DIARY FOR MARCH.

1. SUN.. 1*st Sunday in Lent.* St. David.
2. Mon.. Last day for notice of trial County Court. Recorder's Court sits. Last day for setting down for re-hearing.
4. Wed.. Last day for notice re-hearing.
8. SUN.. 2*nd Sunday in Lent.*
10. Tues.. Quarter Sessions and County Court Sittings in each County.
12. Thurs. Error and Appeal Sittings. Re-hearing Term commences.
15. SUN.. 3*rd Sunday in Lent.*
18. Tues.. *St. Patrick's Day.*
22. SUN.. 4*th Sunday in Lent.*
25. Wed.. *Lady Day,* Appeals from Chancery Chambers.
29. SUN.. 5*th Sunday in Lent.*

THE

Canada Law Journal.

MARCH, 1868.

THE CHIEF JUSTICE OF ONTARIO.

We are glad to learn that Chief Justice Draper has at length been induced to take a short repose from the severe and unremitting labours incident to his high position.

For nearly twenty-one years, his pre-eminent abilities have been devoted to the service of his country, in a judicial capacity. His position has been no sinecure; and if any man ever earned a holiday, that man is he whom we of the professional are proud to call our Chief.

His request for six months' leave of absence, made at the urgent solicitation of his many friends, was acceded to with the alacrity of a government that had the good sense to appreciate the services of such an able and faithful servant; and though his absence even for a short time will be a severe loss, it will be borne patiently in the knowledge that he is enjoying and benefitting by his holiday, and in the confident hope that we shall soon again see him take his place in renewed health and strength.

MARRIAGE.

Whilst discussing the validity of Marriages solemnized between Christians it may not be uninteresting to notice a decision that has been given in the Superior Court at Montreal, in the Province of Quebec, as to the validity of a marriage celebrated after the manner of one of the Indian nations of this continent.

The marriage, the validity of which was disputed in the case of *Connolly* v. *Woolrich and Johnson et al.*, was one of an unusual character, at least in this age of the world's history, having been contracted by a Christian with a Pagan, a daughter of one of the chiefs of the Cree nation.

The case is reported at great length in the *Lower Canada Jurist*, vol. xi., p. 197, from which we take a summary of the case. From this it will be seen that a number of points, very interesting in themselves, but only incidentally connected with the main question, are touched upon. The facts of this curious case were as follows:

William Connolly was born about 1786, at Lachine, in Lower Canada, which was his original domicile, and remained there till the age of 16, when he went to the North West territory, where he resided at different posts of the North West Company for 30 years. In 1803 at the age of 17 years, he took to live with him, as his squaw or Indian wife, an Indian girl, the daughter of an Indian Chief, with the consent of her father, and cohabited with her as his squaw or Indian wife, according to the usages and customs of the Cree nation to which she belonged. They cohabited in the Indian country, and were faithful to one another there for 28 years, and had a family of six children. They came to Lower Canada in 1831 and cohabited there for a short time as husband and wife. In 1832 Connolly left his squaw, and had a marriage ceremony, after a dispensation by the Bishop, celebrated between himself and his second cousin Julia Woolrich, according to the rites of the Roman Catholic Church in Lower Canada where he continued to be, and he, from that time, till his death, in 1849, cohabited with her as wife.

Mr. Justice Monk, who heard the cause, gave a very elaborate judgment, which, with his full statement of the case is not contained in less than 67 closely printed pages of the *Jurist.* The principal points decided by him incidental to question principally involved, were shortly these:—

That though the Hudson's Bay Company's Charter is of doubtful validity, yet if valid, the chartered limits of the company did not extend westward beyond the navigable waters of the rivers flowing into the Bay:

That the English Common law, prevailing in the Hudson's Bay territories, did not apply to

natives who were joint occupants of the territories; nor did it supersede or abrogate, even within the limits of the Charter, the laws, usages, and customs of aborigines:

