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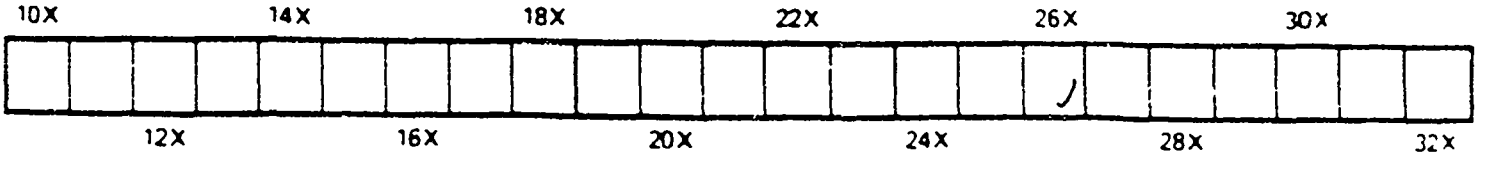

DIVISION COURTS.

OFFICERS AND SUITORS.

Bailiffs.—The 14th section of the D. C. E. Act contains one of the most important provisions, for the protection of Bailiffs, acting in obedience to a Warrant of the Court. The demand of copy of Warrant is made a condition to the bringing any action at all, for an act done in obedience to it. But it should be remembered that if the Bailiff delays complying with the demand, he may, after six days, be sued like any other person. There is not a limit, certainly, to the time within which a delivery of the copy of the Warrant is good, for it may be given at any time before action brought; but if the action be commenced after the time limited by the clause, and before the copy of Warrant has been given, the Bailiff is concluded and loses the benefit of this enactment. Whether or not the party has previously obtained a copy, the Bailiff should furnish one on demand, for it has been decided to be necessary to comply with the demand, even though the party has already obtained a copy of the Warrant.

SUITORS.

The plt. being assured that his claim may be prosecuted against the dft. in a D. C., and having decided on the particular Court in which the same is to be tried, prepares for suit the particulars of his is claim.

The form and requisites of the claim or demand.—We will endeavor to enlighten the suitor on these points.

The object of the plt's particulars is to inform the defendant who it is that sues, and of what will be attempted to be proved against him at the hearing, that he may prepare himself accordingly, should he have any objection to the claim.

It is a fundamental principle of Justice that a party should be informed of a claim or complaint made against him, and have an opportunity to answer it before he is condemned to make payment or satisfaction to the opposite party, and the regulations of practice under the Statute have a view to secure this.

The particulars of claim must be written in a legible manner,—not that anything extra is required in the writing or otherwise, but the claim must be written out fairly, so as to be easily read by a person of common education, for it has to be copied by the Clerk and read and compared by the Bailiff; (and if two copies are given in, by the dft. also)—not to speak of the Judge, before whom it comes at the hearing, whose time should not be wasted in trying to make out illegible accounts or claims. There does not seem to be any objection to the use of abbreviations commonly employed in mercantile business; but only those in common and ordinary use should be employed. *The particulars of claim should show also the names in full, and present or last known places of abode of the parties.*

To begin with the plt.—his Christian and surname should be stated; and if several persons are plts. the names of each should be stated in full. It is not enough to describe the plts as "A. B. and Company." The individual members of the firm should be stated, and it may be added "trading under the style of "A. B. and Company." When the suit is by a corporate body, as by school trustees, the individuals composing the body are not named, but the corporation is described by the corporate name given by Statute.

The defendant is in like manner to be described by his surname and Christian name; or, in case of corporation by the corporate name; but in cases where the plt. is unacquainted with the dft's Christian name, the dft. may be described by his surname and the initials of his Christian name, or by such name as he is generally known by.

The claim must also shew the present, or last known places of abode of the parties.

It is important to both plt. and dft. that information on this head should be inserted in the particulars. It tells the Bailiff where he is to seek for the dft., and tells the dft. where the plt. resides, so that when a notice to the plt. is necessary, the dft. knows how and where it is to be served—whether at the plt's residence or at the Clerk's office. The Court is also informed by the papers of a fact entering into the question of jurisdiction—the place of residence of the dft.

(TO BE CONTINUED.)

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(Continued *from page* 143.)

OF EXEMPTIONS AND PROVISOES.

The information should show that the defendant is not within any of the provisoes in the clause of the Statute under which he is sought to be charged. (t.) The rule and distinction are thus stated. All circumstances of exemption and modification, whether applying to the *offence* or to the *person*, that are originally introduced or incorporated by reference with the enacting clause, must be distinctly enumerated and negatived; but such matters of excuse as are given by other distinct clauses or provisoes need not be specifically set

(t.) 2 Hawk. P. C., c. 25, s. 113; R. v. Bell Peat. C. L. 430; Gill v. Simcox 7 T.R. 27.

out or negatived ;[2] and it is immaterial whether the exemption be in another section or in a distinct Act of Parliament, if referred to and engrafted upon the enacting clause.[3] And where the essence of any offence depends on the absence of legal excuse, the act complained of must be charged as having been done without such legal excuse, notwithstanding no such condition or qualification is referred to in the statute.[4]

Written instruments, when referred to in an information, should be stated with great accuracy, and when the gist of the charge should be set out verbatim.[5]

Sums and quantities should be stated, for in many cases the summary jurisdiction given to Justices depends upon the amount of damage or injury done; and where the question turns upon particular sums or quantities—that is, where value or quantity are necessary parts of the case—they must be particularized with accuracy in the information. Moreover, as Justices may award compensation according to the amount of damage, it is important it should be specified. [6]

Recital of a Statute.—It has been usual in an information under a particular Act to set out its title, &c., and then to aver that that the offence complained of is contrary to its provisions; but this mode of describing a statute does not seem necessary: but it is proper to conclude an information against the form of a Statute, &c. When a Statute is referred to, it must be cited correctly; to describe a Statute as passed in more years than one of a Sovereign reign (as in the 4 & 5, &c.) is incorrect; and this, notwithstanding such Statute may be so recited in subsequent Acts of Parliament,[7] the proper way to describe such a Statute is to say "passed in the session of Parliament holden in the fourth and fifth years of the reign," &c. It is bad, also, to recite a Statute as of the Province of *Canada*, when it is a Statute of the Province of *Upper Canada*.[8] Many of the late Acts contain a very convenient provision giving a short title by which they may be cited: for instance, in "The Upper Canada Division Courts Extension Act," (16 Vic. c. 177, s. 32.)

Describing the property of partner, &c.—To obviate the difficulty which was frequently experienced of stating the ownership of property in informations and complaints, and the proceedings therein, the late Statute[9] has provided that where it is necessary to state the ownership of property belonging to or in the possession of *partners, joint tenants parceners* or *tenants in common*, it shall be sufficient to name one of such persons, and to state the property to belong to the person so named and another, or others, as the case may be; and so, when it is necessary to mention such parties in any information or complaint, for any purpose whatsoever. And there is a like provision as to the ownership of any *work*, or *building*, *made*, *maintained*, or *repaired*, at the expense of any Territorial Division, or of any *materials* for the *making*, *altering* or *repairing* the same, which may be described as the property of the inhabitants of such Territorial Division.

The statement of the time and place of the offence is so immaterial as to strict accuracy that it may be sufficient to say that the object of such statement as to *time* is to show that the information was laid in due time, and to protect the defendant against another charge for the same matter—as to *place*, that it may appear the Magistrate had jurisdiction.[10]

But it has always been sufficient when the locality has once been named, as "at A in the County of B," to say afterwards "at A aforesaid."

It seems better, however, in every case to state the *time and place* of the offence as accurately as possible; and, indeed, it would seem that if in fact a particular locality, however limited, be an ingredient in the offence, it must be accurately described *in the information*, notwithstanding the latitude permitted generally by the late Act.[11]

Aiders and Abettors,—it seems in place here to notice, are now made punishable upon summary conviction. At Common Law accessories in misdemeanors were not punishable, but the 16 Vic. c. 178 thus enacts:

> That every person who shall aid, abet, counsel, or procure the commission of any offence which is or hereafter shall be punishable on summary conviction, shall be liable to be proceeded against and convicted for the same, *either together* with the principal offender, or before or after his conviction, and shall be liable on conviction to the same forfeiture and punishment as such principal offender is or shall be by law liable, and may be proceeded against and convicted either in the territorial division or place where such principal offender may be convicted, or in that in which such offence of aiding, abetting, counselling, or procuring, may had been committed.

For the "Law Journal."

In a late number of the *Law Times* appeared some observations on the present state of the profession in England, which are not without interest in their bearing as to the future for Upper Canada. It may be feared that breakers are ahead, that we are approaching the state of things that in England has produced such disastrous results. The article alluded to opens with the following candid admission:—

[2] Paley on Convictions, 118, Steel v. Smith, 1 B & Ald 94.
[3] R. v. Pratten, 6 T. R. 559, R. v. Matthews, 10 Mod. 27; R. v. Jarvis, 1 Burr 148; 1 East 643; R. v. Thud. 1 Ld. Raym 1375, and see also the recent case Van Boven, 16 L. J. 4 M. C.
[4] See In re. Turner, 16 L. J. 140, M. C.
[5] R. v. Powell, 2 East P. C. 976; Wright v Clement, 3 B. & Ald. 503.
[6] Charter v. Greame, 18 L. J. 73 M. C., R. v. Catherall, Str. 900; R. v. Marshall, 2 Keb. 691; R. v. Gibbs, 1 Str. 497.
[7] Huron D. C. v. London D. C. 4 U. C. R. 302; R. v. Biers, 1 A. & E. 327, Beah v. Beverly, 11 M. & W. 816.
[8] Huron D. C. v. London D. C. 4 U. C. R. 302.
[9] See 16 Vic. c. 178, s. 4

[10] See ante page 402 & 403.
[11] See Daybell's case, 4 B. & Ald. 243-247; R. v. Fletcher, 13 L. J. M. C. 16.

"There are too many Lawyers: that's the fact. A couple of thousand Attorneys, and at least as many Barristers, could well be spared. Why should the truth be concealed? It is not an alarming one, but the contrary. It is full of hope, because it indicates the cause of many evils we now complain of, and at the same time suggests the cure—a cure which happily is already in active progress. Our numbers *are* decreasing. Good. Every unit subtracted adds to the prosperity of those who remain. Law is almost a fixed quantity. Its emoluments are not likely materially to fluctuate, save under such a fortunate accident as the railway mania ten years ago. It makes all the difference to the share of each whether the fund is to be divided among eight thousand or ten thousand. We are not informed at what ratio the diminution is proceeding, but there can be no question that it has begun and that it will go on with increasing rapidity."

An overstocked profession is referred to as a fertile cause of the greater proportion of malpractices that discredit it inasmuch as every man thinks he must live, and in the want of legitimate business for all, poor men who cannot contrive to live by creditable means contrive to live somehow—thus helping to foster the public prejudice against lawyers as a class. Bear in mind there is already an examination *on admission* in England.

Partly for its tendency to reduce the numbers to a due proportion to the work to be done and to prevent any but *fit men* being admited to the profession is urged:—

"an educational test applied to the admission of practitioners in both branches of the Profession—meaning by that, not merely legal knowledge, but general knowledge; not alone the speciality that makes the Lawyer, but the acquirements essential to the gentleman. We want to see the Solicitors, one and all of them, vindicating the honourable title by which they are known to the law—that of *gentlemen*. We would rigorously exclude from the Profession every man who is not "a gentleman," whatever his other qualifications. By this we do not mean merely a gentleman by birth, a man who has ancestors, but *a gentleman by cultivation, in mind, manners and feelings*. A wide range of examination would go far to secure this, and thus still further promote the restriction of numbers which has become so necessary, not only to the well-being of all, but to the reputation and *status* of the Profession. Our enemies, we are aware, are very desirous of introducing among us the principle of competition. Open, they say, the gates of the Prosession as widely as possible, encourage the Lawyers to a conflict of cheapness; let A. offer to do the work for 20 per cent. less than B., then we shall have B. offering to work for 10 per cent. under A., and so there will be cheap law, by which the public will profit though the lawyers devour one another. But this favorable free-trade doctrine is not applicable to the market of intellect. One author does not seek fame by underselling another. We do not go to the cheap physician, or encourage the low-priced architect. It is the same with the law. Its value is not to be ascertained by putting it up to a Dutch auction, and bidding backwards until a purchaser is found. The prices are fixed, and the choice of the employer lies between degrees of ability. The only rivalry permissible is not of prices, but of skill."

Without referring, at this time, to the multifarious and incompatible duties of the Upper Canada "Lawyer" or pausing to notice the advantages that would accrue to the public and the profession if that meretricious union—the offices of counsel and attorney combined in the same person—was dissolved, and the distinction between the two branches of the profession sustained, the writer would invite attention to the law, as it now stands, respecting the admission of Attorneys to practice.

Although the same person *may* be a Barrister as well as an Attorney, it does not follow that every Attorney will become a Barrister; the offices are not *blended*—even the source from which each is accredited is not the same. Formerly there was scarcely an individual case in which the Attorney was not also a Barrister, but there is reason to believe that of late years several gentlemen have been admitted who do not aspire to a call to the bar; and many young men are now under articles solely with a view to admission as Attorneys. Legislation has also facilitated the admission of Attorneys from other countries to practice in our Courts, and we have lately been threatened with a one-sided measure of free trade in that way. It is not impossible that those who are starving for want of business in England, or who leave their country for their country's good, may be shortly upon us like a swarm of mosquitoes. These considerations create grounds for apprehending serious injury to the public and odium lighting on the profession, unless a barrier be erected to guard against the admission of any to the privileges of an attorney-at-law *except men of honour and education, men* trained to the law as a science, and conversant with our system of jurisprudence.

