DIARY FOR SEPTEMBER.

1. Satur.. Paper Day Common Pleas. New Trial Day Queen's Bench.
2. SUN... 14*th Sunday after Trinity.*
3. Mon... Paper Day Queen's Bench. New Trial Day Common Pleas. Recorder's Court sits. Last Day Notice of Trial County Court.
4. Tues... Paper Day Common Pleas. New Trial Day Queen's Bench.
5. Wed... Paper Day Queen's Bench. New Trial Day Common Pleas.
6. Thurs.. Paper Day Common Pleas.
7. Friday. New Trial Day Queen's Bench.
8. Satur... Trinity Term ends
9. SUN... 15*th Sunday after Trinity.*
11. Tues... Quarter Sessions and County Court Sittings in each County. Last day for service for York and Peel.
16. SUN... 16*th Sunday after Trinity.*
21. Friday *St Matthew.* Declare for York and Peel.
23. SUN... 17*th Sunday after Trinity.*
29. Satur.. *St. Michael.* Michaelmas Day. Last day for notice of Trial for York and Peel.
30. SUN... 18*th Sunday after Trinity.*

The Local Courts'

AND

MUNICIPAL GAZETTE.

SEPTEMBER, 1866.

ACTS OF LAST SESSION.

A short review of the legislation that took place during the Fifth Session of the Eighth Provincial Parliament will be peculiarly interesting, in view of the statement made in the Governor General's closing speech, that it is "the last session likely to be held under the Act for the union of the two Canadas." It has been a session of much labour to the legislature, and we may hope of some profit to the country.

The number of Acts which have passed are one hundred and seventy-six, besides one reserved for the consent of the Queen. Of these, the large majority are of a local or private nature—such as acts for granting or amending charters of various companies, or providing for some special case; some refer exclusively to Lower Canada; whilst, of the remainder, we may class about fourteen as acts having peculiar relation to law, or its due administration, besides others of great general interest, such as the Municipal and Assessment Acts—acts to prevent the unlawful training of persons to the use of arms—to provide for the issue of Provincial notes—respecting the Militia, and its maintenance—to regulate the egress from public buildings—to amend the Medical Act, and the Act for the protection of sheep, &c., &c.

The law bills which have received the Royal Assent, and which are of sufficient general interest to refer to, are as follow:—

An Act to amend Chapter 98, Con. Stat. U. C. This act makes further provision for the prosecution and punishment of lawless aggressors against this country and its peaceable inhabitants.

An Act respecting the hearing of causes in the Court of Chancery, which empowers any one of Her Majesty's Council, learned in the law, at the request of the Vice-Chancellors, to hold the sittings of the Court of Chancery for the hearing of causes, and therein to "possess, exercise and enjoy all the powers and authorities of a judge of the said court."

An Act to amend the law of Crown and criminal procedure and evidence at trial in Upper Canada.

An Act to amend the Common Law Procedure Act. The section relating to sheriff's poundage, has been struck out. It was evidently designed to relieve sheriffs from what they considered to be the injustice of depriving them of their poundage, after a levy had actually been made, and the writ satisfied under pressure of the writ, though not directly by the action of the sheriff. The Legislature, however, did not see it in this light, being somewhat influenced, it is said, by considerations which should not have affected their judgment. The amendment is needed in the interest of sheriffs, and would not, we think, unduly prejudice suitors. The second section of the act provides for the recovery of interest on claims after verdict, instead of after judgment, as formerly, thus getting rid of a difficulty often felt by practitioners, but which reached its climax when it touched such an immense sum as was in litigation in the *cause celebre* of *The Commercial Bank* v. *The Great Western Railway Company.*

An Act to amend the law of Upper Canada relating to Crown debtors. This was passed as introduced. It puts the Crown in the same position as regards its debtors, (so far as bonds and other securities referred to in Con. Stat. U. C. Cap. 5 are concerned,) as an ordinary creditor. It is doubtless all very well that the Crown as representing the public should be protected, but there is a limit to everything, and the public would be more convenienced by the repeal of this act than the reverse.

An Act respecting persons in custody, charged with high treason or felony—another measure to ensure the safe keeping of those afflicted with the Fenian disorder or otherwise dangerous to the well being of the state.

An Act to amend the law respecting the appointment of Recorders.

An Act to amend the Act respecting the administration of justice in the unorganized tracts.

An Act to amend the law respecting appeals in cases of summary convictions and returns thereof by justices. This will be interesting to magistrates, and is given in full in another place.

The Act of most general importance to the country at large is the Municipal Act; but it is of too much importance to be hastily disposed of in a short summary like this. Of a cognate nature is the act to amend and consolidate the assessment acts.

Farmers and others in that line will be interested doubtless in an amendment of the act for the protection of sheep; which, by the way, stood in need of some amendment. We publish this act in another column.

Office-seekers in general, and office-seekers amongst the lawyers in particular, will be somewhat exercised by the act to complete the separation of the County of Peel from the County of York. There seems to us to be but little use in the separation of Peel from York except the formation of a few more offices; but the separation is an accomplished fact, and it only remains for us to hope that proper and efficient officers will be found to administer the affairs, judicial and otherwise, of the County of Peel. Of one thing we are confident, and that is, that it will be long before one is found to preside over the new courts with the same kind courtesy, sound common sense, and judicial capacity, as the gentleman who has for so many years sat as the County Judge of the United Counties of York and Peel.

Of the Bills that have *not* become law it is idle to speak. If they are of sufficiently good material they will probably keep till a session of what is likely to be a differently constituted Parliament meets for the despatch of business at Toronto; but if not, they will go to swell that immense mass of rubbish, by means of which certain would-be legislators prove their legislative incapacity, and whereby the Queen's Printers grow fat.

BAILIFFS AND THEIR FEES.

During the hard times resulting from over-speculation, and from an unreasonable extension of the credit system throughout Upper Canada, the number of suits that were entered in the various Division Courts was unprecedented and prodigious. Nearly every claim that merchants, tradesmen, or mechanics had was put into the shape of a judgment, and this over and above the legitimate every day collection business of a healthy trade, as well as the disputed cases which have been, are, and always will be brought before the courts of a country for adjudication.

The natural consequence of all this was enormously to increase the emoluments of all officers paid by fees—a system of remuneration which, as observed by Mr. O'Brien in his Division Court Manual, is open to very grave objections, and one which we venture to say is not looked upon with nearly as much favor by officers now as it was at the time we have referred to. This falling off in the business of the courts, and its consequent effect upon the remuneration of the officers of Division Courts, has been, doubtless, one of the principal reasons for bringing prominently into discussion the tariff of fees which regulates this remuneration. We do not for a moment assert that the subject is a new one, or that justice to all parties did not in the busy times require some modification in the tariff, but it is evident that the subject is one of more vital consequence *now* to these officers than it could have been *then*.

It is scarcely necessary for us to urge the necessity of paying public officers well for the services they render; this is patent to any careful observer. The following are some observations of a cotemporary on this matter where it is put fairly enough:—

"We should like to see these officers, as well as all others, paid liberally for the duties they have to perform, according to their labor, or the extent of their responsibility, and not only as a measure of justice to them, but as a measure of protection to the public; it being, we consider, the worst possible policy to ask any class of men to perform unremunerative services, as it not only offers a temptation to shirk the duties of the office, but also to seek opportunities of compensating themselves in a manner not allowed by law, and therefore not justifiable."

We may, therefore, with some profit examine in what way, if at all, this tariff of fees

can be altered so as to meet the requirements of justice to the officers and protection to the public. We have some guide in this matter as to the opinion of bailiffs themselves in a proposed tariff of fees for bailiffs of Division Courts, settled at a meeting largely attended by them in June last. The proposed tariff is the following:—

	Not exceeding $40.	Exceeding $40.
Service of Summons, or other proceeding excepting Subpœna, on each person.....	$0 20	$0 40
Service of Subpœna on each Witness	0 10	0 10
For taking Confession of Judgment.....	0 20	0 20
Drawing and attending to swear to every Affidavit of service of Summons or Subpœna, when served out of the Division..	0 20	0 20
Attending and making Affidavit of Service of Summons or Subpœna, within Bailiff's own Division	0 05	0 05
Enforcing every Warrant, Execution or Attachment, against the goods or body ...	1 00	1 00
For every mile necessarily travelled from the Clerk's Office, to serve Summons or Subpœna, and in going to seize or sell under Execution or Attachment, where money made, or case settled after the levy.....	0 10	0 10
For every Jury Trial	0 50	0 50
For carrying delinquent to prison, including all expenses and assistance, per mile	0 25	
For every case called in open Court, (this intended as a remuneration for attending on Court Days, acting as Crier, Constable, &c)	0 10	0 10
Every Schedule of property seized under Execution or Attachment, Return, including Affidavit of Appraisal	1 00	1 00
For the return of every Execution returned *Nulla Bona*..... ...	0 50	0 50
For every Bond, including Affidavit of Justification	1 00	1 00
Advertising Sale of Goods (not less than three advertisements).....	0 50	0 50
That there be allowed to the Bailiffs, after levy under any Execution, the sum of five per cent. upon the amount, not to apply to any overplus on said Execution.		