That no other portions of the English Common law, than that introduced by King Charles' Charter obtain in the territories of the Company:

That the English law was not introduced into the North West territories by the cession by France to England, nor by royal Proclamation subsequent to that date:

That neither the decrees of the Council of Trent, nor the ordinance of the French kings, nor the British Marriage Acts, were law or in force at Rat River, or in any part of the North West Territories, in 1803:

The answers to the main questions were not arrived at without a mass of evidence being taken, much of which we should not look upon as altogether relevant to the issue, and which did not shew the habits of one of the principal "protectors" of the settlement, to be the most moral in the world. The points decided with respect to the law of marriage, were the following:

That a marriage contracted where there are no priests, no magistrates, no civil or religious authority, and no registers, may be proved by oral evidence, and that the admission of the parties combined with long cohabitation and repute will be the best evidence:

That such a marriage, though not accompanied by any religious or civil ceremony, is valid, and that an Indian marriage between a Christian and a woman of that nation or tribe is valid, notwithstanding the assumed existence of polygamy and divorce at will, which are no obstacles to the recognition by our Courts of a marriage contracted according to the usages and customs of the country:

That a Christian marrying a native according to their usages, cannot exercise in Lower Canada the right of divorce or repudiation at will, though this is a right which, together with polygamy, obtains among the Crees:

That an Indian marriage, according to the usage of the Cree country, followed by cohabitation and repute, and the bringing up of a numerous family, will be recognized as a valid marriage by our Courts, and that such a marriage is valid: the Indian custom being, as regards the jurisdiction of this Court, a foreign law of marriage, which obtains however within the possessions of the Crown of England, and which cannot be disregarded so long as they are unaltered:

That Connolly never lost his domicile of birth and never acquired one in the Indian Territory.

A late decision in England shows that a somewhat different view of the law is there taken in cases where a marriage is contracted between a man and woman who profess a faith allowing polygamy, in a country where polygamy is lawful; it having been held that such a marriage was not a marriage as understood in Christendom; and, though valid by the *lex loci*, and though both parties were single and competent to contract marriage, the English matrimonial court will not recognize such as a valid marriage in a suit by one of the parties for dissolution of marriage on the ground of the other's adultery—*Hyde* v. *Woodmansee*, Law Rep. 1 P. & D. 130.

A somewhat similar case to that decided in Lower Canada was the English case of *Armitage* v. *Armitage*, (L. R. 3 Eq.: 343—noted in Dig. of Eng. Law Rep. *ante* vol. III., N. S., p. 301.) But in that case the evidence before the court as to the alleged marriage was not very satisfactory, being that of the supposed husband, who said he was a British subject, born abroad, of British parents; that he came to New Zealand in 1828, and had lived there ever since; that, in 1829, he married Tuhi Tuhi, and that such marriage was solemnized according to the laws and customs then in force in New Zealand; that New Zealand was not then a British colony, and there was not then a Christian minister, nor any register of marriages, in the island; and that Tuhi Tuhi had always lived and still lived with him as his wife. He did not state his parents' name. He said that Hannah, before her marriage, was called Tuhi Tuhi, and not by her father's name, in conformity with the customs of the natives of New Zealand, but there was no evidence what the laws and customs of such natives were. But no evidence was given as to the laws and customs of the natives respecting marriages. The Court held that this evidence was insufficient to establish either of these points.

John Gwynne, Esq. Q.C. has been appointed to take the Assizes for York and Toronto, in the absence of the Chief Justice.

JUDGE'S NOTES.

It may be useful to state what is believed to be the practice of the most experienced of the judges, with reference to giving or withholding copies of their notes taken at *Nisi Prius*.

As we understand it, the judge's notes are intended, in the first place, for the use of the judge himself, or for the information of the proper court, and not for the use of the public or of either party to the cause. Copies therefore will be refused, unless it clearly appears that they are desired for the benefit of both parties, as where the parties have consented that they shall be used as the evidence between them on a new trial, or in making up appeal books, or under some other special circumstances which might possibly arise.