Existing laws afford no guarantee of fitness. A young man whose only qualification for entering on the study of the law, is ability to read and write, may be articled to an Attorney;—spend five years copying and serving papers, or idly kicking his heels against the office desk, or in doing the dirty work of a disreputable practitioner. At the end of this time, armed with a certificate of service, he claims to be sworn in as an Attorney of Her Majesty's Courts, and is sworn in accordingly—he may know nothing whatever of professional duties, may in fact be grossly illiterate and deficient in every acquirement that would enable him to act with safety and advantage for a client, and yet the law entitles him, simply on proof of service under articles, to the certificate enabling the holder to undertake the most important duties of an Attorney—duties which if not performed with integrity and ability may bring ruin on the unfortunate client and his family. A man of this stamp will always "be guilty of the cruel, the scandalous misconduct of essaying to practice the law without the requisite amount of professional knowledge." Mark! he is put in possession of credentials that, *as a fit and proper person, he has been admitted to* a class possessing the extensive privilege of conducting the legal affairs of others for reward—is thus enabled to impose upon the unwary; and the discovery of

his incompetence may be made only at the moment when the client's (or victim's) ruin has been consumated by some improper act or omission of this accredited agent of the law.

The Barrister must have passed two examinations before the Law Society previous to his call to the Bar—the first upon his general acquirements, to see if he has that sound and liberal education which fits him to enter with advantage on the study of the law: the second, after five years' standing on the books of the Law Society, to test the extent and nature of his professional knowledge; to determine if it be such as to qualify the candidate to practice with honor to himself and advantage to his fellow-subjects: unless found to be fit and capable to act and stainless in character, the degree of Barrister is not conferred upon him. Here every precaution has been taken to secure (in the language of the Statute) a learned and honorable body to assist their fellow-subjects, as occasion may require, and to support and maintain the Constitution. And we dare affirm, that a more truly honorable and capable bar than that of Upper Canada does not exist in any other colony in her Majesty's dominions.

It is desirable that an educational test should be applied to Attorneys as well as Barristers; and there is more need for it. The former are infinitely more in the way of inflicting injury by ignorance or turpitude than the latter; and from the very nature of their duties with fewer checks.

Be it remembered (says the learned and estimable Samuel Warren) that the Attorney and Solicitor stands in the front ranks—is the very front to whom a layman comes, dismayed and confounded by the derangement of his affairs, of every sort, in every profession, trade and calling, wherever his rights are questioned, his interests threatened; when he means to challenge those of others; how tangled and intricate soever the difficulties in which he has involved himself, or others have involved him, &c. Bear you in mind (he says, addressing Attorneys,) that the bulk of society take the complexion and character of the law *from your exhibition of it.* According as you act and demean yourself on such occasions, you may make that law appear a blessing or a curse; render it detestable as the instrument of meanness, trickery and oppression, or lovely and dignified as the guardian of peace and order; the very visible impersonation of Justice, the protector of the weak and oppressed, vindicating the rights of the most abject, and redressing wrongs though inflicted by the haughtiest and highest of mankind.

Further, the business of the Attorney lies chiefly in his private office with his clients; the Barrister exercises his calling chiefly before the Judge and the public at large, surrounded by all those restraints which an upright and firm judiciary and a well-directed public opinion impose.

At Home, a law requiring the examination of Attorneys has been in force for centuries, and of late years the system has been greatly improved, the examination, before a tribunal composed of men of high standing and great experience, embracing the whole field of the law—its principles and doctrines. In most of the British Colonies there is a preliminary examination; in some colonies, Jamaica for example, before the Judges in open court: and to come nearer home—in Lower Canada every candidate for admission to the profession must undergo the ordeal of an examination.

It would appear that before the passing of the 37 Geo. III. c. 13, the ordinance of the Province of Quebec, 25 Geo. III. c. 4, regulated the mode in which Attorneys, &c., were to be admitted in U. C. By the first clause of that ordinance no person was to be commissioned or permitted to practice as an Attorney, &c., who had not served a regular continued clerkship with an Attorney, &c., for five years at least. And further, such person was not admitted to practice until after he had "*been examined by the first and most able Barristers, Advocates, and Attorneys, &c., in the presence of the Chief Justice, or two Judges,*" *by whom such person, so examined, was to be* "*approved and certified* to be *of fit capacity and character to practice* the law." The U. C. Act 37 Geo. III. c. 13, which repealed this ordinance as respects the ordinary Attorney, &c., and made other provision therefor, was amended by an Act passed a few years afterwards, under which the admission of Attorneys is now regulated. It provides that "no person shall be admtted by the Court of Q. B. to practice as an Attorney in this Province *unless upon an actual service of five years with some Attorney of this Province,*"—nothing more!

Mark the contrast between this and the provisions of the Ordinance. The exigencies of an infant state may have induced this alteration, but no plea to favor it can be advanced at the present day. Do let us bear in mind the times in which we live; when (to quote once more from Warren) knowledge is so universally diffused, and the results of science are so incessantly intermingled in the affairs of life, and turned to purposes of practical account and profit, that the members of our profession are compelled to elevate the standard of acquirement and qualification far higher than sufficed in the days of our good grandfathers and great-grandfathers; and consider what facilities for a really first-rate education now exist almost every where, and which persons far humbler in society—observe—than the classes from which our profession is usually recruited, most eagerly and successfully avail themselves.

Upper Canada, in 1855, is very different from what it was in 1797. Look at the present population—the trade and commerce—her manufactures—her agricultural wealth—her canals, railroads, banking institutions, corporate bodies, &c., and you see the evidences of almost incredible advancement.

The simple solitary good School which existed in 1797, and to which youths from every part of U. C. resorted, is represented by at least 60 excellent seminaries of the sort, and our Common School System has dotted the country with Schools accessible to all; and the Toronto University, Trinity College and other Collegiate Institutions, offer every facility for obtaining a thoroughly sound liberal education. It is no longer necessary to make Lawyers by an act of Parliament, or to invite men to enter the professson, without requiring of them the Shiboleth of fitness. The Land Surveyor and the Common School Master are examined, and their fitness proved before being allowed to pursue their vocations under the sanction of law; the important office of Attorney, with its powers and privileges, is thrown open to any one who has spent a few years in doing, it may be, the mechanical work of an office. There is no Royal road to Law, any more than there is to Geometry; but an Upper Canada Statute can metamorphose a lout into a lawyer in no time—presto—and the stamp of fitness is affixed. "The welfare and tranquility of families, and the peace of individuals require, as an object of the greatest importance, that such persons only should be appointed to act as Attorneys, Solicitors, &c., who are properly qualified to perform their respective callings, and that under necessary and proper regulations." This is the language of the Quebec ordinance, which the Upper Canada Legisture repealed, and not inconsistently omitted this preamble from their Statute for the admission of Attorneys. Enough has been said, it is believed, to indicate, if not an existing evil, at least a great defect in the law, a fruitful source of future evil, if not remedied in time.

It may be that the Courts cannot apply a suitable remedy, or feel bound to take their tone from the Law-givers. confining Rules, in confirmation of the Statutes, to regulations for rigid proof of service, without devising any test for ascertaining the qualifications of the "Articled Clerk."

However that is, the aid of the Canadian Legislature may be asked to apply a suitable and permanent remedy, and now is the time to do it, while the question is not surrounded by the complications which exist in older communities: the means by which this is to be done, whether by examination before the proper examiners, appointed by them, or before the Law Society, is unimportant; but the end in view, that "only persons of honesty and good abilities for such employment" should be admitted to the office and privileges of Attorneys, surely is sufficient to commend the subject of this article to the consideration of every candid and thinking mind.

A. B. V.

U. C. REPORTS.

GENERAL LAW.

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

Wilson v. The Municipal Council of the County of Elgin.

By-Law quashed—Interest exceeding legal rate of interest, contrary to public policy, and injurious to credit of the debentures—Municipal corporations not within sec. 4 of 16 Vic. ch. 80.

Q. B. Easter Term, 18 Vic.

In Hilary Term, C. Robinson obtained a Rule nisi, returnable the first day of this term, calling on the Municipal Council of the County of Elgin to shew cause why the by-law passed on the 10th May, 1854, to raise by loan £7000 and interest should not be quashed, wholly or in part, because,

1st. The by-law provides for the payment of interest on the loan, at a rate exceeding the legal rate of interest.

2nd. The amount required to be raised annually, at a special rate, for the payment of such loan and the interest thereof, and the annual rate in the pound required as a special rate for the payment of interest on the loan, and for creation of a sinking fund to pay the principal thereof, are not either of them recited in such by-law, or that they are untruly recited therein, and the sums required to be levied, and the annual rate in the pound imposed, are excessive, and more than sufficient for the purposes of the by-law.

In Easter Term A. McDonald shewed cause. He contended that the by-law did not *direct* that the loan should be raised at a rate of eight per cent. interest. But if it did, still it would only be void for the excess of interest over six per cent. That the rates imposed appearing in the schedule do not, if they authorise the raising somewhat more than is strictly necessary, i.e. more than each annual instalment and six per cent. interest, therefore make the by-law void. *Watts v. Salter*, 20 L. J. C. P. 43. That the Stat. 16 Vic. ch. 80, sec. 3, saves the by-law, except as to the two per cent. over legal interest. He cited 12 Q. B. U. C. 198.

C. Robinson contra, argued that the by-law showed clearly that eight per cent. was intended and authorised to be paid as interest. That the 16 Vic. ch. 80 did not apply, for this was no contract: that this by-law was contrary to public policy and injurious to public credit, and opened the door to fraud. Cited Grierson v. P. M. C. of Ontario. 9 U. C. 624. He objected, also, that the *rate* was different in each year, referring to Sells and the Village of St. Thomas. 3 U. C. C. P. 286.

Before the Statute 16 Vic. ch. 80, there can be no doubt but that the Municipal Councils could not by by-law or otherwise authorise or contract any loan, debt, or other liability, at a greater interest than six per cent; and this by-law is clearly bad, unless that statute saves it, for it says—we authorise a loan, and impose a tax to pay it, with interest, as to which we are ready to pay eight per cent, though we will not pay more, and we make provision for paying that loan, with interest not to exceed eight per cent., which means with eight per cent.

In our opinion the Stat. 16 Vic. c. 80 was not intended to have the operation contended for. The case does not come within its strict letter, for a by-law is not "a contract for the loan or forbearance of money," though it may be the authority for making a contract. The 4th sec. of that Act is not opposed to this view, though it excepts from its enactments, banks, insurance companies, and corporations or associations, heretofore authorised by law "to lend or *borrow* money at a rate of interest higher than 6 per cent. per annum." These Municipal Corporations clearly do not fall within that exception.

We think, also, that there is great force in Mr. Robinson's suggestion that it is contrary to public policy, and likely to be injurious to the credit of the debentures which these Municipal Corporations are authorised to issue, if they could in the face of them be made payable with a higher rate of interest than could under the 3rd section be legally enforced against them.

In the Consolidated Municipal Loan Fund Act, 16 Vic. ch. 22. passed during the same session, sec. 3, subsec. 5, it is expressly enacted that the debentures which the Receiver General may issue in the credit of this fund shall in no case bear interest at a greater rate than six per cent.

We can hardly think the Legislature intended to restrict

the rate of interest for money to be raised on the credit of this fund for such municipal purposes as are set forth in the 2nd sec. of that Statute, and yet to enable the Municipal Corporations to raise money either for the same or other purposes, on their own debentures, at a higher rate of interest.

We think the by-law should be quashed, as the objection vitiates it throughout.

IN RE. MORRISON AND THE MUNICIPALITY OF THE TOWNSHIP ARTHUR.

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

School trustees—A school section cannot be altered without the assent to such alteration of a majority of the inhabitant house-holders and freeholders, obtained at a meeting convened for such purpose—By-law altering school section without such assent, quashed. 12 & 14 Vic. c. 48, sec. 19.

Q. B. Trinity Term, 19 Vic.

S. M. Jarvis, in Hilary Term, obtained a Rule calling on the Municipality of the Township of Arthur to shew cause why By-Law No. 2, passed on the 5th February, 1853, should not be quashed, on the ground that it alters the school sections of the township of Arthur, as previously established, and yet was not submitted to a meeting of the householders or freeholders of the school section of the township, and that the inhabitant householders and freeholders have not assented to such alteration at any meeting duly called for the purpose of obtaining their consent.

The rule was granted in reading the by-law and two affidavits; one of which stated that previous to the passing this by-law the township of Arthur was divided into four school sections, by a by-law passed 14th Oct., 1850. That on the second Wednesday in January, 1853, the regular annual meeting for the election of a third school-trustee for school section No. 3, in lieu of the retiring trustee, was held, and the applicant Morrison was elected such third trustee. That the alteration made by the by-law moved against materially affects the previous section No. 3, and alters every school section as constituted by the by-law of Oct. 1850. That previous to the passing of the by-law moved against no public meeting of the freeholders or householders in the section No. 3 was ever called by the deponent Morrison or his co-trustees, or either of them, to obtain their opinion as to the propriety of altering the division of the school sections; and no requisition was made, to his knowledge, to call any such meeting; nor has he ever heard that any such meeting was held or opinion expressed. That deponent and his co-trustees have never consented to any such alteration, but have endeavored to maintain their corporate authority, and on 4th January last (1853) called a public meeting, to be held on Wednesday the 11th January, (1853), to elect a school trustee. That the meeting was held, but refused to elect a third trustee. A second affidavit confirmed the principal facts above stated.

