden Island, Esq., to be an Associate Corner, within and for the County of Frontenac. (Gazetted August 28, 1869.)