This, as might be expected, looks at the question from the bailiffs' point of view; the public, on the other, hand will very possibly, and we think very properly, look at many of these charges as excessive. It will be seen that in every case the fees have been increased, aad in only one case has any difference been made in the amount of fees relative to the amount of the claim. It may be very true that in most cases the trouble is the same whether the amount of the claim be $10 or $100, but the responsibility which is incurred in the one case bears no comparison with that in the other.

There are also two items proposed which have found no place in the tariff given by the Act. The first is intended as a remuneration for bailiffs attending on court days acting as criers, constables, &c., and as to this the sum of ten cents for each case appears to us to be too large, even on the supposition that such a fee should be allowed. The number of cases differs materially in different courts and when a bailiff has to break a day in attending court, it would not make much difference to him whether there are ten cases or twenty, but so long as he is paid by fees he must be paid, if paid at all, by a fee in each case, and not by a graduated scale according to the probable amount of time taken up In large courts his profits would bear no sort of proportion to the labour involved, and such a fee would be a direct incentive to a dishonest man to encourage litigation and prevent the amicable settlement of disputes and adjustment of accounts between parties.

As to the second item, namely, a fee on return of *nulla bona*, we still retain the opinion that such an allowance is objectionable. At the most, it should only be such a fee as is allowed in the higher courts, *i.e.*, for filing and return, analogous to the practice in the superior courts, say ten cents for each writ.

The allowance to bailiffs of two and a half per cent. upon money levied under an execution might, we think, fairly be increased to five per cent. which is the amount allowed in the higher courts.

There is another alteration which we think should in all justice be made in the tariff, and that is that all necessary disbursements should be allowed to bailiffs for the removal or keeping property seized under execution until the day of sale. We are well aware that almost invariably bailiffs act as though they had a legal right to allowances of this kind, and we do not at present give it as our opinion that they have no such right; but the item is one that should be put beyond a doubt, for it is the opinion of some that it is not legal for bailiffs to make any such charge. The consequence of any mistake in this matter are obvious. The following extract from a country paper is so much to the purpose that we reprint it:—

"A bailiff, evidently acting in good faith, and under the impression that he was entitled to do so, took a few dollars over what appeared to the judge presiding at the assizes to be justifiable under a strict construction of the tariff, and had in consequence to defend a prosecution brought by the defendant for extortion—the cost of which was probably ten or even twenty times the alleged overcharge. So satisfied was the judge presiding on the occasion that the unsatisfactory state of the law regulating the fees was more to be blamed than the bailiff, that he refused to pass any sentence, although a conviction had been had. The prosecutor was evidently influenced by malice and the promptings of a litigious disposition; but whatever the motive might have been it is quite evident that a bailiff could be very easily ruined by having to defend a number of prosecutions, although morally innocent of any wrong, and even without any conviction being had against him."

It will be seen on reflection, that the position of a bailiff in itself qualifies and otherwise enables him to fill many offices, by which, if his duties as bailiff are not too onerous, he can employ his spare time and make up for any deficiency in his income arising from the paucity of court business, such, for example, as acting as landlord's bailiff on distress warrants, or as county constables, and in a variety of other ways too numerous to mention.

The feeling of the public against any increase in bailiff's fees is much enhanced by the fact that many Division Court clerks are either unaware of or derelict in the discharge of their duties as taxing officers of bailiff's fees, and that some of our judges are not sufficiently alive to the importance of preserving their courts and officers from the suspicion even of corruption or extortion. It cannot be denied that one bailiff will make a large income out of a certain number of suits from which another bailiff equally and probably more efficient would make a bare subsistence. This should not be, and the honest bailiff who cannot be paid to falter in the path of duty, and who rigidly adheres to the tariff of fees laid down in the Act may, with some show of reason, in dull times, complain that his office is not what it once was, or not sufficiently remunerative to enable him to gain an honest livelihood. We do not say that a premium should be offered for dishonesty and extortion; and though, so long as human nature is what it is, such things will be, it is, nevertheless, quite possible that an earnest effort on the part of judges and clerks, aided, of course, by information from the public, would materially conduce to a lessening of the evils complained of. The innocent must always, more or less, suffer for the guilty, and unless some effectual means is otherwise devised for putting all bailiffs and fee takers upon an equal footing, it will be useless to attempt, by making a sweeping increase in the fees to put conscientious officers in a position of equality with their less particular brethren.

The difficulties of the subject are very great in whatever aspect it is viewed. Some think that the fee system is mainly at fault, and that payment of these officers by salary would be the fairest mode of payment for their services. Numberless practical difficulties present themselves to this course, even if otherwise desirable, and *we* certainly do not look upon the fee system with much favour. The suggestion is, therefore, only thrown out to elicit further discussion. Perhaps some of those who are in a position to form an opinion on the subjects touched upon by us will give our readers the benefit of their views or experience.

THE LAW REPORTERS.

A similar agitation to that which was lately quieted in England by the arrangements resulting in the "Law Reports" now supplied to the profession, has during the last few months affected us in Upper Canada. Numerous schemes have been suggested and discussed, but the one which has found favor in the eyes of the Benchers, and which is to be carried out is the following:—The three reporters are to be paid a fixed salary by the Society, and the Society become, so to speak, their own publishers. A volume of reports containing Practice Court, and Common Law Chamber decisions, will also be published, and thus make the series complete. All the reports will be furnished to practitioners free, and the reports will doubtless be obtainable by those who are not practising attorneys or solicitors, at a resaonable rate. To pay expenses, practitioners will be required to pay $15 for their annual certificates under the authority of the late act. An allowance has been made by the Society towards the remuneration of a reporter for Practice Court and Common Law Chambers, and Henry O'Brien, Esq., Barrister-at-Law, and one of the conductors of this journal, has been appointed to fill the office.

ACTS OF LAST SESSION.

An Act to amend and consolidate the Act to impose a tax on dogs, and to provide for the better protection of sheep in Upper Canada.

[Assented to 15th August, 1866.]

Whereas it is expedient to amend and consolidated the act chapter thirty-nine of the twenty-ninth Victoria, intituled, "An act to impose a tax on dogs and to provide for the better protection of sheep in Upper Canada;" Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The act passed in the twenty-ninth year of Her Majesty's reign, and chaptered thirty-nine, intituled, "An act to impose a tax on dogs, and provide for the better protection of sheep in Upper Canada," is hereby repealed.

2. There shall be levied annually in every municipality in Upper Canada, upon the owner of each dog therein, an annual tax of one dollar for each dog, and two dollars for each bitch.

3. The assessor or assessors of every Municipality at the time of making their annual assessment, shall enter on their roll opposite the name of every person assessed, and also shall enter opposite the name of every resident inhabitant not otherwise assessed, being the owner of any dog or dogs, the number by him or her owned or kept, in a column prepared for the purpose.

4. The owner or keeper of any dog, shall when required by the assessor, deliver to him in writing the number of dogs owned or kept, whether one or more, and for every neglect or refusal to do so, and for every false statement made shall incur a penalty of five dollars, to be recovered before any Justice of the Peace for the municipality, with costs.

5. The collector's roll shall contain the name of every person entered on the assessment roll as the owner or keeper of any dog or dogs with the tax hereby imposed, in a separate column, and the collector shall proceed to collect the same and at the same time and with the like authority and make returns to the Treasurer of the Municipality, in the same manner and subject to the same liability for paying over the same in all respects to the Treasurer as in the case of other taxes levied in the municipality.

6. The moneys so collected and paid to the clerk or treasurer of any municipality, shall constitute a fund for satisfying such damages as may arise in any year, from dogs killing or injuring sheep or lambs in such municipality, and the residue, if any, shall form part of the assets of the municipality for the general purposes thereof; but the fund shall be supplemented when necessary in any year to pay charges on the same, to the extent of the amount which may have been applied to the general purposes of the municipality.

7. The owner or keeper of any dog, that shall kill, wound or otherwise injure any sheep or lamb, shall be liable for the value of such sheep or lamb to the owner thereof, without proving notice to the owner or possessor of such dog, or knowledge by him, that his dog was mischievous or disposed to kill sheep.

8. The owner of any sheep or lamb that may have been killed or injured by any dogs, may apply to any two Justices of the Peace for the County, who shall enquire into the matter of complaint and examine such owner and witnesses (if any) upon oath, and if satisfied that such sheep or lamb had been killed or injured by any dogs, and if upon the evidence produced, the Justices shall be satisfied as to whom such dogs belong, or by whom such dogs were kept, such owner or owners if more than one, shall be liable to pay the amount of damages proved to have been sustained by such owner of the sheep or lamb killed or injured by the owner, or if more than one, owners of such dogs, equally, upon the order and decision of the Justices before whom the complaint was made, and each Justice shall have authority to summon witnesses and to enforce payment of damages and costs by distress and sale in the manner provided by one hundred and three of the Consolidated Statutes of Canada, respecting the duties of Justices of the Peace out of session in relation to summary conviction and orders, either party aggrieved having the right to appeal by-law provided in cases of summary conviction.