This rule was originally moved in Easter Term, 17 Vic., and was granted on the 2nd Wednesday after Term. By some inadvertence, after the rule was served, and in which both parties shewed, that rule was allowed to lapse; and on the facts being stated to the Court, the present rule was granted. During this term Wilson, Q. C., shewed cause: he argued the Court should not interfere, no objection appearing on the face of the by-law, and that the lapse of time since it was passed ought also to prevent interference; that delay, as well as any acquiescence in the by-law, should be considered. He cited 10 Q. B. U. C., 626, 12 Q. B. U. C. 525, 5 Q. B. 94, 2 B. & A., 339, 6 B. & C. 240, 4 T. R. 223.

He filed an affidavit of Michael Cox, the Township Clerk, that originally there were 5 school sections in the township; that the inhabitants petitioned the Council to reduce the number to three (the original petition annexed to his affidavit), and in accordance therewith by-law No. 1 passed the Council, whereby three school sections were established: that the same Council, in the same year, passed by-law No. 12, whereby the number of school sections was increased to four, which by-law was passed without any previous meeting of the householders, &c. That the Council of 1853 passed the by-law complained against: that he verbally and in writing requested the trustees to call a meeting as required by Statute, but they "absolutely refused and neglected to call such meeting," with a good deal more which is not relevant to this application.

JARVIS, in reply: As to delay stated, the by-law was not to take effect until Dec. 1853, and the rule was first moved in the following Easter Term: that it stands admitted that there was no public meeting, which the Statute requires.

The question which really presents itself for our determination in the first instance is, whether on the circumstances before us we have authority to quash this by-law. The 13th and 14th Vic. ch. 48, sec. 19, among other duties imposed on the Municipality of each township, in regard to Common Schools, states—fifthly. To alter any school section already established, and to unite two or more school sections into one *at the request* of the majority of the freeholders or householders in each of such sections, *expressed* at a public meeting called by the trustees for that purpose. It is contended that the request expressed at a public meeting is a condition precedent to the exercise of this power, or, in other words, that no power or authority to pass such a by-law is given to the municipality, until such a request has been so expressed.

Assuming for the sake of argument that this is so, has the Court power on such a ground to quash the by-law? The 155th sec. of the 12 Vic. ch. 81, points out the mode of obtaining a certified copy of any by-law; and enacts that either of the Superior Courts of Common Law, at Toronto, may be moved upon production of such copy, &c., to quash such by-law: and if it shall appear to the Court that such by-law is in the whole or in part illegal, it shall be lawful upon proof of service, &c., to order such by-law to be quashed in the whole or in part.

It is observed by the Chief Justice in giving judgment in Sutherland *v.* The Municipality of East Nissouri, 10 Q. B. U. C. 628, this provision does not seem to contemplate the case of a by-law complained of on grounds wholly apart from the nature of its provisions. There may be many objections to a by-law, and which would be sufficient to deprive it of validity, which at the same time may not be found sufficient to justify the interference of the Court in the summary manner given by the Act, as for instance when the objection is to the reasonableness of the by-law which requires the aid of extrinsic matter to demonstrate the existence and force of the objection.

It seems to me, however, that where certain proceedings, emanating not from themselves, but from (probably) a limited portion of their constituents, are by the express terms of an Act of Parliament rendered necessary, in order to give authority to the Municipal Council to pass a by-law relating to a particular subject, and they nevertheless do pass such a by-law, without any such proceedings having taken place, and the absence of such proceedings is clearly established on an application to the Court to set aside the by-law; the statutory jurisdiction attaches, and the by-law may well be deemed illegal in the whole. And this accords with what was said by the Chief Justice in giving judgment in Lafferty *v.* The Municipal Council of Westworth and Halton. 8 U. C. Q. B. 232.

I think this case falls within the same principle and that the summary jurisdiction given by the Statute may be resorted to, for the purpose of quashing a by-law passed under such circumstances.

Then as to the objection itself, the language of the Statute already quoted appears to me clearly to limit the authority of the Municipal Council to pass such a by-law, without a

request first made to them for that purpose by the parties, and in the manner designated; that is, that a request of a majority of the freeholders or householders, in the school sections to be affected by the change, must be expressed at a public meeting to be convened by the school trustees for that purpose. No such meeting, and consequently no such request preceded the passing of this by-law.

In my opinion, therefore, it should be quashed.

THE QUEEN EX REL. WILLIAM SWAN v. JAMES ROWAT.

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

Quo-warranto—Judgment in favor of defendant—Death of Relator—Costs.

Q. B. Trinity Term, 1855.

Mr. Helliwell moves to amend the order of Mr. Justice Richards, in this case, by awarding to the defendant his costs of defence.

It was a quo warranto case, tried before Mr. Justice Richards, to determine the right of the defendant to hold his seat as a township councillor, to which he had been returned as duly elected. The learned Judge determined that the defendant was entitled to retain his seat, but conceiving that he had a discretion to withhold costs, and that there were circumstances in the case which made it proper to do so; he gave judgment in favor of the defendant, but did not give him his costs against the relator.

The defendant contends that the relator having failed must be ordered to pay costs, and that there is no discretion to adjudge otherwise, and he obtained a rule *nisi* last term, to amend the judgment in that respect.

On the return of the rule, this term, affidavits are filed shewing that the relator died on the 6th July last, that is, after this rule *nisi* had issued, and before its return.

It appears that most of the Judges, in cases before them in Chambers, have acted upon the provision respecting costs in the Statute as if it were discretionary, to the full extent, of withholding costs from the successful party. This being so, we shall not reverse this order, under the circumstances of the relator, against whom we are desired to give costs, being no longer living. Upon reference to the Judges of both Courts, we find that a majority of them place the same construction upon the clause in question, as was placed by Mr. Justice Richards.

Rule discharged.

DALE *v.* COOL AND HUGHES.

Division Court Bailiff—Notice.

4 C. P. R. 460.

The bailiff of a Division Court, acting in the discharge of his duty as such bailiff, is entitled to notice of action under the division court acts, and that the objection is open to him under the plea of "not guilty per statute."

Writ issued 16th February, 1854; declaration, 11th April, 1854.

Trespass—*De bonis asportatis.* Pleas: by defendant Cool—Not guilty *per statute*, and not possessed; by defendant Hughes—1st, not guilty; 2nd, not possessed; 3rd and 4th, special pleas, justifying under a Division Court execution, against the goods of one Egan, and alleging an assignment of the goods from Egan to the plaintiff fraudulent as against creditors.

At the trial the plaintiff gave *primâ facie* evidence of a bill of sale duly registered. It appeared that after the assignment Egan departed, leaving his wife in the house where he had resided and kept tavern; that she remained there in possession of the house and goods for three or four weeks, and then left, going to the plaintiff's, shortly before the seizure. It appeared Cool had seized and sold the goods under, as alleged, an execution at Hughes's suit against Egan, being apparently indemnified by Hughes in so selling; but no execution or indemnity appears to have been regularly proved.

At the close of the plaintiff's case *Eccles*, for defendants, moved a nonsuit as to Cool, on the ground that he was entitled to notice of action as having acted in the execution of his duty as bailiff under the Division Court Act; and as to Hughes, because he was not proved to have directed or acted in the alleged trespass to plaintiff's goods. As to Hughes, it was left to the jury, who found a verdict in his favor on the plea of not guilty, and for plaintiff seemingly on the other issues. They found against Cool £65 damages, with leave reserved to move a nonsuit if entitled to notice of action. The jury found that he acted in the execution of his duty as bailiff.

During this term *Eccles* obtained a rule *nisi* to enter a nonsuit pursuant to leave reserved.

Durand shewed cause, and contended that the 14 & 15 Vic. c. 21, applies to bailiffs as well as justices of the peace; that this execution being against Cool, the bailiff had no right to seize plaintiff's goods; that Cool could have had the title to the property tried under the provisions of the statute; that Cool was not acting *bonâ fide*, and therefore not entitled to notice; and that, although the verdict was in favor of Hughes, if a new trial is granted it should be as to both parties.

Eccles, in reply, contended that there is no difference between the statute 13 & 14 Vic. c. 13, sec. 107, and the one which preceded it as to requiring notice of action; that the bailiff may plead the general issue, and give in evidence the want of notice; that the action should have been brought within six months, which has not been done—the plaintiff must therefore fail—Timon *v.* Stubbs, 1 U. C. Q. B. R. 347; Sanderson *v.* Coleman, 4 ib. 119;—that a bailiff, although he knows that the property is not the property of the execution debtor, still if he is ordered he must seize, and is entitled to notice—Beechey *v.* Sides, 9 B. & C. 806; Cook *v.* Leonard, 6 B. & C. 351; Smith *v.* Hopper, 9 Q. B. 1005; Smith *v.* Regina, 18 L. J. 301; Cox *v.* Reid, ib. 216;—that a new trial may be granted against one party—Davis *v.* Moore, 2 U. C. Q. B. R. 180.

MACAULAY, C. J.—The long-continued possession of Egan's wife, &c., constituted evidence sufficient to go to the jury in support of the *bona fides* of Cool's conduct if entitled to notice, assuming that the goods were really the plaintiff's property at the time, and this whether Cool was indemnified or not.

The indemnity might implicate Hughes, as adopting, if not directing, the seizure and sale for his benefit, without depriving Cool of his right to defend himself on any ground of defence open to him under the statute—Timon *v.* Stubbs (1 U. C. Q. B. R. 347), Booth *v.* Clive (10 C. B. 827); that defendant is entitled to notice Jones *v.* Elliott (11 U. C. Q. B R. 30). On reference to the 13 & 14 Vic. c. 53, sec. 107, the 14 & 15 Vic. c. 51, sec. 5, and the 16 Vic. c. 177, sec. 7, it appears to me that the defendant was entitled to notice, and that the objection is open to him under the plea of not guilty per statute. It is clear he was acting under the statute sufficiently to entitle him to notice, and the last act expressly authorizes the objection under such plea—the case cited from 1 U. C. Q. B. R. 347 was before the last act.

I can see no good reason why, since the 16 Vic. c. 177, sec. 7, the defendant may not raise the objection under the general issue per statute, if he could not have done so before.

MCLEAN, J., and RICHARDS, J., concurred.

Rule absolute.

REGINA EX. REL. GLEESON *v.* HORSMAN.

A county court judge cannot grant a *quo warranto* during term time in the superior courts.

13 Q. B. R. p. 140.

Eccles obtained a rule calling on the relator to shew cause why the order made by the judge of the County Court of the

County of Oxford, for the summons in the nature of a *quo warranto* in this cause, should not be set aside with costs, on the grounnd that the said order was granted during last Hilary term, when the said judge had no power or authority to grant the same.

It was sworn that the fiat for the summons was granted by the Judge of the Oxford County Court on the 10th of February last, on which day the writ of summons issued, and which day was the first Saturday in Hilary term. On the same day the judge also granted his fiat for a summons against the returning officer. Both summonses issued and were served, but neither of the defendants appeared, and the judge gave judgment against them *ex parte*.

Hagarty, Q. C., shewed cause.

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

The language of 16 Vic. ch. 181, sec. 27, appears too clear to admit of any argument. This section is substituted for the 146th section of 12 Vic. ch. 81, amended by 13 & 14 Vic. ch. 64, sched. A, number 23. It provides that in certain cases, of which the present is one, a writ of summons in the nature of a *quo warranto* shall lie to try the validity of such election, &c. &c., "which writ shall issue out of either of her Majesty's superior courts of common law at Toronto, *upon an order of such court in term time*, or upon the fiat of either of such courts, or of the judge of the county court having jurisdiction over the municipality within which such election shall have taken place *in vacation*."

Rule absolute.

PERRY *v.* BUCK.

Purchase of growing timber—Right of purchaser to bring trespass qu. cl. fr.

The plaintiff had purchased from the Canada Company all the merchantable timber on a certain lot, and held a letter from them (set out below) authorizing him to enter upon the land and mark whatever trees he might choose, and afterwards to cut and carry them away.

Held, that he had not such a possession as would enable him to bring trespass *quare clausum fregit*.

Quære, what remedy he could have for trespasses on the land:—whether he could support an action on the case against the trespasser for interfering with his privilege; or would be compelled to look to the company, treating their letter as an agreement.

12 U. C. B. R. 451.

Trespass *qu. cl. fr.* to lot No. 11 in the seventh concession in the township of Emily, and there prostrating the trees and underwood—enumerating them. 2nd. count, for seizing and taking a quantity of timber.

Pleas. 1st. Not guilty, to the whole declaration. 2nd. To the first count, that the trees and underwood mentioned were not the plaintiff's property. 3rd. To the last count, plaintiff not possessed.

At the trial before *Richards, J.*, at the last assizes held at Peterborough, it appeared that the plaintiff claimed the right to the timber upon the lot under a letter from the Canada Company, as follows:

Canada Company's Office,
Toronto, 1st Dec. 1853.

SIR,—I hereby acknowledge the receipt, per letter of Samuel Strickland, Esquire, of the 18th ultimo, of sixty-five pounds, for the purchase of the merchantable timber and saw logs you may remove from lots twenty-one in the ninth concession and eleven in the seventh concession of Emily before the first day of November, 1855. You are now at liberty to enter upon the said lots, and also your agent and workmen, and cut the merchantable timber and saw logs thereon till the 1st of November, 1855, and carry away the same, but not after that date. In the meantime, should we dispose of the land, the purchasers or lessees shall have the right (which is hereby reserved specially) of clearing and improving, and using whatever unmarked timber they shall find necessary for fuel, fences and buildings. Any dispute arising between you and him or them must be settled without reference to us. You are therefore requested to mark in a conspicuous manner such trees as you may wish to cut. This license is not transferable. Have the goodness to acknowledge the receipt of this letter."