It is thought that an indiscriminate liberty to use judges notes might lead to most injurious results, and be made a means of improperly harassing witnesses, and particularly because, as a general thing, the evidence is not pretended to be taken down in the exact words of witnesses, so that their meaning might be misunderstood, or statements might be omitted, which would explain apparent inaccuracies or contradictions; or the production of copies of the notes of evidence at a former trial might at a subsequent trial lead to unseemly disputes as to whether the judge had or had not taken down the evidence correctly.

The rule is a wholesome one, and not as generally known or understood as might be supposed.

We direct attention to the remarks of a correspondent on the operation of the Insolvent Act, and particularly with reference to what he says with reference to the anomalous position in which official assignees place themselves by a desire to increase their business and their fees.

The present system, it is said, tends to make those assignees, who live by the number of assignments made to them, the agents rather of insolvents than of their creditors. Nothing is more probable than this, and our correspondent forcibly points out the evils arising from it. There is a strong temptation placed in the way of an assignee to facilitate the success of the insolvent in obtaining his discharge, at the expense of the right which creditors have to obtain as much as possible from the insolvent's estate.

Curiosity, always rife as to the appointment of new officials, particularly where the offices are of much responsibility or of large emolument, has almost died away with reference to the County Judgeship of York. After such long delay we may well expect that the appointment will be such as will be thoroughly satisfactory to the profession and the public.

ACTS OF LAST SESSION.

We make room in this number for such of the Acts of the Session of the Parliament of Ontario, which has just closed, as will be interesting to our readers, or useful in their practice. Promptitude on our part in this respect will be the more appreciated as these Acts, so far as we know, came into operation on the day they were assented to, and therefore long before the public could obtain copies of them. We must confess that we are unable to discover the necessity for the *immediate* operation of any of them; if they were to come into force a month or two hence, when they might be ready for general distribution, no harm would have been done, and perhaps much mischief prevented, which may have arisen from the want of knowledge of their contents.

Headlong legislation seems to be the order of the day, and we shall have to bestir ourselves to keep in view the actual state of the statute law through the cloud of acts, passed and promised, which our "new brooms" have stirred up.

AN ACT

To amend the Common Law Procedure Act.

[Assented to March 4, 1868.]

Whereas it is desirable to amend the Common Law Procedure Act, therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The three hundred and twenty-fourth Section of the Common Law Procedure Act is hereby repealed, and the following Section shall be substituted for and stand in lieu thereof

"If the Plaintiff in any action of trespass or trespass on the case, recovers by the verdict of a jury, less damages than eight dollars, such plaintiff shall not be entitled to recover in respect of such verdict any costs whatever, whether the verdict be given on an issue tried, or judgment has passed by default, unless the Judge or presiding officer before whom such verdict is obtained immediately afterwards, or at any future time to which he may postpone the consideration of the matter, certifies on the

back of the Record, in the form hereinafter prescribed, to entitle the plaintiff to full costs; and in case such certificate be not granted then, the defendant in such action shall be entitled to set off his costs against such verdict and recover judgment and issue execution against the plaintiff for the balance of such costs as between Attorney and client, unless the said Judge or presiding officer shall certify as hereinafter provided upon the Record, in manner aforesaid, that the defendant is not entitled to recover his costs in the cause against the plaintiff."

2. The three hundred and twenty-eighth section of the Common Law Procedure Act is hereby repealed, and the following section shall stand in the place thereof:

"In case a suit of the competence of a County Court be brought in either of the Superior Courts of the Common Law, or in case a suit of the proper competence of a Division Court be brought in either of such Superior Courts, or in a County Court, the costs shall be taxed in the manner following:

(1.) In case the Judge, who presides at the trial of the cause, certifies in open Court, immediately after the verdict has been rendered, or at any future time to which he may then postpone the consideration of granting or refusing the certificate, that it is a fit cause to be withdrawn from the County Court or Division Court, as the case may be, and brought in the Superior Court or a County Court, as the case may be, the plaintiff shall recover his costs of suit according to the practice of the Court in which the action is brought, in like manner, and subject to the like deduction or set off, for costs of the issues upon which the defendant may have succeeded, as he would have done and would have been subject to in case his suit had been of the proper competence of the Court in which the action is brought.