9. If the party injured shall make oath that upon diligent search and enquiry he has not been able to discover the owner or keeper of the dogs by which such damage or injury has been done, or shall fail to recover the amount of damages or injury adjudged from the owner or keeper of such dogs, if known, for want of distress, the Justices before whom the complaint was made, shall certify to the facts that such owners cannot be found, or that if known, there were no goods found upon which to levy the same, and the amount of damages by them adjudged, and upon the production of the certificate of such Justices to the effect aforesaid, be served upon or left with the clerk of the municipality, it shall be the duty of such clerk to lay the same before the Municipal Council at its next meeting; and in such cases the Municipal Council shall issue its order on the treasurer for the amount of the damages appearing by the certificate of the Justices of the Peace to have been sustained by the owner of any sheep or lamb killed or injured by dogs, and such amount shall be paid by the treasurer from and out of the fund constituted by the sixth section of this act, and from one other fund whatsoever; provided always, that if after such damages shall have been paid by the treasurer as aforesaid, the owner or keeper of any such dogs shall afterwards be identified and proved, it shall be the duty of the clerk of the municipality to make complaint before a Justice of the Peace for the County, who

shall summon such reputed owner, and any two Justices of the Peace shall proceed to try the case and determine the same in the manner provided by the eighth section of this act for compelling the owners of dogs killing or injuring sheep or lambs to pay the damages.

10. If after receiving the amount of such damages from the treasurer of the municipality, the owner of the sheep or lamb so killed or injured shall recover the value thereof, or any part of such value from the owner or keeper of any dog, he shall refund and repay to the treasurer of the municipality, the sum so received from him, and it shall be the duty of the clerk of the municipality to bring an action against such owner to recover such amount and such amount when recovered shall form part of the fund constituted by the six section of this act.

11. Any person may kill any dog which he may see worrying or wounding any sheep or lamb.

12. The owner or keeper of any dog to whom notice shall be given, of any injury done by his dog to any sheep or lamb, or of his dog having chased or worried any sheep or lamb, shall within forty-eight hours after such notice, cause such dog to be killed, and for every neglect so to do, he shall forfeit a sum of two dollars and fifty cents, and a further sum of one dollar and twenty-five cents, for every forty-eight hours thereafter until such dog be killed; provided that it shall be proved to the satisfaction of the Justices of the Peace, before whom such suit shall be brought for the recovery of such penalties, that such dog has worried or otherwise injured such sheep or lamb; and provided also, that no such penalties shall be enforced in case it shall appear to the satisfaction of such Justices of the Peace, that it was not in the power of such owner or keeper to kill such dog.

13. In cases where parties have been assessed for dogs and the Township Collector has failed to collect the taxes authorized by this act, he shall report the same under oath to any Justice of the Peace, and such Justice may order such dogs to be destroyed.

14. Every Justice of the Peace shall be entitled to charge such fees in case of prosecutions under this act as it is lawful for him to do in other cases within his jurisdiction, and shall make the returns usual in cases of conviction, and also a return in each case to the clerk of the municipality, whose duty it shall be to enter the same in a book to be kept for that purpose.

15. This act shall apply to Upper Canada only.

An Act to amend the Law respecting appeals in cases of Summary convictions, and Returns thereof by Justices of the Peace in Upper Canada.

[Assented to 15th August, 1866.]

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In all cases of appeal from any order, decision or conviction made or had before any Justice or Justices of the Peace in Upper Canada, under the law relating to appeals from Summary Convictions the Court, to which such appeal is made shall hear and determine the charge or complaint on which such order, decision or conviction shall be made or had, upon the merits, notwithstanding any defect of form or otherwise in such conviction; and if the person charged or complained against shall be found guilty, the conviction shall be affirmed, and the Court shall amend the same, if necessary, and any conviction so affirmed or affirmed and amended shall be enforced in the same manner as convictions affirmed in appeal are now enforced.

2. And for the more effectual prevention of frivolous appeals, any Court of Quarter Sessions or Recorder's Court, upon proof of notice of any appeal to such Court having been given to the party or parties entitled to receive the same, though such appeal was not afterwards prosecuted or entered, may, if such appeal shall not have been abandoned according to law, at the same Court for which such notice was given, order to the party or parties receiving the same such costs and charges as by the said Court shall be thought reasonable and just to be paid by the party or parties giving such notices, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction.

3. It shall not be necessary, for any Justice or Justices before whom any trial or hearing is had under any law, giving jurisdiction in the case, and who convicts and imposes any fine, forfeiture, penalty or damages upon any defendant, to make a return thereof in writing under his or there hand or hands, until the Quarter Sessions to which a party complaining can by law appeal, and it shall be sufficient if such return be made to such Quarter Sessions.

4. In all cases of appeal, when the appellant is not in custody, he shall enter into a recognizance with two sufficient sureties in manner provided by the Act respecting Appeals in cases of Summary Conviction.

An Act to amend the ninety-eighth chapter of the Consolidated Statutes for Upper Canada.

[Assented to 15th August, 1866.]

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The third section of the ninety-eighth chapter of the Consolidated Statutes for Upper Canada, intituled: *An Act to protect the inhabitants of Upper Canada, against lawless aggressions from the subjects of Foreign Countries at peace with Her Majesty*, is heredy repealed, and the following section shall be and is hereby substituted in lieu of the said section hereby repealed, and shall be taken and read as the third section of the said act:

"3. Every subject of Her Majesty and every citizen or subject of any foreign country who has at any time heretofore offended or may at any time hereafter offend against the provisions of this act, is and shall be held to be guilty of felony, and may, notwithstanding the provisions hereinbefore contained, be prosecuted and tried before any Court of Oyer and Terminer and General Gaol Delivery, in and for any County in Upper Canada, in the same manner as if the offence had been committed in such County, and upon conviction shall suffer death as a felon."

2. In case any person shall be prosecuted and tried under the provisions of the next preceding section and found guilty, it shall and may be lawful for the Court before which such trial shall have taken place, to pass sentence of death upon such person, to take effect at such time as the Court may direct, notwithstanding the provisions of an act of the Consolidated Statutes for Upper Canada, intituled: *An Act respecting New Trials and Appeals and Writs of Error in criminal cases in Upper Canada.*

An Act to regulate the means of egress from Public Buildings.

[Assented to 15th August, 1866.]

Whereas, the neglect of a proper mode of constructing the doors and gates of churches and of halls or buildings used for holding public meetings, is a source of great danger to life and limb, and it is desirable to provide a remedy: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In all churches, theatres, halls or other buildings in this Province hereafter to be constructed or used for holding public meetings, or for places of public resort or amusement, all the doors shall be so hinged that they may open freely outwards, and all the gates of outer fences, if not so hinged, shall be kept open by proper fastenings during the time such buildings are publicly used to facilitate the egress of people, in case of an alarm from fire or other cause.

2. Congregations or others owning churches, and individuals, corporations and companies owning halls, theatres, or other buildings used for the purpose of holding public meetings, or places of public resort or amusement, shall, within twelve months from the passing of this act, be required to have the doors of such churches, theatres, halls or other buildings so hinged as to open freely outwards.

3. Individuals, companies and corporations owning or possessing public halls, churches or other buildings used for public meetings, who shall violate the provisions of this act, shall be liable to a fine not exceeding fifty dollars, recoverable on information before any two of Her Majesty's Justices of the Peace, or before the Mayor or Police Magistrate of any city or town; one moiety of such fine shall be paid to the party laying the information, and the other moiety to the municipality within which the case may arise, and parties so complained against shall be liable to a further fine of five dollars for every week succeeding that in which the complaint is laid, if the necessary changes are not made:

2. Congregations possessing corporate powers, and all trustees holding churches or buildings used for churches under the act, chapter sixty-nine, of the Consolidated Statutes for Upper Canada, intituled: *An Act respecting the property of religious institutions in Upper Canada*, and incumbents and church-wardens holding churches, or buildings used for churches under the act of parliament of Upper Canada, chapter seventy-four, third Victoria, intituled: *An Act to make provision for the management of the temporalities of the United Church of England and Ireland in this Province, and for other purposes therein mentioned*, and the incumbents, church-wardens or trustees holding churches or buildings used for churches under the act chapter nineteen of the Consolidated Statutes for Lower Canada, intituled: *An Act respecting lands held by religious congregations*; and all others holding churches or buildings used for churches, under any act, shall be severally liable as trustees for such societies or congregations, to the provisions of the preceding section.

4. Municipal Corporations in Upper Canada shall have power to enact by-laws to regulate the size and number of doors in churches, theatres and halls, or other buildings used for places used for places of worship, public meetings, or places of amusement, and the street gates leading thereto, and also the size and structure of stairs and stair-railing in all such buildings, and the strength of beams and joists, and their supports.

5. Municipal Corporations in Lower Canada shall have the same power to enact by-laws as is hereby granted to the Municipal Corporations in Upper Canada—except in so far as relates to churches and other buildings used for places of worship, the construction of which is regulated by chapter eighteen of the Consolidated Statutes for Lower Canada; and the Commissioners mentioned in the said chapter shall have, for the said churches and places used for worship, the same power to enact by-laws as is hereby conferred on the Municipal Corporations, which said by-laws, when sanctioned by the ecclesiastical authorities mentioned in the said chapter, shall have full force and effect.