(Addressed to the plaintiff.)

There was no doubt the defendant did cut a considerable number of trees upon lot No. 11, as ascertained by the surveyor, and it was proved that he offered the plaintiff to pay him $1 per tree for what he had cut.

The lot in question was treated by the agent of the Canada Company in the county of Victoria as belonging to the Company, but their title was not proved. It was proved that the plaintiff's agent had gone upon the lot after obtaining the letter before mentioned from the Canada Company.

The learned judge left to the jury to determine whether the plaintiff was in actual possession of the lot, and if not to find for the defendant.

The charge was objected to on the ground that in consequence of the plaintiff having the lines run by a surveyor, that was a taking of possession, and the judge should have so told the jury.

The jury found for the defendant.

Phillpotts obtained a rule to show cause why the verdict should not be set aside on the ground that it was contrary to law and evidence, and for misdirection, and on the ground of surprise.

Eccles shewed cause.

The authorities referred to are cited in the judgment.

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

We think, upon the evidence given, it cannot be held that the plaintiff was by his agreement with the Canada Company placed in exclusive possession of the land in question. He had only acquired a right to enter upon the land and mark whatever trees, fit (in his opinion) for making merchantable timber and saw logs he might choose to take. His entry for that purpose would be no trespass; and he had acquired the further right of going afterward upon the premises at any and all times up to the 1st of November, 1855, for the purpose of felling, and preparing, and carrying away the timber and saw logs which he had so indicated his determination to take.

The defendant in going upon the land was no trespasser as to him, for he might have many lawful occasions for going there, for purposes which would not interfere with the privilege which the plaintiff had acquired; and if he had no such lawful occasion for going there, he would be a trespasser upon the owner of the land, not upon the plaintiff, who had only a limited and qualified right of entry. This applies to the alleged wrongful entry upon the premises.

Then as to the timber cut—whose property was it, as it lay on the ground after being cut? Not, we think, the plaintiff's, for he had not yet made it his timber by marking it as timber which he elected to take. The agreement with the company required that he should do this, besides any legal question that might be raised as to the growing timber being capable of being transferred to the plaintiff otherwise than by deed.

The plaintiff, no doubt, ought to have a remedy for such a wrong as he complains of, and we do not see what should prevent his recovering in a special action on the case against the defendant for wrongfully cutting down and taking away the trees, whereby he was obstructed and prejudiced in the enjoyment of the privilege which he had purchased.

That might still depend, however, on whether the plaintiff had acquired the property in the trees, or whether he would

not be compelled to look to the company, treating their letter as an agreement in writing sufficient to charge them under the Statute of Frauds.

These are points on which the plaintiff must act as he is advised. I refer to the case in this court of Ferguson *v.* Hill (11 U. C. R. 530); Scorell *v.* Boxall (1 Y. & J. 395); Ellis *v.* Grubb (3 O. S. 611); Teal *v.* Auty (2 B. & B. 99); besides the cases of Monahan *v.* Foley (4 U. C. R. 129); and McLaren *v.* Rice (5 U. C. R. 151), which are expressly in point against the plaintiff's right to bring this action.

Rule discharged.

IN RE. CAMERON AND THE MUNICIPALITY OF EAST NISSOURI.

By-laws—Rules for construction of—Certainty.

In construing a by-law the court will not intend that the municipality are trying to evade compliance with a statute, but will give every reasonable help of construction to bring the by-law within it.

They will also look at the whole by-law to ascertain its meaning, and construe one part with another or other parts, so as if possible to give full effect to the whole.

Where a by-law recited that the amount of the whole ratable property of the township, according to the last assessment returns, was £114,756, and that it would require the annual rate of 2½d. in the pound as a special rate, for payment, &c., and then enacted that a special rate of 2½d. should be levied to pay the principal and interest of the loan to be raised under the by-law, and that the proceeds of such special rate should be applied solely to the payment, &c., until the same be fully paid and satisfied; *Held*, that the recital as to the amount of ratable property and the assessment returns was sufficient, and that it sufficiently appeared that the rate was to be levied in each year.

In one part of the by-law the reeve was empowered to issue debentures for such sums as should be from time to time required for the purposes mentioned, but not to exceed in the whole £10,000; in subsequent clauses a special rate was imposed to pay "the said sum of £10,000," and the application of "the said sum of £10,000" was pointed out: and the debentures were directed to be made payable "within twenty years of the time that this by-law shall come into operation." *Held*, that the amount of the loan, and the time when the debentures were to be made payable, was stated with sufficient certainty.

[13 B. R. Rep. 190.]

C. Robinson, in Hilary Term, obtained a rule calling on the municipality of the township of East Nissouri to shew cause why a by-law passed by them on the 8th of January, 1855, entitled a by-law to raise by way of loan £10,000, payable within twenty years, for the purpose, &c., should not be quashed, wholly or in part, with costs; because, 1st, The amount of the whole ratable property of the township, according to the assessment returns for the financial year next preceding the passing of the by-law is not set forth therein. 2nd, That it is not stated with sufficient certainty, according to the assessment returns, for what financial year the amount of the ratable property is ascertained. 3rd, Nor at what period the debentures mentioned in the by-law are to become payable. 4th, That the special rate in the pound authorized to be levied is not based on the amount of the whole ratable property in the township, as such amount is ascertained by the assessment returns for each township for the financial year next preceding that in which the by-law was passed. 5th, That it does not appear that the rate is sufficient for the purposes of the by-law according to the returns of such financial year. 6th, That no special rate is directed to be levied in each year for the payment of the loan. 7th, That the amount of the loan is not stated with sufficient certainty, but is left to the discretion of the reeve, and it is uncertain what sum may be borrowed.

In this term, *M. C. Cameron* shewed cause. The material parts of the by-law and the statute referred to are set out in the judgment.

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

The by-law contained the following recital—"Whereas the amount of the whole ratable property of the township of East Nissouri, according to the last assessment returns, was £114,756, and it will require the annual rate of 2½d. in the pound on the said ratable property as a special rate for the payment," &c. It appears to us this is sufficient. We ought not to intend that the municipal council are trying to evade compliance with the statute, but should, we think, give every reasonable help of construction to bring their by-laws within it. 12 Vic. ch. 81, sec. 177, enacted that no by-law for the negotiation of any loan shall be valid to bind such municipal corporation, unless a special rate per annum, over and above, and in addition to all other rates whatever, shall be settled in such by-law, to be levied in each year, for the payment of the debt created by the loan to be negotiated, nor unless such special rate shall be sufficient, according to the amount of ratable property in such township, as shall appear by the then last assessment returns of such township, to satisfy and discharge such debt, with the interest, within twenty years from the passing of such by-law. Now, unless we assume that the municipal council wished to evade the statute while apparently complying with it, we ought to hold that the recital according to the *last* assessment returns means what this clause requires. The 14 & 15 Vic. ch. 109, sec. 4, gives more particular directions, that in every by-law for contracting a loan there shall be recited by way of preamble, 1st, The amount, and in some brief and general terms the object of the loan. No objection is raised on that score. 2nd, The amount required to be raised annually, according to the 177th section of the act 12 Vic. c. 81, as a special rate for the payment of such debt or loan and interest, within the time thereby limited (*i.e.* twenty years), at the days when the same shall become payable according to such by-law. 3rd, The amount of the whole ratable property of such township, according to the assessment returns for the then next preceding financial year. 4th, The annual rate in the pound on such ratable property required as a special rate for the payment of the interest and the creation of a sinking fund. We think the recital as to the amount of ratable property and the year sufficiently complies with this latter act.

Before referring particularly to other objections, I will state that in my opinion we should look at the whole by-law to ascertain its meaning, and construe one part with another or other parts, so as if possible to give full effect to the whole. Acting on this rule, we find that, though in one part the reeve is empowered to cause debentures to be made out for such sums as may be from time to time required for the purposes mentioned, but not to exceed in the whole £10,000: we find also, in the fourth section, that a special rate is imposed for the purpose of "paying the *said sum of* £10,000," with interest, and in the 5th section the application of the "*said sum of* £10,000" is pointed out. Taken together, this shews clearly enough that £10,000 is to be the whole amount raised, for which the reeve is to cause debentures to be issued from time to time for such sums as may be required; that is, leaving it in his discretion, according to circumstances, what sum any debenture may be given for, whether £100 or £200, or any less or greater sum, "so as not to exceed in the whole £10,000," the sum the necessity for raising which is the first part of the recital. Then, again, it is enacted that a certain special rate will be necessary for the payment of the interest and for the creation of a sinking fund to pay the principal, according to the requirements of the 12 Vic. ch. 81, and the 14 and 15 Vic. ch. 109, both of which require the payment to be within twenty years from the passing of the by-law. The by-law enacts that the debentures shall be made payable "within twenty years of the time that this by-law shall come into operation." The two taken together, though not as precise as they might be, and without the aid of a schedule shewing clearly what is meant for each year, nevertheless, we think, import sufficiently authority and direction to the reeve to issue debentures which shall run as long from the time of their issue, but no longer, than the statutes permit; and this at present appears to us to be enough. We think, therefore, the third objection fails. As to the fourth, there is nothing before the court to shew that this objection is founded in fact. I am not quite sure I understand what is meant; but either it is an assent on without proof, or it is a renewal in a varied form of the first and second objections.

The fifth objection is, that it does not appear that the rate is sufficient for the purposes of the by-law, according to the return of the financial year. We think some ground should be brought before us to shew that it is insufficient, and that, this not being done, we should assume its sufficiency. It was hardly meant, we suppose, to ask the court to make a calculation in order to determine the question.

The sixth objection is, that no special rate is directed to be levied in *each year* for the payment of the loan. The recital states, "that it will require the *annual rate* of 2½d. in the pound" to pay the interest and the principal, according to the requirements of the statutes: and the fourth section enacts, "that a special rate of 2½d. in the pound shall be raised for the purpose of paying the said sum of £10,000, with the interest thereon, and the proceeds of such special rate shall be applied solely to the payment of such debentures and the interest thereof, until the same be fully paid and discharged." The statute 14 & 15 Vic. makes the preamble to a by-law an essential part of it, and requires the rate to be raised annually to be recited. When this is done, and then the rate is afterwards formally imposed, and for the purpose of paying principal and interest of a loan which is to be discharged within twenty years, we think we may construe the whole together as imposing the special rate annually, though the word *annual* is not used in the section.

The seventh objection has been already answered in noticing the third.

On the whole we think the rule must be discharged with costs.

Rule discharged.

HOWLAND *v.* BROWN.

Contract for sale of flour f. o. b.—Liability of vendee for warehouse charges.

[13 B. R. Rep. 199.]

One E. in February, sold defendant certain flour to be delivered in May following, f. o. b. (meaning free on board the vessels which were to take it from Hamilton.) The flour was delivered in May, but defendant had no vessels then ready, and E. stored it with the plaintiff subject to the defendant's order, paying all charges on it up to the end of May.

Held, that the defendant was liable to the plaintiff for subsequent warehouse charges up to the time of shipment.

This was an appeal from the County Court of the county of Wentworth. It was an action of debt brought to recover fees for storage of certain goods. *Plea—Nunquam indebitatus.*

The plaintiff below obtained a verdict for £22 1s. 8d., subject to the opinion of the court. Upon argument of the points reserved judgment was given for the plaintiff, and from this decision the defendant appealed

Springer, for the appellant, cited Wilmot *v.* Wadsworth, 10 U. C. R. 594; Proudfoot *v.* Anderson, 7 U. C. R. 573; Bentall *v.* Burn, 3 B. & C. 426; 5 D. & R. 284, S. C.; Farina *v.* Home, 16 M. &. W. 1. 20, 20 Eng. Rep. 524; Story on Bailments, sec. 589; Beckett *v.* Urquhart, 1 U. C. R. 188; James *v.* Griffin, 1 M. & W. 26; 2 M. W. 633, S. C.

The facts of the case were sufficiently stated in the judgment.

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

We are at a loss to see how any doubt could be entertained in this case. On the 2nd of February, 1854, Mr. Ewart, through a broker, sold 4,000 barrels of flour to the appellant, to be delivered in May following, f. o. b., meaning free on board the vessels which were to transport it from Hamilton. The contract was to pay in cash £1,000, and £3,500 by promissory notes payable at the time the flour was to be delivered. The same day the appellant paid £1,000 in cash, and gave his promissory notes according to the contract. The flour was delivered according to contract at Hamilton in the month of May, but the appellant had not vessels there to put the same on board. It was proved that the flour was put into the respondent's warehouse subject to the appellant's orders, and Mr. Ewart paid all charges upon it up to the 31st of May. The flour was not all shipped until early in August. The argument for the appellant, that he is not liable for the storage subsequent to the 31st of May, and that Mr. Ewart is, if storage can be collected from any one, proceeds upon the idea that the contract of Mr. Ewart is not complete until the flour is actually on board the vessel, and that it lay in the respondent's warehouse subject to Mr. Ewart's order. That question depends upon the construction of the bought and sold note, and not upon the broker's opinion of what was or was not a reasonable time for the flour to remain in store. The bought and sold note is that the whole quantity, dividing it into parcels, shall be deliverable in the first, second, and last week in May, free on board. The seller, Mr. Ewart, had accomplished all he could do, and had the flour ready to be put on board by the 31st of May free of charge, for he had paid all charges to that time. Then at whose risk was the flour after the 31st of May? The appellant was bound to furnish vessels ready to receive the flour by the time that Mr. Ewart was bound by the contract to deliver. The obligation to receive is mutual with the obligation to deliver: and if the seller be ready to deliver, and does all he can for the purpose, but the buyer is not ready to receive, the risk must remain with him. The question depends simply upon the construction of the bought and sold note, and upon the evidence, whether Mr. Ewart had complied with his part of the contract; and we must say we entertain no doubt he did comply with his contract, and that the flour remained in the warehouse at the risk of the appellant after the delivery there and charges paid. The property being that of the appellant was liable to the charges of the warehouse keeper after the same became appellant's property.