(2.) In case the Judge who presides at the trial of the cause certifies at the time aforesaid that the plaintiff had reasonable ground for believing he had the right of withdrawing his cause from the County Court or Division Court, as the case may be, and bringing it in the Superior Court or a County Court, as the case may be, and that the defendant, without just reason, defended the same, the plaintiff shall recover his costs of suit according to the practice of the Court in which the action should have been brought, in like manner, and subject to the like deduction or set-off for costs of issues upon which the defendant may have succeeded, as he would have done and would have been subject to in case he had brought his action in such inferior court.

(3.) In case the Judge, who presides at the trial, shall not certify as aforesaid, the plaintiff shall recover only County Court costs, or Division Court costs, as the case may be, and the defendant shall be entitled to tax his costs of suit as between attorney and client, and so much thereof as exceeds the taxable costs of defence which would have been incurred in the County Court or Division Court, shall, in entering judgment, be set off and allowed by the taxing officer against the plaintiff's County Court or Division Court costs to be taxed, or against the costs to be taxed, and the amount of the verdict if it be necessary, and if the amount of the costs so set off exceeds the amount of the plaintiff's verdict and taxed costs, the defendant shall be entitled to execution for the excess against the plaintiff."

3. The Certificate may be as follows: "I certify to entitle the plaintiff to full costs."

Or, "I certify to prevent the defendant deducting costs."

Or, "I certify to entitle the plaintiff to County (or Division) Court costs."

4. The two hundred and seventy-first section of the said Common Law Procedure Act is repealed, and the following clause substituted therefor:—

"(1.) In case a part only be made by the Sheriff on, or by force of any execution against goods and chattels, the Sheriff shall be entitled besides his fees and expenses of execution, to poundage only upon the amount so made by him, whatever be the sum endorsed upon the writ, and in case the personal estate, except chattels real, of the defendant or defendants be seized or advertised, on or under an execution, but not sold by reason of satisfaction having been otherwise obtained, or from some other cause, and no money be actually made by the sheriff on or by force of such execution, the Sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized, not exceeding the amount endorsed on the writ, or such less sum as a Judge of the Court out of which the writ issued may deem reasonable under the circumstances of the case. Provided, also, in cases of writs of execution upon the same judgment to several Counties wherein the personal estate of the judgment debtor or debtors, has been seized or advertised, but not sold by reason of satisfaction having been obtained under or by virtue of a writ in some other County, and no money has been actually made on such execution, the Sheriff shall not be entitled to poundage, but to mileage and fees only for the services actually rendered and performed by him, and the Court out of which the writ issued or any Judge thereof, may allow him a reasonable charge for such services, in case no special fee therefor be assigned in any table of costs."

"(2.) In case where any person liable on any execution shall be dissatisfied as to the amount of poundage fees and expenses of execution that any Sheriff may claim under the tariff of fees and allowances now in force, or under this Act, he may, before or after payment thereof, apply to the Court out of which such writ issued, or to any Judge thereof, and if, upon a statement of the whole facts, the said Court or Judge, after notice to the Sheriff, is of opinion that such amount is more than reasonable, notwithstanding it may be according

to the tariff, or this Act, the same shall be reduced or ordered to be refunded, upon such terms as to costs or otherwise as the court or Judge may think fit to impose.

AN ACT

To secure Free Grants and Homesteads to actual Settlers on the Public Lands.

[Assented to March 4, 1868.

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

1. This Act shall be called and known as "The Free Grants and Homestead Act of 1868," and may be so cited or designated in all Acts or proceedings whatsoever.