6. In cities, towns and incorporated villiges, it shall be the duty of the High Bailiff, Chief Constable, or Chief of Police, to enforce the provisions of this act, and such officers neglecting the performance of such duties shall be liable to a fine not exceeding fifty dollars, recoverable in the manner and before the Justice of the Peace, and payable to the par-

ties mentioned in the third section of this act.

7. County, Township and Parish Municipalities may, by by-law, appoint an officer to enforce the provisions of this act.

8. This act shall not be construed to apply to convents or private chapels connected therewith.

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

MUNICIPAL CORPORATIONS—MORTMAIN ACT.—After the passing of the 27 Victoria, chapter 17, a municipal corporation invested on mortgage part of the surplus clergy reserve moneys in their hands, and the mortgagors made default in payment, whereupon the municipality filed a bill to forelose the security.

Held, that the municipality were entitled to a decree of foreclosure, and were not restricted to a sale of the property only, notwithstanding the statutes of mortmain.—*The Municipality of Oxford* v. *Bailey*, 12 U. C. Chan. E. 276.

INJUNCTION—PRACTICE—RAISING MONEY UNDER BY-LAW OF TOWNSHIP COUNCIL—ASSESSMENT ACTS.—Where a bill was filed to restrain proceedings by a township council on a resolution which named, it was alleged, a higher rate than was necessary to raise the sum required for county purposes, and the plaintiff allowed a term of the common law courts to pass before moving for an injunction, it was held—that he came too late, the proper course in such a case being to move at law to quash the resolution or by-law.

The Consolidated Assessment Act of Upper Canada, as affecting the question, considered.—*Grier* v. *St. Vincent*, 12 U. C. Chan. R. 330.

CRIMINAL LAW—VOLUNTARY STATEMENT OF PRISONER—CONVICTION.—The prisoner's house had been visited by a constable, who came to inquire about the purpose for which the prisoner's forge was used. The prisoner volunteered a statement, implicating himself and several others in a Fenian conspiracy. The constable asked the prisoner "had he any objection to tell that to the superintendent." The prisoner said not, and went to the superintendent, and thence to a magistrate, where he made a detailed information upon oath to the same effect. No inducement whatever was offered to the prisoner to make the information; but he was not cautioned by the magistrate. Some days afterwards he was asked by the constable to come down and hear his information read in the presence of the persons whom he had informed against, now in custody. He went down and made a further information, and on that occasion made this statement—"I came to save myself." No caution was given on this occasion. The prisoner was bound over to prosecute, and the magistrate considered him as an approver. No charge was preferred against the prisoner up to this point, nor was he in custody. Subsequently he refused to prosecute, and was then arrested, tried, and convicted, his own information being put in evidence against him.

Held (MONAHAN, C. J., and KEOGH, J., dissentientibus), that the informations were not properly received, and that therefore the conviction was bad.

Held, by FITZGERALD and DEASY, BB., that the first information was admissible, no intimation having been made by the prisoner of the expectation under which he made the admission; but that the second information was inadmissible.—*Regina* v. *Gillis*, 14 W. R. 845.

TURNPIKE ACT, 3 GEO. 4, c. 126, s. 32—EXEMPTION FROM TOLL—COMMISSARIAT STORES CARRIED BY A COMMON CARRIER.—By the 3 Geo. 4, c. 126, s. 32, it is enacted that no toll shall be taken for "any waggon, &c., or the horse or horses, &c., drawing the same, employed in conveying any commissariat or other public stores of or belonging to his Majesty, or for the use of his Majesty's forces."

Held, that under this section, the waggons of a common carrier, employed in delivering hay, &c., supplied by a contractor to her Majesty's forces are exempt from toll.—*L. & S. W. R. W. Co.* v. *Reeves*, 14 W. R. 967.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

MARRIED WOMAN'S DEED—CERTIFICATE—RIGHT OF WAY—DESCRIPTION.—Where the certificate endorsed on a married woman's deed, executed in Minnesota, was given by a person described as the judge of the District Court in that State, and under the seal of the court, but it was not stated in the certificate (which would have been enough), or otherwise proved, that such court was a court of record—*Held* insufficient.—*McCammon et al* v. *Beauprè*, 25, U. C. Q. B. 419.

COUNTY COURT—JURISDICTION—AMOUNT ASCERTAINED BY ACT OF PARTIES.—The defendant

was book-keeper for the plaintiff, and as such debited himself with cash received which more than paid his salary, and for which excess a verdict was, upon action brought, given against him. He thereupon applied for a prohibition.

Held, that the amount had been ascertained by the act of the parties.—*Furnivall* v. *Saunders*, 2 U. C. L J., N. S. 245.

WILL—WORDS OF DEVISE—WHAT A SUFFICIENT SEAL.—A testator by his will, duly made and published in the year 1832, gave certain lands to his son J. D., "for his children," adding, in the concluding paragraph, "any other lands I may now or hereafter have I may add." *Held*, that the words of devise carried only a life-estate; and as to these words, that they expressed only a possible intention of the testator at some future time of making a devise thereof.

A deed had been duly signed by the parties; but instead of any wax or wafer being affixed thereto for seals, slits had been cut in the parchment, and a ribbon woven through, so as to appear on the face of the document at intervals, opposite one of which each of the parties to the deed signed. *Held*, a sufficient execution of the instrument.—*Hamilton* v. *Dennis*, 12 U. C. Chan. R. 325.

ADJOINING OWNERS—LATERAL SUPPORT OF LAND—INAPPRECIABLE INJURY.—The plaintiff was entitled to lateral support for his land, but not for the wall upon it. The defendant dug a well in his own land, adjoining the land of the plaintiff, and when he no longer required it, filled it up, but the material used for the filling up sunk. The consequence was a subsidence of earth towards the place where the well had been, and this subsistence included particles of the plaintiff's earth, and caused the fall of the plaintiff's wall; but there would have been no appreciable injury to the plaintiff's land if the wall had not been upon it.

Held, that there was no cause for action.—*Smith* v. *Thackerah, et al*, 14, W. R., 832.

STATUTE OF LIMITATIONS—PROMISE WITHIN SIX YEARS—ACKNOWLEDGMENT.—In an action for a debt more than six years old, the following letter, written within six years, was relied on as sufficient to take the case out of the Statute of Limitations:—

"It is quite true that I have not sent you any money for years, but I really have none of my own. I will try to pay you a little at a time, if you will let me. I am sure that I am anxious to get out of your debt. I will endeavour to to send you a little next week."

Held (per BRAMWELL and CHANELL, BB., MARTIN, B., dissentiente), that this was a sufficient acknowledgment.—*Lee* v. *Wilmot*, 14 W. R., 993.

UPPER CANADA REPORTS.

COURT OF ERROR AND APPEAL.

(Reported by ALEX. GRANT, ESQ., *Barrister at Law, Reporter to the Court.)*

ON AN APPEAL FROM THE COURT OF QUEEN'S BENCH.

HODGINS v. THE CORPORATION OF THE UNITED COUNTIES OF HURON AND BRUCE.

Corporation—Notice of action.

Held per Curiam—[RICHARDS, C. J., A. WILSON, J., and MOWAT, V. C., dissenting]—that a municipal corporation is not entitled (like a public officer) to a month's notice before action brought against the municipality in respect of any act of the corporation; nor is a party aggrieved by such act bound to commence his action within six months from the committing of the act complained of.

The plaintiff sued in the court below for an injury which he alleged the defendants had done him in the formation of a road and in cutting drains, by causing water to flow upon his land.

The defendants pleaded the general issue by statute.

The jury gave a verdict for the plaintiff, and awarded him $100 damages.

Counsel for the defendants afterwards moved for a rule, calling on the plaintiff to shew cause why the verdict should not be set aside, and a nonsuit entered pursuant to leave reserved at the trial, on the ground that no notice of action had been given to the defendants before the commencement of the suit: or why a new trial should not be ordered, because the verdict was against law and evidence, in this, that no notice of action was given, and that the action was not commenced within six months next after the act was committed; and also because of the misdirection of the learned judge in overruling the objection to the plaintiff's recovery, that the action had not been commenced within six months next after the act had been committed.

The court refused the rule; the defendants appealed for this refusal of the rule:

1. Because the defendants were entitled to such notice of action, and none had been given; and,

2. Because the action was not commenced within six months next after the act complained of was committed.

The appeal came on to be argued at the sittings of this court in March, 1865.

S. Richards, Q. C., for the appellants (the defendants below).

There is a conflict of opinion between the Queen's Bench and the Common Pleas, as to the necessity of notice to a municipal corporation in such a case as the present. The Queen's Bench holding that the corporation is not entitled to notice, because the statute, ch. 126 of the Consolidated Statutes for Upper Canada, requires that notice shall be served on the *person*, or left at his *place of abode;* and no such service can be made on a corporation aggregate, as it cannot be personally served, and as it has no place of abode. And the Common Pleas holding that the statute does, with the aid of the Interpretation Act, U. C., ch. 2, sec. 12, apply to corporations as persons—that they may perform a *public* duty —and as it is conceded their officers and servants,

while carrying out the corporation directions, are entitled to notice, that the corporation must equally be entitled to notice as those whom they employ.