Appeal dismissed, with costs.

CHANCERY.

ABRAHAM *v.* SHEPHERD.

Practice—County Courts.

A defendant on moving to dissolve an injunction issued from a County Court, is not bound to have the proceedings returned to the Registrar, from the County Court office.

[4 U. C. C. Rep. 260.]

This was a suit commenced in the County Court of the county of York, to restrain waste alleged to have been committed on lands of the plaintiff—and a motion was now made to dissolve the injunction so issued, by

Mr. *Morphy*, for the defendant.

Mr. *R. Cooper*, contra, objected that there was nothing before the court to warrant them taking cognizance of this matter—the claim and other papers still remaining on the files of the county court, which it was the duty of the party moving to have had returned to this court.

The court, however, thought that a defendant is entitled to make this motion, without having the papers transmitted to this court; that was a duty incumbent on the plaintiff, who has been regularly served with notice of this application.

STEVENSON *v.* HUFFMAN.

Practice—County Court.

Where a plaintiff in an injunction suit, instituted in the County Court, desires to extend the injunction, it is his duty to have the pleadings and papers in the cause transmitted to this court before the motion is heard.

A notice of motion given for a day which is not a regular court day, unless leave of the court be obtained for that purpose, is a void proceeding, and the party served need not attend thereon.

[4 U. C. C. Rep. 318.]

This was a motion to extend an injunction issued from the County Court of the United Counties of Frontenac, Lennox and Addington, the period for which it had been granted by the judge expiring either on this or the following day. The notice of motion had been served for the Saturday preceding, the court having appointed a special sitting throughout the week

for the purpose of hearing causes; on that day, however, the court did not sit, the judges being occupied in the Court of Appeal. From the statements of counsel it appeared that the pleadings and papers filed in the county court had not yet reached the office of the registrar, and it was now desired either that the injunction might be extended according to the terms of the notice on reading the draft pleadings, or that the motion might be directed to stand over in order to save the notice already given, and to enable the plaintiff to produce the original papers.

The court refused the application, stating that the month allowed by the statute afforded a plaintiff sufficient time for the production of the papers in the registrar's office, and it was clearly his duty to see that they were there before bringing on his motion: Besides this, however, the notice shewn to have been given was merely nugatory; having been given for a day which was not a regular court day, without leave having been obtained for that purpose, the defendant would have been justified in taking no notice of it whatever.

MUNICIPAL CASES.

(Digested from U. C. Reports.)
From 12 Victoria, chap. 81, inclusive.
(Continued from page 153.)

XXXII. *By-law for closing highway—Objections to.* 12 Vic. ch. 81, ss. 155, 192.

Held that a by-law was sufficiently authenticated for the purpose of a motion against it, by an affidavit of the relator that the copy produced was received by T. from the clerk of the council, and delivered by him to the deponent.

It is not necessary to recite in a by-law all that is requisite to shew the authority of the council, or the regularity of their proceedings. These will be presumed, until the contrary is proved.

It was objected that a by-law was expressed on the face of it to be passed by the "Municipality of Vaughan," there being no such corporate body.

Held, that this was not a valid objection, and *semble*, if it were, that the applicant recognised the by-law as one passed by the corporation, intended, by the fact of his moving against it, as a by-law passed by that body.

A by-law for shutting up an old road need not describe its course, &c., minutely. Such a by-law is not bad for directing that the parties applying to have the roads closed shall pay the expenses.

Municipal councils have authority to close a road, however long in use.

Held, that want of the requisite notice was not sufficiently shewn on the affidavits stated below.

Fisher v. *The Municipal Council of Vaughan.* 10 U. C. B. R. Rep. 492.

XXXIII. *Rules for regulation of Inns—Authority of Municipal Council—Proof of by-law—Affidavit of applicant—Addition.* 13 & 14 Vic. c. 65, s. 4.

Upon motion to quash the following rules prescribed in a by-law:—

6. "Every innkeeper shall shut up his bar-room, the outer as well as the inner doors, each night at eleven o'clock, and keep them closed during the night, except on Saturday night, when they shall be closed at the same hour and not opened again until four o'clock on Monday morning, except for the entrance of himself or servant,—*during which time no spirituous or intoxicating liquors are to be sold or furnished to any one.*"

7. "If any dispute shall arise between the guests and the innkeeper, it shall be referred to any justice of the peace, whose decision shall be final as to the *quantum* of the charge, by his verbal order."

Held, that the municipal council had no power to make the order as to spirituous or intoxicating liquors, contained in the sixth rule, and that the seventh rule was also an enactment beyond their authority.

Where the seal of the corporation was not mentioned in the clerk's certificate, but was on the same page with the certificate, just above it, and opposite to the signatures of the reeve and clerk, the by-law was held to be sufficiently proved. The affidavit of the applicant stated him to be a rate-payer, and a resident householder, and that he obtained the copy of by-law from the clerk.

Held, not necessary to give any further addition of deponent.

Baker v. The Municipal Council of Paris. 10 U. C. B. R. Rep. 621.

XXXIV. *Nature of objections for which by-laws may be quashed.* 12 Vic. ch. 81, secs. 155, 168, 192.

The court has no authority to quash a by-law, on application, except for something illegal appearing on the face of it; or, except, perhaps, where it is shewn to have been passed under circumstances which, by the express terms of the statute, make it illegal. They therefore refused to interfere with a by-law, on the ground that a quorum of the council was not present at its passing, as required by 12 Vic. ch. 81, sec. 168.

Sutherland v. The Municipal Council of the Township of East Nissouri. 10 U. C. B. R. Rep. 626.

XXXV. *Trespass q. c. f.—Justification under a Municipal by-law—Validity thereof—Pleading.* 12 Vic. c. 81, s. 167, 192, 205.

Trespass *quare clausum fregit.*

Defendant filed several pleas justifying the trespass as done by him as the servant of the municipal council of Wentworth and Halton, and by their command, in pursuance of a by-law by them passed (on the 31st January, 1850,) "in accordance with the provisions and requirements of the Municipal Council Act of 1849," (which came into force on the 1st January, 1850.)

Held, on demurrer, that it was a valid objection to the several pleas that they did not shew a calendar month's notice, given previous to the passing of the by-law; that, on the contrary, they imported on the face of them that it could not have been given, because the by-law was passed within a month after the Municipal Act of 1849 came into operation.

Held, also, that the Municipal Act of 1849 was sufficiently referred to in the pleadings, being a public act, and that it was not necessary to set out any portion thereof, either to identify it, or to shew the powers of the council under it.

Held, also, that a road between the townships of West and East Flamboro' is within the jurisdiction of the municipal council of Wentworth and Halton, though it may deviate in some portions entirely in one township.

Held, also, that the clause of the by-law which enacted "that the petitioners should pay all expenses and costs incurred in establishing the road, and that none of the county funds should be applied for land taken for said road," and referring plaintiff to unnamed petitioners for compensation, was void.

Quære: If such clause had the effect of rendering the by-law void in toto.

Quære, also: Can any individual justify the opening of a new road through private property, under a by-law establishing the road, when the opening is not authorized or directed in the same by-law, or any supplementary one?

Lafferty v. Stock. 3 C. P. Rep. 1.

XXXVI. *Levying school rates—Legality of by-law authorizing the same.*

A by-law passed by a township municipality, authorizing the levy of a certain rate to realize the sum of £100 for school purposes, having been quashed, the municipality then, without a second meeting having been called, passed another by-law (set out in the report) for the same purpose, which was also moved against on several grounds.

Held, on the several objections taken,—1st, That the discretion to apportion the sum required rested as much with the council as with the school meeting or trustees. 2 dly. That the rate was not declared on the property assessed in 1851, (the preceding financial year), but only determined by reference to the assessed value of taxable property in that year. 3rdly. That the rate not being complained of as excessive, its being calculated to realize more than the precise sum of £100 did not render the by-law void. 4thly. That the meeting was not indispensable. 5thly. That the duty imposed upon the clerk of the municipality was not unreasonable, or inconsistent with the statutes. 6thly. That the rate was properly assessed upon the whole ratable property of the school section. 7thly. That the proviso of the by-law sanctioning the receipts *pro tanto* from those who had paid under the invalid by-law did not render the second by-law void.

In re. De La Haye and The Municipality of the Gore of Toronto. 3 C. P. Rep. 23.

XXXVII. *Municipal by-law creating debts, &c.—What they must contain.* 14 & 15 Vic. ch. 104, sec. 4. *Equality of annual rate in amount.*

The statute 14 & 15 Vic. chap. 109, sec. 4, prescribing what municipal by-laws creating debts, &c., shall recite and set forth, is only *directory*, and does not declare that the omission of any of the prescribed recitals in any such by-law shall render the by-law invalid or void.

The rate to be levied by any municipal council for the payment of a debt or liquidation of a loan, &c., must, under the Municipal Acts, be equal in each successive year, and not fluctuating according to the arbitrary discretion of the municipality.

In re. John Sells and The Municipality of the Village of St. Thomas. 3 Cr P. Rep. 400.

XXXVIII. *A by-law passed by a Township Council, levying a sum of money to pay the costs of a contested election is illegal, and will be quashed with costs.*

In re. Henry Bell v. The Municipality of the Township of Manvers. 3 C. P. Rep. 400. See 2 C. P. R. 507.

XXXIX. *District Councils—Power to sell growing timber on allowances for roads—Pleading.*

The district councils had no power under 4 & 5 Vic. ch. 10, to pass a by-law authorising the township councils to sell and dispose of trees growing upon the allowances for roads, &c.

A pleading alleging a purchase of such timber from the council ought to shew a transfer by deed, or at least a contract or sale in writing.

Cochran v. Hislop. 3 C. P. Rep. 410.

XL. *Overflowing land in repairing highway—Plea of justification by Municipal Council.*

Case against a Municipal Council for overflowing the plt's land. The defendants pleaded that the road eastward and westward of the plaintiff's premises was swampy and unsafe: that it was the duty of the defendants to keep this road in good order, and that in the performance of such duty they committed the grievance complained of, doing no unnecessary damage to the plaintiff.

Held, on demurrer, that it was not necessary to aver that the act complained of was done under a by-law, for that would *prima facie* be presumed, if essential,—but that the plea was bad for not shewing a sufficient justification, as it should have been alleged that the injury was one which the plaintiff was bound to submit to, and that no other course could have been taken for relieving the road.

Brown v. The Municipal Council of Sarnia. 11 U. C. B. R. Rep. 87.

XLI. *Copy of by-law moved against described as annexed, but not annexed, to applicant's affidavit.* 12 Vic. ch. 81, sec. 155.

In an application to quash a by-law, a paper was put in purporting to be a copy of the by-law, authenticated by the seal of the corporation, and certified by the township clerk to be a true copy of a by-law passed on, &c., (corresponding in date with that moved against;) also an affidavit of the applicant, in which he swore that *the annexed* copy of the by-law (describing it accurately by title and date) was a true copy of the by-law received by him from the township clerk. On shewing cause against the rule, it appeared, and was objected, that the by-law was not annexed to the affidavit, and there was no appearance of any paper having been attached thereto; but *Held*, that the objection could not prevail.

Bessey v. The Municipal Council of Grantham. 11 U. C. B. R. Rep. 156.

XLII. *Entitling of affidavit.*

An affidavit in support of an application to quash a by-law was not entitled in any court, and there was nothing to shew that it was sworn before an officer of any court, the commissioner styling himself merely "A commissioner, &c." *Held*, insufficient.

In re. Hirons et al. and The Municipal Council of Amherstburgh. 11 U. C. B. R. Rep. 458.

XLIII. *By-law to establish a road quashed for uncertainty.*

A by-law to establish a road was in these terms:—

"Be it enacted, &c., that the new survey made by Mr. A. M. Holmes, commencing at the Pine Hill Road, on lot 37, Lake Road East, running South-Westerly, south of the old Lake Road until it strikes the old lake road on lot 52, be, and it is hereby established and constituted a public road. And be it further enacted, that the said road shall be four rods in width."

Held, that the road to be established was not sufficiently defined, and that the by-law must be quashed for such uncertainty.

McIntyre v. The Municipal Council of Bosanquet. 11 U. C. B. R. Rep. 460.

XLIV. *Power of Municipal Corporations with respect to Taverns, under 13 & 14 Vic. chap. 65, sec. 4—Misnomer "Municipal Council" for "Municipality."* 12 Vic. ch. 81, secs. 2, 31.

Held, on an application to quash a by-law, that a rule nisi entitled as against "The Municipal Council" of a township, instead of "The Municipality," was sufficient, though the latter is the proper designation.

Held, also, that under 13 & 14 Vic. ch. 65, sec. 4, the municipal corporations had no power to pass a by-law prohibiting altogether the licensing of inns for the sale of wines or spirituous liquors by retail, or to be drunk therein; but that the legislature, by the words used in that section, either meant to give authority to prohibit the licensing of houses of public entertainment only as distinct from inns (the one having a public bar-room and the other not), or, if they meant inns, that they meant only to give the power of preventing any one or more particular inns from being licensed.