2. The Statute of the Parliament of the late Province of Canada, passed in the twenty-third year of Her Majesty's Reign, entitled "An Act respecting the Sale and Management of the Public Lands," may be cited and designated in all Acts and proceedings as "The Public Lands Act of 1860," and is the Act hereinafter so designated.

3. The thirteenth section of "The Public Lands Act of 1860" is hereby repealed, except that Patents may issue for all lands heretofore located as free grants under that section, as if this Act had not been passed.

4. The Lieutenant-Governor in Council may appropriate any Public Lands considered suitable for settlement and cultivation, and not being Mineral Lands or Pine Timber Lands, as Free Grants to actual Settlers, under such regulations as shall from time to time be made by Order in Council, not inconsistent with the provisions of this Act.

5. Such grants or appropriations shall be confined to lands surveyed or hereafter to be surveyed, situate within the tract or territory composed of the Districts of Algoma and Nipissing, and of the lands lying between the Ottawa River and the Georgian Bay, to the west of a line drawn from a point opposite the south-east angle of the Township of Palmerston north-westerly along the western boundaries of the Townships of North Sherbrooke, Lavant, Blithfield, Admaston, Bromley, Stafford and Pembroke to the Ottawa River, and to the north of the rear or northerly boundaries of the Townships of Oso, Olden, Kennebec, Kaladar, Elzevir, Madoc, Marmora, Belmont, Dummer, Smith, Ennismore, Sommerville, Laxton, Carden, Rama, and of the River Severn.

6. The person to whom any land may be allotted or assigned under such regulations for a free grant thereof, shall be considered as located for said land within the meaning of this Act, and is hereinafter called the Locatee thereof.

7. No person shall be located for any land under this Act or said regulations unless such person shall be of the age of eighteen years or upwards, nor shall any person be so located for any greater quantity than one hundred acres.

8. Before any person shall be located for any land as aforesaid, such person shall make affidavit to be deposited with the Agent authorized to make such location, that he or she has not been located for any land under this Act or under said regulations, and that he or she is of the age of eighteen years or upwards, and believes the land for which he or she applies or desires to be located, is suited for settlement and cultivation, and is not valuable chiefly for its mines minerals or pine timber, and that such location is desired for his or her benefit and for the purpose of actual settlement and cultivation of such land, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever, nor for the purpose of obtaining, possessing or disposing of any of the pine trees growing or being on the said land, or any benefit or advantage therefrom, or any gold, silver, copper, lead, iron, or other mines or minerals, or any quarry or bed of stone, marble or gypsum thereon.

9. No patent shall issue for any land located under this Act or under said regulations until the expiration of five years from the date of such location, nor unless or until the Locatee or those claiming under him or some of them shall have performed the following settlement duties, that is to say, shall have cleared and have under cultivation at least fifteen acres of the said land, whereof at least two acres shall be cleared and cultivated annually during the five years next after the date of the location, to be computed from such date, and have built a house thereon fit for habitation at least sixteen feet by twenty feet, and shall have actually and continuously resided upon and cultivated the said land for the term of five years next succeeding the date of such location, and from thence up to the issue of the Patent, except that the Locatee shall be allowed one month from the date of the location to enter upon and occupy the land, and that absence from the said land for in all not more than six months during any one year, (to be computed from the date of the location) shall not be held to be a cessation of such residence, provided such land be cultivated as aforesaid.

On failure, in performance of the settlement duties aforesaid, the location shall be forfeited, and all right of the Locatee, or of any one claiming under him or her, in the land shall cease.