The cases in the Queen's Bench are: *Brown* v. *The Township of Sarnia*, 11 U. C. Q. B. 215; *Snook* v. *The Town of Brantford*, 13 U. C. Q. B, 621; *McKenzie* v. *The City of Kingston*, 13 U. C. Q. B. 634; *McGrath* v. *The Township of Brock*, *Ib.* 629. And those in the Common Pleas are: *Croft* v. *The Town of Peterborough*, 5 U. C. C. P. 141; *Reid* v. *The City of Hamilton*, 5 U. C. C. P. 269; *Barclay* v. *The Township of Darlington*, *Ib.* 432; *Allen* v. *The City of Toronto*, 6 U. C. C. P. 334.

A corporation may have a place of abode, which is presumed to be its place of business, as in the direction of the process of summons in commencing action—C. L. P. Act, section 1. *Mason* v. *The Birkenhead Improvement Commissioners*, 6 H. & N. 72; and corporations are held responsible in a variety of actions, which treat them as persons; they are liable for slander, for assault and battery. *Addison* on torts, 714. 762; *Stevens* v. *The Midland Counties R. Co.*, 10 Exch. 352; *Whitfield* v. *The South Eastern R. Co.*, 1 E. B. & E. 115; *Denton* v. *The Geeat Northern R. Co.*, 5 E. & B. 860.

C. Robinson, Q. C., contra.

The reasons are given in *Snook* v. *The Town of Brantford*, before cited, why chapter 126 does not apply to municipal corporations, and he could add nothing further; there was a direct conflict on the point between the two courts, and all the cases bearing upon the question has been already cited.

The six months here were no bar, for there was a case of continuing damage, and cannot therefore be governed by such a case as *Turner* v. *The Town of Brantford*, 13 U. C. C. P. 109.

DRAPER, C. J.—The 14th & 15th Victoria, ch. 54, annulled all previous enactments, giving certain privileges and protection to justices of the peace, and other officers or persons fulfilling any public duty and acting *bonâ fide* in the execution thereof, and it put all such privileges and protections as to notice of action, limitation of time for bringing such action, costs, pleading the general issue and giving the special matter in evidence, venue, tendering amends, and payment of money into court, upon a uniform footing.

The 16th Victoria, chapter 180, (passed the 14th of June, 1853,) by sec. 15, which is not very accurately penned, repealed, so far as regarded Upper Canada, so much of the 14th & 15th Victoria, chapter 54, in respect to actions against justices of the peace, together with all other acts, or parts of acts, inconsistent with the 16th Victoria, except as to statutes by such previous acts repealed. The 14th & 15th Victoria had, however, repealed all preceding statutes on that subject.

But though the 14th & 15th Victoria was repealed only as to justices, the 16th section of 16 Victoria, chapter 180, enacts that the last act shall apply for the protection of all persons for anything done in the *execution of their office*, in all cases in which by the provisions of any act or acts, the several statutes or parts of statutes by this act repealed would, but for such repeal, have been applicable.

The last act, and the Consolidated Statutes of Upper Canada, chapter 126, superseding it, enact, that every action to be brought against a justice for any act done in the execution of his duty, with respect to a matter within his jurisdiction, shall be an action on the case as for a tort, and it must be expressly averred in the declaration, and proved at the trial, that the act was done maliciously, and without reasonable or probable cause.—(Section 1.)

But, for an act done by such justice in which the law gives him no jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under any conviction or order made, or warrant issued by such justice, an action may be maintained by the person against such justice, just as before the act was passed—(Section 2); but no action shall be brought for anything done under such conviction or order until it has been quashed, nor for anything done under a warrant issued by such justice to procure the appearance of the party, and which has been followed by a conviction or order in the same matter until such conviction or order has been quashed—(Section 3); nor for any act done, if such last mentioned warrant has not been followed by a conviction or order, or if the warrant be to compel appearance; if a summons to appear were previously served but not obeyed—(Section 4). The 5th, 6th and 7th sections apply exclusively to justices. The 8th gives power to a judge of the court in which an action is brought, where the act declares no action shall be brought, to set aside the proceedings. This must allude to the actions prohibited in the 3rd, 4th, 5th and 7th sections; actions either against justices of the peace or against persons acting under a conviction or order made by a justice. Then the limitation of time, the notice of action, the venue, pleading the general issue, and giving the special matter in evidence, are all provided for; although, as expressed, in favor of justices only; but the 20th section extends the application for the protection of every officer and person fulfilling any public duty. It may be doubted whether the 12th section was intended to apply to any others than justices; I think it was not, for it cannot be said to be applicable within the meaning of section 20.

On comparing the first and last sections an obvious difference presents itself. The cases for the application of the first section are plainly defined by the statute; whether any person not being a justice can claim the protection and privilege accorded by the last, is a matter of judicial interpretation. All the privileges given by the act belong to justices; but, excepting those in the first section, the question as to whether the remaining privileges created by subsequent sections are applicable to others than justices is left to be determined by the courts, for they are given to such others only "so far as applicable." It has been held that they are not applicable to sheriffs, though they are public officers, when sued for acts done in the execution of their duty.

The language of this act, whether with or without aid, never could be held to include corporations. This result is deduced from the interpretation acts. The first of these applicable to the statutes, passed since the union, is 12 Victoria, chapter 10, which recited that it was desirable to avoid, by the establishment of some general rules for the interpretation of our acts, the repe-

tition of *words*, *phrases* and *clauses*, which are rendered necessary only by the want of such rules, and enacted that such provision should apply to all future acts, except so far as it shall be inconsistent with the context; and (Section 5, 8thly,) that the word "person" should include any body corporate or politic, or party, and the heirs, executors, administrators, or other legal representatives of such person to whom the context may apply. Then chapter 2 of the Consolidated Statutes of Upper Canada was passed "to prevent the unnecessary multiplication of words, and to give definite meaning to certain words and expressions which may be provided for by a general law." This act is in force in Upper Canada only. Section 10 enacts, that the word "person" shall include any body corporate or politic, or party, and the heirs, executors, administrators, or other legal representatives of such person to whom the context applies. Section 19 provides, that the provisions contained in the Interpretation Act of Canada, and not contained in this act, shall apply to the Consolidated Statutes of Upper Canada as if incorporated therein. Reading these two interpretation acts together, and referring to section 3 of the Interpretation Act of Canada, as well as to the statute 12 Victoria, chapter 10, I presume that the following words, which begin section 2 of the Upper Canada Interpretation Act, "unless otherwise declared or indicated by the context," apply to all the sections following down to and including section 17. Such is the form and effect of the statute 12 Victoria, and also of the Interpretation Act of Canada. All these acts are so plainly *in pari materia*, that I feel warranted in so far construing the one by the aid of the other. Indeed I cannot suggest a reason why the same form of enactment was not followed for both.

(*To be continued*)

COMMON LAW CHAMBERS.

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

IN MATTER OF ROBERT RUSSELL WADDELL, AN INSOLVENT.

Insolvent Act of 1864, *sec.* 9, *sub-secs.* 6, 10, *and sec.* 11, *sub-sec.* 1—*Appeal from county judge—Application for discharge of insolvent—Notices to creditors.*

The provisions of sec. 11, of the above act, with reference to notices, do not apply to the case of an insolvent who has procured a consent from his creditors to his discharge, or has procured the execution by the requisite number of his creditors of a deed of composition and discharge, and who is applying to the judge for a confirmation of such discharge.

Sec. 9, sub-secs. 6 and 10, point out all that is to be done on the part of the insolvent, to enable him to bring his application before the judge.

[Chambers July, 4, 16, 1866.]

On 23rd June last the insolvent presented a petition to the county judge for his discharge under the Act. Notice of his intention to apply in the form given by the statute was published in the *Canada Gazette*, the first insertion in that paper being on 21st April and the last on 16th June. Notices of the intention to apply were not sent to the creditors of the insolvent.

Burton, Q. C., appeared for an opposing creditor, and objected that the publication of the notice was not sufficient. It was not published for two months as required by sub-sec. 6 of sec. 9, and notices should have been sent to the creditors as provided by sec. 11, sub-sec. 1, and both these sub-sections must be read together.

Sadleir, for the insolvent, *contra*.

Sub-sections 2, 3, and 4, of sec. 1, of Act of 1864, are repealed by Act of 1865, second session. This provides that where an assignment is made to an official assignee, no notices are required to be sent by insolvent to his creditors, by post or otherwise; form A in old Act is done away with, and form A in new Act is only where an assignment is not made to an official assignee. Where the assignment is to an official assignee, the first notice is given by assignee for the purpose of calling on creditors to prove claims. See then section 11 of old Act—To whom is insolvent to give notice of his intention to apply for discharge? The end of sub-section 1, section 11, showed "that notices thereof must be addressed to all creditors within the Province, &c., at the time of the insertion of the first advertisement," that is, the assignee's advertisement.