In re. Barclay and The Municipal Council of Darlington. 11 U. C. B. R. Rep. 470.

TO CORRESPONDENTS.

D. J. H.—We do not agree with you; what is said in the article referred to is quite consistent with *Ferris v. Fox*. The privilege given extends only to the particular causes of action specified in the clause of the Statute. The decision you refer to as "given about a year ago," we think liable to objection, if the plaintiff sued in the ordinary way.—Thanks for the matter furnished.

A. C.—We are obliged by your communication. Send us anything you think will suit; it will be available at some period. In the matter referred to by you, the "meaning" was made out, and as the errors could lead no one astray who understood the subject, they will not need further remark. We feel obliged for your wishes; and gratified at the favorable opinion expressed of the *Law Journal* by one who is certainly no mean judge of the subject.

THE LAW JOURNAL.

SEPTEMBER, 1855.

TO OUR READERS.

VOLUME II.

Our apologies are due to you for the late appearance of the present number; and we plead guilty to other defaults. Only those who have been connected with the Press can rightly estimate the difficulties surrounding a new work, and particularly a Law Publication. These difficulties and matters personal (which need not be referred to) have caused delays in our issues, but you may be assured of punctuality for the future.

We have heard fears expressed that the *Law Journal* will not be continued: we assure you it will; and that neither trouble nor expense will be spared to enhance its value and raise its character. Its success has been most encouraging; and from all sides we have received testimonials of its usefulness—many from the highest quarters. We hope to complete all the numbers of the present volume by January, and the *Law Journal* will be able to commence the new year with at least 800 subscribers; and these, not from one class or in one locality, but from many directly benefitted by the publication, and from every county in Upper Canada. Though the returns, after deducting the necessary heavy outlay, are small, yet they are sufficient to justify the belief that the *Journal* will be sustained as a permanent publication. The next year, however, will be the test: and we must look to those who value the publication and desire its continuance, for support, not only by their individual subscriptions, but by their influence to assist in increasing the circulation.

The ensuing volume of the *Law Journal* will be enhanced in value by arrangements which are now in progress, comprehending an accession of able writers, not only in U. C., but from England. We need not now further dwell upon the matter: but promise that every effort will be made to give satisfaction to our supporters.

COMMITMENT UPON JUDGMENT SUMMONS.

(D. C. Act. of 1850, secs. 91 & 92.)

Review of English Decisions.

The 91st and 92nd sections of our D. C. Act are copied from the 98th and 99th sections of the English County Courts Act, 9 & 10 Vic. ch. 95, and a review of the leading cases on the subject of commitment, under the English Act, as they are authority with us, may be acceptable. In *Hayes v. Keene*, 19 L. T. 90, C. B., a debtor, having a judgment against him in the County Court, and an order to pay the amount by instalments, made default, whereupon a judgment summons was issued, and on the debtor's non-appearance thereto, a warrant of commitment was issued on the 131st Rule of Practice, which directs that "such warrant shall bear date on the day on which the order of commitment was made, and shall continue in force for three calendar months and no longer." The warrant authorised the arrest of the debtor and his commitment to prison "for the term of ten days from the date of the arrest."

The warrant bore date on 19th *September*, 1851, and the debtor was arrested on the 16th *December* following, and was delivered into the custody of the keeper of the prison to whom it was directed, who detained the debtor until the 25th of the same month, December, being seven days beyond the three months during which the warrant was to be of full force and virtue.

The debtor brought his action against the gaoler for false arrest and imprisonment, and the latter pleaded a justification under the warrant.

To this plea the plaintiff replied that the warrant, by the 131st Rule of the "Practice and Proceedings of the County Courts" was to continue in force for three calendar months and no longer; and that although he was arrested within that period, and was imprisoned under colour thereof for ten days, yet he was unlawfully detained in prison seven days beyond the three calendar months during which the warrant had to run.

It was held on general demurrer, that the Replication was no answer to the plea: for that although the warrant was to remain in force only three months from the date of the order of commitment, the debtor, having been arrested within that period, was to be imprisoned for the number of days specified in the warrant, notwithstanding the three months during which it had force were expired before the debtor had completed the term of imprisonment which the County Judge had ordered.

The 55th Rule of the General Rules for Division Courts is taken from the 131st of the English Rules, and with an immaterial alteration in the wording of our Rule, is a *verbatim* copy.

In *Davis* v. *Fletcher et al.*, 22 L. J. Q. B. 429, A. obtained judgment in a County Court against the plaintiff, who was ordered to pay the amount by a certain day to the Clerk of the Court. The money not being paid, a summons was issued under the 9 & 10 Vic. c. 95, sec. 98, calling on the plaintiff to attend and shew cause, &c. The plt. did not attend as required by the summons, and upon proof of the personal service upon him, the Judge, under the 99th section, ordered him to be committed for seven days, or until he should be sooner discharged by due course of law. Upon this order, the Clerk issued to the Bailiff a warrant of commitment, upon which the amount of debt and costs was endorsed, and under it the plaintiff was arrested. *Before his arrest*, but after the issuing of the warrant, the plaintiff paid the debt and costs to A, who wrote a letter to the Clerk of the Court, informing him of that fact. The plt. having sued the Clerk and Bailiff of the Court for false imprisonment, it was held that the action could not be supported, as the order and warrant were regularly issued and were in force at the time of the arrest, and were not superseded by the judgment to A, and the notice to the Clerk of the Court. See the 95th and 96th sections of the Division Court Act, which are copied from corresponding sections (the 102nd and 110th) in the English County Courts Act. See also No. 58 in the Division Courts Forms, which is taken from the English Form.

According to the Division Court Rule No. 10, the Clerk is required to endorse on the warrant of commitment the debt and costs in gross up to the time of delivery to the bailiff for execution: and though we have no rule corresponding with the English Rule No. 133, it would appear that the Bailiff, at any time before delivering the defendant's body to the custody of the gaoler, should discharge the defendant out of custody on receiving the amount endorsed on the warrant.

(TO BE CONTINUED.)

DIVISION COURTS—SET-OFF—JURISDICTION; RIGHT AS TO COSTS OF R. R.—SETTING ASIDE AWARD—JUDGES ROBING.

We have received the report of rather a singular decision in a Division Court for one of the Eastern Counties, as communicated to us, by a member of the profession, as follows:—

"Assumpsit to recover the amount of an account for painting. The plts. account was admitted, except the price per day, which was proven. Defence, set-off; a promissory note made by the plt., payable to C. L. or order by the payee, was offered as a set-off. His Honor the Judge held, that proof of the delivery of the note by the payee, without his endorsement to the deft., was sufficient to set off the note against the proven claim of the plt., without shewing any agreement between the parties for that purpose."

It is difficult to understand on what principle this decision is or could be based. A set-off is in the nature of an action, and requires the same proof to support it. Had the deft. sued the plt. on this note, could he have recovered, wanting the important link of endorsement to complete his title to the note. Promissory notes belong to almost the only class of choses in action which are capable of transfer, so as to enable the transferee to maintain an action in his own name, when assigned and delivered in the customary way; otherwise they can only be sued by the original creditor, or the person who first had the right of action. There are many other objections to this decision, and nothing we can see to support it; but the matter is so clear that it is needless to dwell on it.

Two cases arose at the last assizes for the County of Simcoe, on the right to costs, involving a question of jurisdiction under the D. C. Acts. The one was a special action on the case against a mill proprietor for penning back water by his dam, whereby a small piece of woodland belonging to plt. was overflowed. The verdict was for £3. A certificate for costs was moved for, but opposed on the ground that the case might have been brought in a D. C.; the action being a "personal action" for a sum under £10, and not falling within the excepted objects of jurisdiction enumerated in the first section of the D. C. Act of 1853.

The other was also an action on the case for maliciously, &c., suing out an attachment from the D. C., not having reasonable or probable cause, &c. The verdict in this case was for £4 5s., and the motion for certificate was opposed on like grounds. In this case the question appeared to turn on the meaning of the words "malicious prosecution," actions for which are excepted from the D. C.'s jurisdiction. It was contended for the plaintiff that the proceeding by attachment was in the nature of a malicious prosecution, and that these words covered not merely malicious prosecutions (for criminal matters) as commonly understood, but every legal proceeding or prosecution where the process of the Courts was abused for malicious purposes.

The learned Judge, Judge Richards, reserved the questions. Any decisions which may be made, we hope to lay in a future number before our readers.

The practice on references in the D. C. is beginning to develope itself. We have some cases before us on applications to set aside awards. As yet they appear to be decisions more on general Law, than on any peculiar features in the D. C. jurisdiction, two of which before Judge McKenzie, of Kingston, we may mention. In *Gleeson* v. *Gleeson*, the award was set aside on the ground that the arbitrators refused to hear important evidence for

the defendant, His Honor after referring to authorities saying:—

"As a general rule, I am very unwilling to interfere with the decisions of arbitrators, but their refusal to receive the evidence tendered is so clearly wrong and so contrary to the proper method of ascertaining the truth, and doing justice properly between the parties that I cannot allow the award to stand. The practice of the Courts above is in favour of this view, and natural justice points out that an award made without hearing all the evidence offered should not be permitted to stand."

In *King* v. *Davy*, the main question was one of General Law, and the Judge declined interfering with an award on the ground that the arbitrators had not decided the matter of reference fairly on the merits, no dishonesty or corruption on the part of the arbitrators being shown. Another objection was that the Clerk did not receive the award until the 2d day of June, the reference providing that the award should be made on or before the 1st day of June. Upon this point, the learned Judge was of opinion that the award was made in time;—the time limited by the order of reference was the 1st June; the award was made on May 30th, and an award is deemed published from the time of its execution. The Statute of 1853 restricts the time of making the application for setting the award aside to "within fourteen days after the entry of the award," but the award may be entered after the time limited in the order of reference for the making of it, and be a good award.

Judges robing in the D. C. is a subject of which we often hear. No doubt every Judge is desirous to render the Courts over which he presides as useful and respectable as possible. He is appointed as a Barrister and may reasonably be expected to appear in the garb of his class. He owes it to himself,—whilst it is a decent mark of respect to the public and to the suitors in his Court. Moreover there is very much in externals, and we should be for keeping to the old land marks. This is our opinion, and it must go forth for what it is worth; every Judge will of course act as he thinks seemly. With the Judge who does not wear the gown, because it is troublesome to carry it, through bad roads, from court to court, we can sympathise; but of Judges who refuse to wear Robes because they are *above* such things, men are apt to say, they are too *purely* intellectual to need forms.

THE CRIMINAL LAW AMENDMENT ACT.

THE Criminal Law Amendment Act of last Session contains some provisions that meet rather severe strictures. There is a striking coincidence in the following:

"His Lordship (the Chief Justice of Upper Canada, in his address to the Grand Jury at Toronto,) alluded to the change which had been made in regard to the opening of the Court. The ordinary Commissions had been dispensed with here, although they are still retained in England, and although these Commissions had the effect of *reminding people that Justice was administered under the authority and in the name of the Sovereign*, it had been thought an improvement to dispense with them."—*Colonist*, Oct. 1855.

"We protest against doing away with the Queen's Commissions. *The Message which Her High Ministers of Justice bear about, periodically, to every part of the Province is in the mind of every British subject associated with the administration of the Criminal Law of this country*, and we see no advantage in the change."—Toronto *Leader*, 13th Oct. 1855.

In the same article, in protesting against Queen's Counsel acting as Judges of Assize, the *Leader* concludes an argument on the subject in these words:

"Above all there is this great and insurmountable objection, applying generally to Queen's Counsel acting as Judges of Assize; they may recently have *advised as Counsel* on questions which afterwards came before them as *Judges to decide*."

The practical commentary on this, is that it has actually occurred. We have seen it mentioned in a local paper, that at the last Assizes, certain cases were made remanets, "the learned gentleman who presided having been retained in them."

We trust that the 36, 37, and 38 sections of the Act may be repealed next session.

WANTED A SOLICITOR!

Our attention has been called to an advertisement in the *Colonist*, announcing that the Board of Directors of the Great Western Railway Company "is open to the reception of applications" for the office of Solicitor to the Company, which is as follows:—

"To Solicitors.—Notice is hereby given, that in consequence of the unexpected resignation, by Miles O'Reilly, Esq., of his important situation as Solicitor to the Great Western Railway Company, that office is become vacant.

The Board of Directors is therefore open to the reception of applications from competent candidates for the above-named valuable appointment.—Communications, addressed to the undersigned, will have particular attention from the Board; and said communications will (if so required by the applicants) be considered confidential.—By order of the Board,

ROBERT W. HARRIS.
President Great Western Railway Company.
29th October, 1855."

This advertisement was sent to us for publication, but we beg respectfully to decline it, as we cannot conceive it to be consistent with the dignity and respectability of the Profession that such a course should be adopted. Such an advertisement is quite a novelty in this country, and we believe it is without respectable precedent in England or elsewhere.

If the members of the Profession had degraded themselves by advertisements after the manner of "Moses & Co.," proffering their services "at a rate cheaper than ever," or "at next to nothing," we

could not complain if met by an advertisement of this stamp; but such do not, and we sincerely trust never will taint our profession: without adopting the severe views of our correspondent, we admit that our Professional feelings are somewhat outraged by this advertisement; at the same time, we must believe it an unadvised act, for we cannot think that a respectable Company would designedly cast a slur upon the Professors of the Law in Upper Canada, who stand, as a class, as high as any other in Her Majesty's dominions. As the matter is new, so is the style of the advertisement. We can understand that the situation of Solicitor to the Company is an "*important*" one, but, for all that the advertisement discloses, there is no evidence of its being a "*valuable* appointment," unless we are to suppose a weighty law business on hand. The promise to keep applications private seems quite necessary, for few men would venture to brave publicity in answering the advertisement. We fear that the effect will be to prevent men of high standing accepting an important office *thus* sought to be filled. If, indeed, the object is to obtain a "cheap lawyer," to perform professional services at "under price," the office to be given to the "lowest bidder," we think it would be proper for the Law Society, or the Profession, to add as a N.B., *No Gentleman need apply.*

We notice the resignation of Judge Jarvis;—whether this is for temporary purposes, or a final act, we are not informed, and we can only at present say that we should indeed regret the loss of that truly excellent man from the Local Bench. Judge Jarvis is the Senior County Judge in Upper Canada.