10. All Pine trees growing or being upon any land so located, and all gold, silver, copper, lead, iron, or other mines or minerals, shall be considered as reserved from said location, and shall be the property of Her Majesty, except that the Locatee or those claiming under him or her, may cut and use such trees as may be necessary for the purpose of building, fencing, and fuel, on the land so located, and may also cut and dispose of all trees required to be removed, in actually clearing said land for cultivation, but no pine trees (except for necessary building, fencing, and fuel as aforesaid,) shall

be cut beyond the limit of such actual clearing before the issuing of the Patent, and all pine trees so cut and disposed of (except for the necessary building, fencing, and fuel as aforesaid), shall be subject to the payment of the same dues, as are at the time payable by the holders of licenses to cut timber or saw logs. All trees remaining on the land at the time the Patent issues shall pass to the Patentee.

11. On the death of the Locatee, whether before or after the issue of the Patent for any land so located, all his then right and interest in and to such land shall descend to and become vested in his widow during her widowhood in lieu of dower, in case there be such widow surviving such Locatee, but such widow may elect, to have her dower in such land in lieu of the provision aforesaid.

12. Neither, the Locatee, nor any one claiming under him or her, shall have power to alienate, (otherwise than by devise) or to mortgage or pledge any land located as aforesaid, or any right or interest therein before the issue of the Patent.

13. No alienation (otherwise than by devise) and no mortgage or pledge of such land, or of any right or interest therein by the Locatee after the issue of the Patent, and within twenty years from the date of such location, and during the life-time of the wife of such Locatee, shall be valid or of any effect, unless the same be by Deed, in which she shall be one of the grantors with her husband, nor unless such Deed is executed by her in the same presence, and there are the same examination and certificate and at the same time, as shall be at the date of such deed required by Law in the case of married women conveying their real estate.

14. No land located as aforesaid, nor any interest therein, shall in any event be or become liable to the satisfaction of any debt or liability contracted or incurred by the Locatee, his widow, heirs, or devisee, before the issuing of the Patent for such land: After the issuing of the Patent for any such land, and while such land or any part thereof or any interest therein is owned by the locatee or his widow, heirs, or devisees, such land, part or interest, shall during twenty years next after the date of such location be exempt from attachment, levy under execution or sale for payment of debts, and shall not be or become liable to the satisfaction of any debt or liability contracted or incurred before or during that period, save and except any debt secured by a valid mortgage or pledge of such land made subsequently to the issuing of the Patent therefor.

15. Nothing in this Act shall be construed to exempt any land from levy or sale for rates or taxes, now or hereafter legally imposed.

16. Every patent to be issued for any land located as aforesaid shall state in the body thereof, the name of the original Locatee of the said land, and the date of the said location, and that the said Patent is issued under the authority of this Act.

17. This Act shall be taken and read as part of "The Public Lands Act of 1860."

AN ACT

Respecting Overholding Tenants.

[Assented to March 4, 1868.]

Whereas, it is expedient to provide a less expensive and more expeditious mode of proceeding against tenants of occupants overholding wrongfully, than is provided by law; Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows:

1. The Act of the late Parliament of Canada, passed in the twenty-seventh and twenty-eighth year of Her Majesty's reign, chapter thirtieth, and intituled "An Act to afford a more expeditious remedy as regards tenants overholding, wrongfully, in Upper Canada," is hereby repealed; Provided, always, that all proceedings had, or taken under the said Act, shall not be affected by the repeal of the said Act, but the same may be carried on and finally determined under the provisions of the said Act as the same might be if the said Act had not been repealed.

2. In case a tenant, after his lease or right of occupation whether created by writing or by verbal agreement has expired, or been determined, either by the landlord or the tenant, by a notice to quit or notice pursuant to a proviso in any lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses, upon demand made in writing, to go out of possession of the land demised to him or which he has been permitted to occupy, his landlord or the agent of his landlord, may apply to the County Judge of the county, or union of counties, in which such land lies, in term or in vacation, and wherever such Judge may then be, setting forth on affidavit the terms of the demise or right of occupation, if verbal, and annexing a copy of the instrument creating or containing such demise or right of occupation, if in writing; or if a copy cannot be so annexed by reason of the said writing being mislaid, lost or destroyed, or being in the possession of the tenant or from any other cause, then annexing a statement setting forth the terms of the demise or occupation and the reason why a copy of the said writing cannot be annexed, and also annexing a copy of the demand made for the delivering up of possession, and stating also the refusal of the tenant to go out of possession, and the reasons given for such refusal, if any were given, adding such explanation in regard to the ground of such refusal as the truth of the case may require; and this section shall extend, and be construed to apply to tenancies from week to week, from month to month,

from year to year, and tenancies at will, as well as to all other terms, tenancies, holdings or occupations.