The following judgment was, after consideration given by the learned judge of the court below,

Logie, Co. J.—As to the first point sub-sec. 6 sec. 9, provides that notice shall be given by advertisement in the *Canada Gazette* for two months, and the first point raised is whether the full period of two months must elapse between the first and last insertions in the *Gazette*, or whether the time of making application to the Judge being more than two months from the day of the first insertion in the *Gazette* publication in all the issues of the paper during the intervening time would be sufficient although the time between the first and last insertions should happen to be less than two months. I was under the impression that the case of *Coe* v. *Pickering*, 24 U. C., Q. B., 439, settled that point, but on looking at the case, I find it does not; and I have not been able to find any case in which it has been determined. I have, on careful consideration, come to the conclusion that the insertion of the advertisement for two months means an insertion in each issue of the paper published during the two months between the first insertion and the day of presenting the petition; and therefore, as in this case, the day of meeting is more than two months from the date of the first insertion, and the notice has appeared in each issue during the period, the publication in the *Gazette* is sufficient.

With regard to the other point, I am of opinion that notices should have been sent to the creditors of the insolvent as provided by sec. 11. I think that sec. 11, sub-sec. 1, must be read along with sec. 9, sub-sec. 6, in order to ascertain the intention of the Legistature. Sec. 11, sub-sec. 1, contains the general provision of the Insolvent Act for the giving of notices. It provides that notices of meetings of creditors and all other notices required to be given by advertisement without special designation of the nature of such notice shall be given by publication for two weeks, &c. And in any case, the assignee or person giving such notice shall also address notices, &c., to the creditors. The words in the last part of this section, "and in any case," &c., are very comprehensive, and unless controlled or limited by the other part of the section, or by anything in sub-sec. 6, of sec. 9, would

unquestionably include the case of an insolvent giving notice of intention to apply for his discharge. It is contended by Mr. Sadlier for the insolvent, that it is limited by the words "without special designation of the nature of such meeting" to cases where a meeting is called without the object of the meeting being stated in the notice, but that where the object is stated in the notice the requirements of sec. 11 do not extend to all notices required to be given; and therefore where there is a special provision for advertising notice of application as in sub-sec. 6, of sec. 9, the provisions of sec. 11 do not apply to it. I think, however, that the portion of sec. 11 requiring notice to be given to creditors applies to applications for discharge under sub-sec. 6 of sec. 9, and my reasons for so thinking are as follows: Sub-sec. 6 provides that the insolvent may give "notice &c. of his intention to apply &c.;" and notice shall be given by advertisement, &c.; if the latter part of the clause had been omitted, there would be no question, I think, as to the notice required; the general provisions of sec. 11, would apply. Does the last part of the clause then limit these provisions? I think not; it provides, generally, that notice shall be given, and that notice, meaning the notice referred to, shall be advertised for a longer period than sec. 11 requires; the effect in my opinion of sub-sec. 6, is merely to extend the period of advertising from two weeks to two months, in other respects the requirements of sec. 11 as to notice to creditors must be complied with. I am also of opinion that the words in sec. 11 "without special designation of the nature of such notice," do not limit the words, "and all other notices herein required to be given," to cases where the object of the meeting or notice is not expressed in the notice. In the case of a voluntary assignment, under sec. 2, a meeting must be called, of which notices must be sent to the creditors, though the special object of the meeting is stated; sub-sec. 2 of that section assumes that notice is sent to creditors under the general provisions of the Act, and requires a list of creditors to be sent with it. The last part of sec. 11 requiring notices to be sent to creditors, applies in my opinion, to every case where notice is required to be given; and as the notices have not been given in this case, I cannot entertain the insolvent's petition for his discharge."

From this judgment, the insolvent (at the suggestion of the learned Judge himself,) appealed by petition entitled in the Court of Queen's Bench, to the presiding Judge in Chambers under sec 7 of the Insolvent Act of 1864.

The petition was as follows:—

"The petition of Robert Russell Waddell, of &c., sheweth,

1. That your petition on the 27th April, 1865, made an assignment under the Insolvent Act of 1864, and surrendered all his estate, both real and personal to John Murray, of the city of Hamilton, an official assignee.

2. That the said John Murray has since died, and William Forest Findlay, of &c., has been appointed and acts in his place, &c.

3. All proceedings in said matter of insolvency of your petition have been carried on in the County Court of the County of Wentworth.

4. That more than one year had elapsed from the date of your petitioner's said assignment, and his application by petition to the judge of the said County Court of the County of Wentworth for an order allowing and confirming your petitioner's discharge, under the Insolvent Act of 1864 (a copy of this petition was annexed).

5. Your petitioner, on the 23rd June, 1866, by petition, setting forth that your petitioner having duly assigned and surrendered, and in all things conformed himself to the statutes, rules, and orders relating to bankruptcy, and having been duly examined under oath, touching his estate and effects, made his application to Alex. Logie, Esq., judge of the said County of Wentworth, for an order allowing and confirming his discharge under said Act.

6. That his honor, the said judge, refused your petitioner's said application, on the grounds set forth and declared in his said judgment given therein (a copy of which was annexed).

7. Your petitioner being dissatisfied with the determination and decision of the said judge of the County Court of Wentworth, gave due notice of his intention to appeal therefrom to this honorable court, or to the presiding judge in chambers.

8. That your petitioner applied to the presiding judge in chambers on the 11th July, 1866, for leave to appeal from the decision of the judge of the County Court of Wentworth, and by an order made in chambers, bearing date the 11th July, 1866, by his lordship the hon. Mr. Chief Justice Draper, it was ordered that your petitioner should be allowed to appeal from the decision of the judge, dated July 4, 1866, upon giving the required securities, and otherwise complying with the provisions in that behalf contained in the Insolvent Act of 1864.

9. Your petitioner hath given the security required under the said Act, as approved of by the said judge of the County Court of Wentworth, and otherwise complied with the provisions in that behalf, as directed by the said order of his lordship, Mr. Chief Justice Draper.

Your petitioner therefore prays:

1. That the said judgment or decision of Alex. Logie, Esq., judge, &c., may be revised by this honorable court, or the presiding judge in chambers to whom this petition may be presented.

2. That your petitioner may have such further and other ordered relief as the circumstances of the case may require.

3. That the respondent, Lewis R. Corby, the creditor of your petitioner, opposing his discharge, may be ordered to pay the costs of this appeal.

And your petitioner, &c.

This petition was verified by an affidavit of the insolvent.

Sadleir, for the insolvent, the appellant.

S. Richards, Q.C., for the opposing creditor.

No cases were cited on the argument.

DRAPER, C. J.—The question raised on this appeal is in what manner is the notice to be given by an insolvent who has procured a consent from his creditors to his discharge, or has procured the execution by the requisite number of his creditors of a deed of composition and discharge within the meaning of the act to apply to the Judge for a confirmation of such discharge.

The objection on which such an application has been decided adversely to this insolvent is, that

no notices were addressed to all his creditors and to the representatives of foreign creditors within this Province, nor were any mailed to them, postage paid, according to the 11th sec., sub-sec. 1 of the Insolvent Act of 1864.

The 6th sub-sec. of sec. 9, points out how the insolvent is to proceed to obtain a confirmation of his discharge, either under a consent or a deed of composition and discharge. It requires, 1st. Filing in the proper office the consent or the deed, 2nd. Giving notice of such filing and of the insolvent's intention to apply on a day named in such notice for a confirmation thereof by the Judge, "and a notice shall be given by advertisement in the *Canada Gazette* for two months, and also for the same period if the application is to be made in Upper Canada, in one newspaper * * * * in or nearest the place of residence of the insolvent."

The 11th sec. is to the following effect:—Notice of meetings of creditors and all other notices herein required to be given by advertisement, without special designation of the nature of such notice, shall be so given by publication thereof for two weeks in the *Canada Gazette;* also, in Upper Canada, in one newspaper, in English, published at or nearest to the place where the proceedings are being carried on. * * * * And in any case the assignee or person giving such notice, shall also address notices thereof to all creditors and to all representatives of foreign creditors within the Province, and shall mail the same with the postage thereon paid at the time of the insertion of the first advertisement.

The application in this case was under the 10th sub-sec of sec. 9, by which the insolvent is required to give notice of his application in the manner provided for by sub-sec 6, above set out, *i.e.*, "in the manner hereinbefore provided, for notice of application for confirmation of discharge."

The first observation which suggests itself, is, that the 6th sub-sec. contains a complete direction as to the notice of the day on which the application for a confirmation of the discharge will be made. The words are precise, and it makes no reference to any other part of the Act as is done in sub-sec 2 of sec. 2, as to each notice of meeting sent by post "as hereinafter provided," evidently alluding to the 11th sec. which fixes the length of time for advertising as well as directs the postal notice.

The 10th sub-sec. of sec. 9 refers to the 6th sub-sec. as to the mode of giving notice, as if all was to be found expressed there.