The Subscriptions to this Periodical, which as yet remain unpaid, would be very acceptable if forwarded without delay "*To the Editors of the U. C. Law Journal, Barrie, C.W.*" We have had many flattering testimonials of approbation, as to the utility of the work; but in the receipt of the more *substantial* proof of its satisfaction to our Subscribers, we should be greatly aided.

DIVISION COURTS.

(Reports in relation to)

BORTHWICK ET AL. (*Appellants*) v. WALTON ET AL. (*Respondents.*)

C.P. *Jan.* 23.

County Court—9 & 10 Vic., c. 95, s. 60—Whole cause of action—Jurisdiction.

The plaintiffs carried on the business of warehousemen at Manchester; one of them being at Oxford received a verbal order from the dfts., who resided and carried on business at Oxford, for Manchester goods which were to be sent in the usual way, which was by London and North Western Railway. The goods were accordingly sent by the plts. by Railway from Manchester from a station within the jurisdiction of the County Court of Lancashire at Manchester. The goods not having been paid for, a summons out of the District was granted by the Judge of the Manchester County Court against the defendants.

Held, that the order at Oxford was part of the cause of action; that therefore the whole cause of action did not arise within the District of the County Court of Lancashire, and that the Judge of that Court had no jurisdiction under sec. 66 of the Act 9 and 10 Vic., c. 95.

This was an appeal from the County Court of Manchester.

The case stated that the summons was a summons issued out of the district by leave of the judge. The action was for £37 8s. 4d., for goods sold and delivered. The plaintiffs were Manchester warehousemen; the defendants resided at Oxford. It was proved that, in March last, one of the plaintiffs was in Oxford, soliciting orders, and there obtained from one of the defendants a verbal order for the goods, (for the price of which the action was brought,) with a direction from the defendants that they should be sent in the usual way, which had always been by the London and Northwestern Railway. In pursuance of the order, the goods were sent by the railway from a station in the Manchester county court district to Oxford, addressed to the defendants. It was objected for the defendants, that, as the order was given and received by the plaintiffs at Oxford, within the jurisdiction of the county court there, the whole cause of action did not arise within the Manchester district, and that therefore the judge of that court had no jurisdiction. The judge held, that, in point of law, the delivery to the railway company was a delivery to the defendants, and that, as the delivery took place in the Manchester district, he had jurisdiction. He therefore heard the cause, and gave judgment for thy plaintiffs for the amount claimed. The question for the opinion of the Court of Appeal was, whether, under the circumstances above stated, the cause of action arose within the jurisdiction of the Manchester county court.

Griffiths, for the appellants. The county court judge of Manchester had no jurisdiction to try the plaint. It is true that, by sect. 60 of the Small Debts Act, 9 & 10 Vict. c. 95, the judge of the district "in which the cause of action arose" may issue his summons and hear the case; but the cause of action means the whole cause of action. *Barnes* v. *Marshall*, 21 Law J. Rep. (N. S.) Q. B. 388; s. c. 14 Eng. Rep. 45; *In re. Walsh* v. *Ionides*, 1 El. & B. 383; s. c. 16 Eng. Rep. 248; and *In re. Fuller* v. *Mackay*, 2 Ibid. 573; s. c. 22 Eng. Rep. 148; and in this case the whole cause of action did not arise in Manchester, for the cause of action arose from the order given in Oxford, (which was, in fact, the contract for the goods,) as well as from the delivery of the goods in Manchester. A material part, therefore, of the cause of action arose out of the jurisdiction of the Manchester judge. He referred to *Buckley* v. *Hann*, 5 Exch. Rep. 43; *Wilde* v. *Sheridan*, 21 Law J. Rep. (N. S.) Q. B. 260; s. c. 11 Eng. Rep. 389; and *Huth* v. *Long*, 19 Law J. Rep. (N. S.) Q. B. 325.

Aspland, for the respondents. The county court of Manchester was right in assuming jurisdiction. Sect. 60 was meant to extend the jurisdiction of the county courts. It ought to be construed with reference to sects. 128 and 129. If the substantial cause of action arose within the jurisdiction it is sufficient. The order for the goods is not part of the cause of action, within the meaning of sect. 60. In *Copeland* v. *Lewis*, 2 Stark. 33; *Huxham* v. *Smith*, 2 Camp. 21; and *Harwood* v. *Lester*, 3 Bos. & P. 617, it was held, that the

cause of action arose, not where the goods were ordered, but where they were delivered. It is not necessary that every particular connected with the contract should take place within the district. He cited *Emery* v. *Bartlett*, 2 Ld. Raym, 1555.

JERVIS, C. J.—I am of opinion that the county court judge was wrong. The expression, "cause of action," in sect. 60, means the whole cause of action. The question then is, did the whole cause of action arise in Manchester? To sustain their case, the plaintiffs, in addition to proving the delivery of the goods, would have had to prove the order for them. Now, that order was given at Oxford. Therefore, the whole cause of action did not arise within the Manchester district. The plaintiffs ought to be nonsuited.

MAULE, J.—I entirely agree in opinion. It is manifest that, according to the natural construction of the term, "cause of action," in sect. 60, the whole cause of action is meant. A defendant may be sued where he resides or has resided for the last six months, or where the whole cause of action arose, but not in a district in which he has not resided, in which only part of the cause of action arose.

CRESSWELL, J., and WILLIAMS, J., concurred.

Appeal allowed.

DRAKE AND OTHERS, ATTACHING CREDITORS, PLAINTIFFS,

v.

PARLEE, AN ABSCONDING DEBTOR, DEFENDANT.

(County of Elgin.—D. J. Hughes, Judge.)

Interpleader.

The claimant was summoned touching a claim made by him to goods seized under these attachments, he being an execution creditor on a Judgment recovered after the defendant absconded. The attachments were issued on the 19th April, 1855.

The claimant's Fi. Fa. came to the Sheriff's hands on 1st May, 1855; the judgment in the County Court was commenced by non-bailable process, and defendant served therewith before he absconded. Before executions were issued on the attaching creditors' judgments, the claimant's *fieri facias* issued against the defendant's goods and chattels.

The claimant insisted at the hearing of this Interpleader Summons that he was entitled to priority over the attaching creditors, because the defendant had been served with process of the County Court (which resulted in the recovery of a judgment for the claimant) previous to the issuing of the Attachments, and cited Bank of British N. A. *v.* Jarvis, 1 U. C. R. 182.

Mr. Nichol, for the attaching creditors, contended—1st. That the 4th clause, 5 Wm. IV. ch. 5, only applies to attachments issued under the Absconding Debtors' Acts, 2 Wm. IV. ch. 5, and 5 Wm. IV. ch. 5, and not to those issued under the authority of the Div. Courts Act of 1850.

2nd. That process issued from the County or Superior Courts does not nullify the writ of this Court, or supersede the effect of attachments issued by its authority.

3rd. That the process of each Court is independent each of the other.

4th. That the 66th clause of 13 & 14 Vic. ch. 53, vests all the property seized under the authority of that clause in the Clerk of the Court from whence the process issues, who is to hold it until all the attaching creditors for whose benefit the seizure was made are satisfied their claims, or until sold and disposed of for their benefit; and cited Ex parte MacDonald, *U. C. Law Journal 77*, in re. Mawhinney.

Per Hughes, J.—The various clauses of 13 & 14 Vic. ch. 53, bearing upon the subject of absconding debtors, are the 64, 65, 66, 67, 68, and 71st; and after a careful perusal of them, I am satisfied that upon all the points Mr. Nichol is right in what he has urged for the attaching creditors.

I admit that the case before me presents an anomaly as regards the several Statutes relating to absconding debtors; for whilst I see the principle established by all of them that a preference shall be given to a certain class of creditors under certain circumstances, a superior preference is recognized in favour of the suitors of the particular Court which may happen to have cognizance of their claims; on the one hand it goes the length, so far as I can see, of justifying the holding the whole property of an absconding debtor in this Court for the benefit of those who shall come in within *one* month to sue out attachments, (providing there has been no process served in any suit *in this Court* previous to the debtor's departure) and for those only—to the exclusion of the attaching creditors of any other Court, until those of this Court are satisfied: and on the other hand, the property is seized by the Sheriff on Attachments issued from the different Superior Courts, and held by him for the benefit of all those who shall sue out and place in his hands Attachments within six months from the issuing the first attachment, provided the debtor has not been served with bailable or non-bailable process previous to his departure, whereon proceedings have been based that have led to a judgment recorded by the plaintiff therein.

I am satisfied that the 64 section of the D. C. Act of 1850 makes an exception in favour of persons who have commenced proceedings in this Court against persons before they abscond, and before the issuing of an Attachment under that section, by giving the creditors who are already in Court a priority in execution. I do not think, however, that priority is intended to be given to any other than Division Court suitors; or that the Clerk of the Division Court holds the property, or the proceeds of its sale, in trust for the benefit of any other than judgment creditors, or attaching suitors who afterwards obtain judgments in the Division Court, because the second sentence of the second proviso, sec. 64, appears clearly to contemplate suitors in the Division Court only; the words are—"*and that when proceedings shall be commenced in any case before the issuing of an attachment under the provisions of this section, such proceedings may be continued to judgment and execution in the Division Court within which such proceedings may have been commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment, or the proceeds thereof, in case such property shall have been sold as perishable, shall be applied in satisfaction of such judgment.*"

Were the intention of the Legislature otherwise—in order to entitle this claimant to his priority in execution, the word "Division" before the word "Court" would have been omitted in the sentence I have quoted.

The Acts of 2 Wm. IV. ch. 5, and 5 Wm. IV. ch. 5, were passed when there were no courts in existence authorized to issue these Attachments against absconding debtors other than the *Q. B.* and the *C. C.* in Upper Canada; so that on that ground I should say the 4 clause of 5 Wm. IV. ch. 5, does not refer to Attachments issued against absconding debtors generally, but only to those issued by the Superior Courts or *C. C.*

On the whole, for the reasons stated, I am satisfied priority cannot, under the existing laws, be legally set up by this claimant.

[Upon the main point in this case, there is a conflict of decision among the County Judges. We know that the Judge of the County of Simcoe has held the law to be much the

same as that laid down by Judge Hughes, while the Judge of the Counties of York and Peel, and other Judges, take a different view, viz.: that the process of the Superior Courts in the hands of the Sheriff when acted on, under the above circumstances nullify the Writ of Attachment for the Division Court, and supersede the seizure made thereunder.

This point is one that the Commissioners under the Statute might with advantage settle by Rule at their next meeting.—*Ed. L. J.*]

(County of Essex—A. Chewett, Judge.)

IN RE. THE GREAT WESTERN R. W. CO.

Appeal from the Court of Revision.

The Great W. R. W. Co. in appeal from decision of the Court of Revision of the Corporation of Windsor, Essex. The whole assessed property in Windsor was, in round numbers, £120,000, about £60,000 of which belonged to the Great W. R. W. Co.

There was no evidence adduced before the Court of Revision, under 26 sec. 16 Vic. ch. 181, by the G. W. R. W. to reduce the amount previously settled by the assessors; and that court having received evidence *ex parte*, confirmed that assessment.

Before the County Judge, under 28 sec., on the appeal, no evidence was offered to shew that that amount was too much, except what was done by the County Council under 38 sec., on the annual equalization of the county rates, apparently for county purposes, but which equalization reduced the valuation of property in Windsor from about £120,000 down to about £90,000.

It is contended by the appellants that this reduction in the equalization is sufficient evidence here to shew that the assessment of the individual case of the G. W. R. W. should be reduced in the same ratio.

At first sight this would appear reasonable; but on close examination of the Statute, it is by no means so clear that this is proper evidence for the County Judge, on appeal, to go upon in any case. I am strongly inclined to think that it is not, as the equalization by the County Council was no doubt intended to take place under the Statute *after* the duties of the assessors and decision of the Court of Revision, if required; and even *after* the decision of the County Judge, in case of an appeal from the Court of Revision, and is apparently intended for other purposes than the guidance of the assessors, or the Court of Revision, or the Court of Appeal, as to the amount that each individual ought to be assessed in the first instance, as the duties of either of them would or ought to be conducted so as to correct the Assessment Rolls before they are sent to the County Council for the purpose of equalization. In this case it so happened, by parties not being prepared to go into the appeal at an early day, that the county equalization took place before the case was heard, though after the assessment by the Judge for the hearing; otherwise *in this*, and as I think was intended by the Act, *in all cases*, judgment would have been had on appeal before the equalization, which could not have been in evidence, of course.