The 11th sec. professes to regulate "notices of meetings of creditors and all other notices herein required to be given by advertisement without special designation of the nature of such notice." The notice in question is very clearly a notice required to be given by advertisement, and yet it cannot, in one respect, be governed by sec. 11, which names two weeks as the period of insertion in the *Gazette* and newspaper, while the 6th sub-sec. names two months for the same purpose. The form of notice directed to be used by sub-sec. 10, (Q) designates the object of the application to the Judge to be for a discharge under the Act. Waiving for the moment, the question how to construe the words "without special designation of the nature of such notice," it is obvious that the provisions of the 11th sec. both as to time and to the local newspaper are inconsistent with the 6th sub-sec. of sec. 9, the former absolutely, and the latter possibly, for it may not always happen that the place where the proceedings are being carried on is also the place of residence of the insolvent. But the words on which the opposing creditor relies are "in any case, the assignee or person giving such notice" shall also address notices to all creditors, &c., and to mail them, postage paid; the contention is, that this applies to the notice required by sub-secs. 6 and 10 of sec. 9.

I am not sure that I rightly understand what effect or meaning the learned Judge in the Insolvent Court, put upon the words "without special designation of the nature of such notice." Mr. Richards argued very strenuously that they would be satisfied by holding them to apply to the period during which the advertisement is to be continued. I confess this appears to me a forced construction, not in accordance with the guidance to interpretation furnished in the 13th sub-sec. of sec. 11, which, in reference to "every petition, application, motion, contestation, or other pleading under this Act," says the parties may use plain and concise language "to the interpretation of which the rules of construction, applicable to such language in the ordinary transactions of life shall apply." I think the meaning of these words is without special statement of the matters to which such notice relates; thus, the notice by the sheriff of a writ of attachment is couched in general terms.

On the other hand, it is impossible not to admit that there are notices which do contain such special statement, which appear to come within the latter part of sec. 11, and require postal transmission in addition to the advertisement.

The only instance in which I have observed that the Legislature have specially referred to postal notice in addition to advertisement (except sec. 11), is in sub-sec. 2 of sec. 2, and there the advertisement is to state the object of the meeting to be called; but I do not find in this, any argument which leads to the conclusion that postal notice is prescribed as to cases within the 6th and 9th sub-sec. of sec. 9

The 6th sub-sec. applies to the case of an insolvent who has either procured a consent to his discharge, (See sub-sec. 3 of sec. 9), or the execution of a deed of composition and discharge, (see sub-secs. 1, 2, of sec. 9); although such deed of composition and discharge may be made before proceedings upon assignment or for compulsory liquidation. I entertain no doubt that in the great majority of cases, it will be either pending or after such proceedings among other reasons for these suggested by Mr. Edgar in a note on this section of his useful edition of this Statute, and in all these cases the creditors have had notice as required by the Act of previous meetings and proceedings, and the deed itself must have been executed by a fixed proportion of the creditors, a majority in number of those whose debts amount to, or exceed $100, and who represent three-fourths in value of the insolvent liabilities, and the deed so executed binds the remainder of the creditors. In this instance it appears to me, not unreasonable to conclude that the Legislature considered adver-

tising for two months sufficient without postal notice. A similar conclusion is equally suggested in the case of a consent in writing of the creditors as provided for in sub-sec. 3 of the same section. Nor does this conclusion appear to me less clear when the application is under sub-sec. 10, where the application for a discharge is not until after the expiration of one year from the date of an assignment, which must have been advertised, or from the issue of a writ of attachment also advertised, and under each of which other proceedings requiring advertisement and postal notice will have taken place, or the insolvent will not be in a position to ask for a discharge from his liabilities.

On the whole, after some hesitation, arising mainly from my respect for the well known care and discrimination of the learned Judge in the court below, I am compelled to differ from his conclusion, and am of opinion the 11th sec. does not apply to the present case, but that the 6th and the 10th sub-sec. of sec. 9 point out all that was to be done on the insolvent's part to enable him to bring his application before the Judge.

The appeal must therefore be allowed, and the application further heard. Assuming that I have power over the costs of this appeal, I do not think it a fit case to give them.

CORRESPONDENCE.

Division Courts—Sec. 83 *of D. C. Act.*

To the Editors of the Local Courts Gazette.

Sir,—The columns of the Law Journal have always been open to communications relating to the practice in Division Courts as followed by different judges, perhaps with a view to establishing an uniform practice in Upper Canada. Now the judge of these counties lately put a construction upon the 83rd sec. of Division Courts Act which must be new to a majority of the judges and members of the profession.

The section in question enacts as follows, 'Every clerk or bailiff may sue and be sued for any debt due to or by him, as the case may be, separately, or jointly with any other person in the court of any next adjoining Division in the same county, in the same manner, to all intents and purpoess as if the cause of action had arisen within such next adjoining Division, or the defendant or defendants were resident therein, and no clerk or bailiff shall bring any suit in the Division Court of which he is such clerk or bailiff."

The suit before the judge was brought against a bailiff of a Division Court in the Division next to the Division in which the contract arose and of which defendant was bailiff, both being in the same county, but he resided in another county, and the judge held that he had no jurisdiction, as this section gives plaintiff liberty to sue in the Division next to that in which bailiff resides, but not to sue in the Division next to that of which he is bailiff and where the contract arose.

Will you be kind enough to say whether you are inclined to put the same construction upon this section as our learned judge.

Yours, &c.,

Sept. 1st, 1866. Enquirer.

[We should be inclined to construct the section, under the above facts, differently from the learned Judge.—Eds. L. C. G.)

Insolvent Act of 1864—*Defects in, and suggested amendments*—Thorne *v.* Torrance—*Notices to Creditors.*

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

Sirs,—The cases of *Thorne* v. *Torrance*, and *Ross* v. *Brown*, recently decided by the Court of Common Pleas, have, I think, taken the profession by surprise, and go far to unsettle the notion which most lawyers entertained of the effect and operation of the Insolvent law.

The facts were, that John and Charles Parsons being at the time in insolvent circumstances, made an assignment which was not in accordance with the Insolvent Act, and so an act of insolvency within that Act, but good at Common Law, and under the provisions of the Indigent Debtors' Act.

Shortly after the assignment, a *fi. fa.* was issued against the assignors, and placed in the sheriff's hands, and within a few days thereafter a writ of attachment was issued under the Insolvent Act of 1864.

Few lawyers would be found to dispute the position that the assignment in question being in itself an act of insolvency, and followed up in due course by insolvency proceedings, would be invalid against the assignee in insolvency, and if authority were wanting on what would seem so clear a question, the case of *Wilson* v. *Cramp*, recently decided by V. C. Mowat disposes of it, but in the cases referred to, the Court of Common Pleas have decided that the effect of the insolvency proceedings is not only to render the assignment invalid as against the assignee in insolvency, but to let in the claim of the execution creditors. Several English cases are cited as apparently supporting this view; let us see whether on a careful review of them, they do support it. It is submitted with great deference that they are not authorities for the judgments just pronounced, and in view of the serious responsibilities entailed upon sheriffs and others in acting upon them, it is to be hoped that no time will be lost in bringing the question before the Court of Appeal.

It is difficult to understand the reasoning of the Chief Justice of the Common Pleas in the following extract from his judgment:—

"If we were not to hold assignments of this kind void, the Insolvency Act would be of little practical advantage; it makes the giving of such an assignment an act of insolvency on which the debtor's estate can be put into compulsory liquidation, but if he, by assigning all his effects to a trustee to satisfy his debts, were to have his estate administered in a manner not provided for by the act, he would not have any estate to be liquidated under the act. This could, hardly be the intention of the Legislature."

Does the Chief Justice consider that it would be of much practical advantage towards making an equal distribution of an insolvent's estate if execution creditors could be thus priviileged, or that *such was the intention of the Legislature?* What he urges is, a strong reason for holding the assignment void as against the assignee in insolvency; and that is all that was decided in *Wilson* v *Cramp*, and if the effect of its being so avoided is to let in the execution, it is an unfortunate slip which will have to be remedied by the Legislature.

The Chief Justice founds his judgment if I understand his reasoning correctly, chiefly on the ground that our Insolvent Laws, differing in this respect from the Bankruptcy Laws of England, do not vest the property in the assignee by relation back to the act of Bankruptcy, but merely provide that the estate and effects of the insolvent *as existing at the date* of the issue of the writ of attachment shall vest in the assignee in the same manner, and to the same extent as if a voluntary assignment had *at that date* been executed in his favor.

For the purpose of the argument, I pass over the question of whether the first assignment was, or was not valid under the Indigent Debtors' Act, but assuming it to be good under that act, but invalidated under the Insolvent Act, is the effect of such avoiding to let in the intermediate execution?

The cases of *Graham* v. *Wetherly*, and *Graham* v. *Lewis*, 7 Q. B. 491, are referred to as the cases, the principles of the decision of which must dispose of this case.

The facts of those cases shortly were, that one Bennett placed a *fi. fa.* in the sheriff's hands against Seddons on a judgment obtained upon a warrant of attorney under which a seizure was made.