It is quite clear that for the purpose of county rates, the amount, increased or reduced by the equalization, is the guide by which the inferior municipalities must be rated in raising their individual proportion of the rates for county purposes. But that increase or reduction must be made by the inferior municipalities, (see 23 sec.,) and *not* by the County Judge on appeal from the Court of Revision, as, if the Judge did it, it could only extend to the individual case, and would increase or reduce *again* by data taken from the county equalization, what the inferior municipality was bound also to increase or reduce by the same *equalization*. In this case the Municipal Council of Windsor would first reduce the valuation for assessment of the whole village, from £120,000 to £90,000, i.e., £30,000 less by the effect of the 32 sec. on the equalization; and if the Judge took the equalization as a guide, and sent in the order (28 sec.) to correct the Assessment Roll under it, the individual £60,000 valuation for assessment of the G. W. R. W. property would be reduced £15,000 more, which could not have been intended, it, in fact, having the effect (taking the same data as evidence) of reducing the assessed value of the G. W. R. W. property about 25 per cent. less in proportion than any other property in the same village. The decision of the Court of Revision, for these reasons, should be considered to stand untouched.

MONTHLY REPERTORY.

Notes of English Cases.

COMMON LAW.

H. OF L. LANG *v.* BROWN. *May* 8.

Arbitration—Enlarging time for award—Umpire.

A deed of submission was entered into, to A. and B., and in the event of their differing in opinion, to any umpire they might appoint, and the parties agreed to submit to "whatever the arbitrator or umpire should determine by an award or awards interim or final," and gave powers to them to enlarge the time. Within the last enlargement of time made by A. and B., they delivered no award, but having agreed upon all matters except two, they appointed C. as umpire in and concerning those two matters, and to that extent devolved upon him all the powers competent to an umpire. C. then enlarged the time for making the award generally, and within that time, but after the expiry of the last enlargement made by themselves, A. & B. delivered their award regarding those matters which they had not referred to the umpire.

Held, reversing the decision of the Court of Session that the award of the arbitrators was not within the proper time, for that the enlargement made by the umpire was not applicable to their award, being beyond his powers as regarded them.

H. OF L. DREW *v.* DREW. *March* 8.

Arbitration—Rescinding submission—Misconduct of arbitrator—Waiver of irregularity.

Where an arbitrator, to whom certain disputed debts between A. & B. had been referred, was one of several trustees who had lent part of the trust monies to A. unknown to B., who on discovering the fact, and that A. was insolvent, applied to the court to rescind the submission:—

Held, the interest in the arbitrator was too remote to warrant the court in rescinding.

Where an arbitrator examines witnesses behind the back of one of the parties, such party is justified in at once abandoning the reference, and applying to the judge to rescind the submission, but if he continue, after the fact has come to his knowledge, to attend the subsequent proceedings, this will be a waiver of the irregularity, and he cannot afterwards set aside the award on that ground.

H. OF L. WALKER *v.* STEWART. *March* 13.

Covenant in conveyance as to use of water construction.

A. conveyed to B. in fee a parcel of land lying about twenty yards from a stream, the soil, and both banks of which,

belonged to A., "with liberty to B. to take water from the said stream for the use of his mill, by a pipe not exceeding twelve inches in diameter."

Held, B. had no right to dam up the bed of the stream so as to force the water into the pipe, thereby making it always run to the full.

C.C.R. REG. v. EAGLETON. *July 9.*

Misdemeanor—Attempt to commit—Indictment—Fraud—Breach of contract—Delivering short weight—False Pretences—Attempt to obtain money—Obtaining credit in account.

An indictment in one count charged A. with a fraud, alleging that he had contracted with the guardians of the poor to deliver to the out-door poor of a certain parish, loaves of bread of a certain weight, at a certain price; but that he had delivered to different poor people loaves of less weight, intending to deprive them of proper food and sustenance, and to endanger their healths and constitutions, and to cheat and defraud the guardians.

Held, that this count could not be sustained, as the delivery of a less quantity than that contracted for was a mere private fraud, no false weights or tokens having been used.

Another count charged the defendant with attempting to obtain money from the guardians by falsely pretending to the relieving officer that he had delivered to certain poor persons certain loaves, and that each loaf was of a certain weight.

The evidence was that he had contracted to deliver loaves of the specified weight to any poor person bringing a ticket from the relieving officer, and that the duty of the defendant was to return those tickets at the end of each week, together with a written statement of the number of loaves delivered by him to the paupers; whereupon he would be credited for that amount in the relieving officer's book, and the money would be paid at the time stipulated in the contract, namely, at the end of two months from a day named. The defendant having delivered loaves of less than the specified weight, returned the tickets and obtained credit in account for the loaves so delivered; but before the time for payment of the money arrived, the fraud was discovered.

Held, that this was a case within the Statute against false pretences, because the defendant had been guilty of a fraudulent misstatement of an antecedent fact, and had not merely sold goods to the prosecutors upon a misrepresentation of weight or quality.

Quære, whether a case of this latter description is within the Statute?

Held, also, that although the defendant had obtained only credit in account, and could not therefore have been convicted of the complete offence, he might have been convicted of an attempt to obtain money, he having done all that depended upon himself, towards obtaining it.

M.R. MILLER v. CHAPMAN.

Will—Bequest in the alternative—Ambiguity.

A testator directed that all the property coming to him and his heirs under the will of T., at the death of H. and his wife, to whom it was left for life, should be divided equally between his (testator's) children living at the time of their decease, "or such others lawfully begotten, as would have been entitled to it at the death of their parents."

Held, that a grandchild, whose parent survived the testator but pre-deceased the tenant for life, was excluded.

V.C.R. THORNBER v. WILSON. *April 24-26 & 30.*

Mortmain—Devise—Charitable trust.

A testator devised some lands "to the then minister of the Roman Catholic Chapel at L., and his successors, ministers of the same chapel, for ever, as an addition to the stipend of such chapel;" other lands "to T. W., minister of the Roman Catholic chapel at K., and to his successors for ever;" and the rents and profits of other lands "to the officiating minister of the said Roman Catholic chapel at K., for and during the term of seven years after his (the said testator's) decease.

Held, that these devises were not intended for the devisees personally, but for the chapels, and that they were void under the Statutes of Mortmain.

CORRESPONDENCE.

To the Editor of the "Law Journal."

SIR,

I have been requested by some of the Reeves of this County to enquire your opinion as to the legality of raising the rate of Statute Labour per day, as in some townships the municipalities have put it up to one dollar per day; and the point is much disputed. An answer in the next number of the *U. C. Law Journal* will therefore much oblige,

Your obed't serv't,
A. S.

[The provisions of the 12 Vic. ch. 81, sec. 31, clause 27, would not apply to the question you put; and it is only under the circumstances within that clause that the rate of commutation for Statute Labour is not to exceed two shillings and sixpence for each day's labour. We see nothing to prevent a Township Municipality, under by-law, fixing the rate at upwards of two shillings and sixpence per day: on the contrary, secs. 36 & 38 of the 16 Vic. ch. 181, appear to contemplate that sum, *or such other sum as may have been determined by the Municipal Council of the Township.*

The question has not, to our knowledge, been raised before the courts. A fair rate would seem to be the average rate of labour per day in the peculiar locality.—*Ed. L. J.*]

To the Editor of the "Upper Canada Law Journal."

SIR,

A Township Council submit to the vote of the inhabitants a by-law for the purpose of issuing debentures for a given sum, payable by ten annual instalments, with interest, at stated periods (half-yearly.)

Suppose proper notice was given in the newspapers, but that the several notices to be posted in the township were put up one week only previous to the day of voting, and not any objection made at the poll to the by-law, nor to the non-posting the several notices in the township in due time, would the Township Municipal Council be sustained by law in carrying out the by-law, it having been passed by a majority of voters?

Yours,
W. S.

[Assuming that the by-law was passed under the provisions of the 16 Vic. ch. 22, no objection to the by-law, or to the non-posting of the notices, could be made at the poll: "the only question to be determined at such meeting;" sec. 2 cl. 5, being the approval or non-approval of the by-law. The Town-

ship Council would not, however, be sustained by law in carrying out the by-law, on the ground solely of its having been passed by a majority of voters, unless the notices were given as required by law. Under the 11th clause of that section, the Governor-General in Council must be satisfied that the by-law was published and notice given as required. —*Ed.. L. J.*]

APPOINTMENTS TO OFFICE, &c.

COUNTY COURT JUDGES.

WILLIAM ROSS, of Osgoode Hall, Esquire, Barrister-at-Law, to be Judge of the County Court of the United Counties of Stormont, Dundas and Glengary, in the room of George S. Jarvis, Esquire, resigned.—[Gazetted 22nd Sept., 1855.]

CLERK OF COUNTY COURT.

JOHN TWIG, of the town of Picton, Esquire, to be Clerk of the County Court of the County of Prince Edward.—[Gazetted 22nd September, 1855.]

CORONERS.

GEORGE HERRICK, Esquire, M.D., EDWARD M. HODDER, Esquire, M.D., JOHN SCOTT, Esquire, M.D., to be Associate Coroners in and for the city of Toronto.—[Gazetted 8th September, 1855.]

WILLIAM McPHERSON, of the township of Caledonia, Esquire, to be an Associate Coroner for the County of Haldimand.—[Gazetted 22nd of September, 1855.]

NOTARIES PUBLIC IN U.C.

SAMUEL SHERWOOD SMADES, of the township of Humberstone, gentleman; and WILLIAM MARSHALL MATHESON, of the city of Toronto, Esquire, Barrister-at-Law, to be Notaries Public in U.C.—[Gazetted 15th Sept., 1855.]

MALCOLM COLIN CAMPBELL, of Goderich, Esquire, Attorney-at-Law, to be a Notary Public in U. C.—[Gazetted 22nd Sept., 1855.]

LAW SOCIETY OF UPPER CANADA,

(OSGOODE HALL.)

Trinity Term, 19th Victoria, 1855.

During this present Term of Trinity the following Gentlemen were called to the degree of Barrister-at-Law:

On Monday the 27th August—

THOMAS CLARK,
SAMUEL ROWLANDS,
ALFRED BOULTBEE,
COLUMBUS HOPKINS GREEN,
ADAM FERRIE, Jun.,
ALFRED FRANCIS WRIGHT,
JAMES HARROLD DOYLE,
WILLIAM MARSHALL MATHESON,
JAMES FRASER, Junior,
JAMES BOYD DAVIS, Esquires.

On Saturday, 1st September—

WILLIAM MENDELL, Esquire.

On Tuesday, 4th September.

FITZWILLIAM HENRY CHAMBERS.
MAUNSELL BOWERS JACKSON.
JOHN ROBERT JONES.
JAMES BEATY.
PHILIP TURNER WORTHINGTON.
ROBERT CLEOBUREY STONEMAN.
ALEXANDER GEORGE FRASER, Esquires.

On Saturday, 8th September.

ROBERT SUTHERLAND, Esquire.

On Tuesday the 12th of June, in this Term, the following Gentlemen were admitted into this Society as Members thereof, and entered in the following order as Students of the Law, their examinations having been classed as follows, viz:

Senior Class:

Mr. WALTER ROSS MCDONALD.

Junior Class.

Mr. GEORGE LOUIS PHILIPPE CARRIERE.
" FREDERICK JOHN DIGNAN SMITH.
" JOHN MICHAEL TIERNEY.
" WILLIAM PENN BROWN.
" FREDERICK PROUDFOOT.
" WILLIAM MCKINLAY.
" JAMES ALEXANDER MCCULLOCH.
" SIMPSON HACKETT GRAYDON.
" WILLIAM HEPBURNE SCOTT.
" ALEXANDER DICKIE MCNAUGHTON.
" WILLIAM DUMMER POWELL.
" JAMES GREER.
" HENRY FREDERIC DUCK.
" WILLIAM DOW FOOTE.

Ordered—That the examination for admission shall, until further order, be in the following books respectively, that is to say—

For the Optime Class:

In the Phœnissæ of Euripides, the first twelve books of Homer's Iliad, Horace, Sallust, Euclid or Legendre's Geometrie, Hind's Algebra, Snowball's Trigonometry, Earnshaw's Statics and Dynamics, Herschell's Astronomy, Paley's Moral Philosophy, Locke's Essay on the Human Understanding, Whateley's Logic and Rhetoric, and such works in Ancient and Modern History and Geography as the candidates may have read.

For the University Class:

In Homer, first book of Iliad, Lucian (Charon, Life or Dream of Lucian and Timon), Odes of Horace, in Mathematics or Metaphysics at the option of the candidate, according to the following courses respectively: Mathematics, (Euclid, 1st, 2nd, 3rd, 4th, and 6th books, or Legendre's Geometrie, 1st, 2nd, 3rd, and 4th books, Hind's Algebra to the end of Simultaneous Equations); Metaphysics—(Walker's and Whateley's Logic, and Locke's Essay on the Human Understanding); Herschell's Astronomy, chapters 1, 3, 4, and 5; and such works in Ancient and Modern Geography and History as the candidates may have read.

For the Senior Class.

In the same subjects and books as for the University Class.

For the Junior Class:

In the 1st and 3rd books of the Odes of Horace; Euclid, 1st, 2nd, and 3rd books, or Legendre, 1st and 2nd books; and such works in Modern History and Geography as the candidates may have read: and that this Order be published every Term, with the admissions of such Term.

Ordered—That the class or order of the examination passed by each candidate for admission be stated in his certificate of admission.

NOTICE.—By a Rule of Hilary Term, 18th Victoria, students keeping Term are henceforth required to attend a course of Lectures to be delivered, each Term, at Osgoode Hall, and exhibit to the Secretary on the last day of Term, the Lecturer's Certificate of such attendance.

Lecturer next Term—O. MOWAT, Esquire.

Subject—Equity Jurisprudence.

Hour of Lecture—From 9 o'clock to 10 o'clock, A.M.

ROBERT BALDWIN,
Treasurer.

Trinity Term, 19th Victoria, 1855.