Whilst the sheriff was so in possession, another plaintiff, Wetherly, obtained a judgment in an adverse action, and placed a writ in the sheriff's hands; whilst the goods were unsold, a *fiat* in bankruptcy issued against Seddons, the goods were afterwards sold for an amount more than enough to cover Wetherly's writ but not sufficient to pay off Bennett's.

As between Bennett and Wetherly there was no question that Bennett was entitled to priority; but under the Bankrupt Act of Geo. IV., Bennett's judgment was fraudulent and void as against the assignee in bankruptcy; the question then arose, what would be the effect as to Wetherly's writ, and they held, that the moment the *fiat* in Bankruptcy issued, the sheriff was bound to treat the first writ as void. The moment he so treated it, the writ of the second execution creditor which had attached provisionally, became in effect the first writ.

By placing the assignments, argues the Chief Justice, in the place of Bennett's writ, we have a very clear analogy in principle to apply to the case before us, and a strong authority in favor of the defendants.

The fallacy of this reasoning appears to me to be this: in the English case the goods were bound by both writs—Bennett's first, unless something occurred to displace that priority—and subject thereto by Wetherly's. If, therefore, Bennett's writ was displaced or rendered void, the goods remained still the goods of the bankrupt, subject however to any existing lien, and subject to such lien vested in the assignee. In the case, however, under discussion, the execution never attached; the goods were never bound by it, and the very moment the assignment became void, that same moment did they vest in the assignee. The title of the first assignee was good against all the world except the assignee in insolvency, and inasmuch as the execution never could legally attach, there ceases to my mind, to be any analogy between the two cases.

Whilst on the subject of insolvency, it may not be amiss to make some reference to the Act of 1864, and its amendment, with a view to invite some discussion through your columns on the subject; and, first, as to the wording of the acts which could scarcely have been more ambiguously framed, had uncertainty been the special aim of its framers. No two lawyers can be found to agree upon many of its provisions, and a vast labour has been thrown upon our already overworked judges in the hearing of appeals, which, after all, can scarcely be as satisfactory as if there had been a Chief Judge in insolvency to whom appeals might have been made with powers to him in cases of intricacy and importance to state a case for the opinion of one or other of the full courts. If a first-class man were selected for this position he might also be a judge of the Court of Error and Appeal—a court which, as at present constituted, can scarcely be said to be satisfactory either to the profession or the country.

A case recently came by way of appeal before the Chief Justice of Upper Canada which illustrates the difficulty of putting a construction upon the acts in question, and the decision in which does not seem to be very clearly upheld by some of the clauses to which the learned judge refers.

The question was whether an insolvent applying for his discharge was bound to mail notices to creditors under section 11—the section referring to, and regulating proceedure generally—or whether the advertisement for two months under sub-section 6 of section 9

was sufficient. The learned judge in insolvency held that it was necessary to send notices by mail; that the true construction of section 11 was, that in cases where notices were required to be given by advertisement, two weeks notice in the *Official Gazette*, and in one newspaper, would in all cases be sufficient unless the act *specially designated the nature of the notice*, in which cases the advertisement instead of being for two weeks, and in a paper nearest to the place where the proceedings are being carried on would be for the period and in the mode so designated; but that in *all* cases the person giving the notice, whether for two weeks or for the period, and in the manner so designated, was to send notices by mail.

One of the time-honoured fictions of our law is, that every one is presumed to know it; and another, that a notice in the *Official Gazette* is notice to all the world. Our Legislature in framing the Insolvent Act appear to have considered that, however much to be venerated for its antiquity, such a mode of giving notice was of little practical utility; and that it would be well, therefore, that creditors should have *actual notice;* and it is submitted with great deference to the opinion of the learned Chief Justice who reversed the decision of the judge below, that it was intended, under the Insolvent Act, that creditors should in all cases receive actual notice in addition to the two weeks publication; and that in certain cases the publication should be for a longer period.

The Chief Justice appears to have fallen into an error in supposing that sub-section 2 of section 2 *requires* notice to be sent. That section assumes that the notices referred to in section 11 are required, but further provides that they shall be accompanied with a list of creditors.

But if the construction placed upon the 11th section by the Chief Justice be the correct, one, it follows: that although that section professes to *regulate procedure generally*, the Legislature have strangely omitted to make any regulation whatever in the cases to which the words in question apply. The Chief Justice thinks the meaning of those words to be "without a special statement of the matter to which such notice relates." Then section 11—not applying to such cases—for what period, and in what manner are such notices to be advertised? for one week, and in one paper? at whose discretion is it to be varied? by the assignee or insolvent, or by application to the judge? Manifestly it was intended to secure uniformity in procedure by the clause in question. This would be attained by placing this construction upon it which was adopted by the judge below and which makes the whole act consistent. Such construction moreover secures to the creditors, what, in my humble judgment, the Legislature intended they should have, viz., actual notice of the proceedings which were being taken to wipe out their claims.

Yours, &c., A BARRISTER.

[The matters above referred to are well worthy of discussion. The name and standing of our correspondent lend additional weight to the views he puts forward. *Thorne* v. *Torrance* no doubt has taken many by surprise, and, it is hoped, will be reversed in appeal. The case referred to by our correspondent in the latter part of his letter is doubtless that of *In re Waddell*, which our readers will find reported in full in a former page of the present number.—EDS. L. J.]

APPOINTMENTS TO OFFICE.

COUNTY COURT JUDGES.

JOHN DEACON, of Osgoode Hall, Esquire, Barrister-at-Law, to be Judge of the County Court in and for the County of Renfrew. (Gazetted Aug. 25, 1866.)

EDWARD HORTON, of Osgoode Hall, Esquire, Barrister-at-Law, to be Deputy Judge of the County Court in and for the County of Elgin. (Gazetted Aug. 18, 1866.)

POLICE MAGISTRATE.

LAWRENCE LAURASON, Esquire, to be Police Magistrate for the City of London. (Gazetted Aug. 18, 1866.)

SHERIFF.

JAMES MORRIS, Esquire, to be Sheriff in and for the County of Renfrew. (Gazetted Aug. 25, 1866.)

COUNTY CROWN ATTORNEY.

WILLIAM DUCK, of Osgoode Hall, Esquire, Barrister-at-Law, to be Clerk of the Peace and County Crown Attorney in and for the County of Renfrew. (Gazetted Aug. 25, 1866.)

CLERK OF COUNTY COURT.

ARCHIBALD THOMSON, Esquire, to be Clerk of the County Court in and for the County of Renfrew. (Gazetted Aug. 25, 1866.)

REGISTRAR.

ANDREW IRVINE, Esquire, to be Registrar of the County of Renfrew, in the room of James Morris, Esquire, appointed Sheriff of said County. (Gazetted Aug. 25, 1866.)

NOTARIES PUBLIC.

EDWARD ROBINSON, of the town of Chatham, Esquire, Attorney-at-Law, to be a Notary Public for Upper Canada.

FRANK EVANS, of Orillia, Esquire, Barrister-at-Law, to be a Notary Public for Upper Canada.

ARCHIBALD LEITCH MACLELLAN, of Belleville, Esquire, Attorney-at-Law, to be a Notary Public for Upper Canada.

WILLIAM BEALL, of Columbus, Esquire, to be a Notary Public for Upper Canada. (Gazetted Aug. 4, 1866).

HENRY O'BRIEN, of the city of Toronto, Esquire, Barrister-at-Law, to be a Notary Public for Upper Canada.

THOMAS O'BRIEN, Esquire, Barrister-at-Law, to be a Notary Public for Upper Canada. (Gazetted Aug. 11, 1866.)

FRANCIS TYRRELL, of Morrisburgh, Esquire, Attorney-at-Law, to be a Notary Public for Upper Canada. (Gazetted Aug. 18, 1866.)

CORONERS.

ALEXANDER BELL, of the village of Lakefield, Esq., M.D., to be an Associate Coroner for the County of Peterboro'.

JAMES COWAN, of the township of Minto, Esquire, M.D., to be an Associate Coroner for the County of Wellington.

WILLIAM JOSEPH R. HOLMES, of Ainleyville, Esquire, M.D., to be an Associate Coroner for the United Counties of Huron and Bruce. (Gazetted Aug. 4, 1866.)

JAMES STEPHENSON, of Iroquois, Esquire, M.D., to be an Associate Coroner for the United Counties of Stormont, Dundas and Glengarry.

DANIEL BROWN McCOOL, Esquire, M.D., to be an Associate Coroner for the United Counties of Huron and Bruce.

CHARLES JAMES STEWART ASKIN, of Chatham, Esquire, M.D., to be an Associate Coroner for the County of Kent. (Gazetted Aug. 11, 1866.)

THOMAS FREER, ALBERT H. DOWSELL, CHARLES YOUNG, JOHN D. CLENDINNEN, GEORGE SURTEES, JOHN CHANNONHOUSE, JOHN JUDGE, EDWARD McKENZIE, JOHN G. CRANSTON, and DAVID EVANS, to be Coroners in and for the County of Renfrew. (Gazetted Aug. 25, 1866.)