3. If, upon such affidavit, it appears to such County Judge that the tenant wrongfully holds, without colour of right, and that the landlord is entitled to possession, such Judge shall appoint a time and place at which he will enquire and determine whether the person complained of was tenant to the complainant for a term or period which has expired, or has been determined by a notice to quit or otherwise, and whether the tenant without any colour of right holds the possession against the right of the landlord, and whether the tenant does wrongfully refuse to go out of possession, having no right to continue in possession, or how otherwise.

4. Notice in writing of the time and place so appointed by the County Judge for holding such inquiry, shall be, by the landlord, served upon the tenant or left at his place of abode, at least three days before the day so appointed, if the place so appointed be not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the affidavit on which the appointment was obtained, and of the papers attached thereto.

5. If at the time and place appointed, as aforesaid, the tenant, having been duly notified, as above provided, fails to appear, the County Judge, if it appears to him that the tenant holds without color of right, may order a writ to issue to the sheriff, in the Queen's name, commanding him forthwith to place the landlord in possession of the premises in question; but if the tenant appears at such time and place, the County Judge shall, in a summary manner, hear the parties, and examine into the matter, and shall administer an oath or affirmation to the witnesses adduced by either party, and shall examine them; and if after such hearing and examination it appears to the County Judge that the case is clearly one coming under the true intent and meaning of the second section of this Act, and that the tenant holds without color of right against the right of the landlord, then he shall order the issue of such writ, as aforesaid, otherwise he shall dismiss the case; and the proceedings, in any such case, shall form part of the records of the County Court: and the said writ may be in the form or to the effect of forms number one or number two, in Schedule A, forming part of this Act, according as the tenant is ordered to pay costs or otherwise, and on any such examination the parties shall be competent witnesses.

6. Where any such writ has been issued, either of the superior courts of common law for the Province of Ontario, may, on motion, before the end of the second term after the issue of such writ, command such County Judge to send up the proceedings and evidence in the case to such superior court certified under his hand, and may examine into the proceedings, and if they find cause may set aside the same, and may, if necessary, order a writ to issue to the sheriff, commanding him to restore the tenant to his possession, in order that the question of right, if any appear, may be tried, as in other cases of ejectment.

7. The judges of the superior courts of common law, for the Province of Ontario, may, from time to time, make such orders respecting costs, in cases under this Act, as to them may seem just; and the County Judge, before whom any such case is brought, may, in his discretion, award costs therein, according to any such order then in force, and if no such order is in force, reasonable costs, in his discretion, to the party entitled thereto; and in case the party complaining is ordered to pay costs, execution may issue out of the county court for such costs as in other cases in the county court wherein an order is made for the payment of costs.

8. The County Judge may cause any person to be summoned as a witness to attend before him in any such case, in like manner as witnesses are summoned in other cases in the county court, and under like penalties for non-attendance, or refusing to answer, or wilfully swearing, or affirming falsely in such case.

9. Nothing herein contained shall prevent any landlord from proceeding under the sixty-third, and ten next following sections of the Act respecting ejectment, chapter twenty-seven of the Consolidated Statutes of Upper Canada, if he thinks it advisable to proceed under the said sections, or shall in any way affect the powers of any judge or judges of the superior courts under the same, or under sections fifty-seven, fifty-eight and fifty-nine of the said Act, or shall prejudice or affect any other right or right of action or remedy which landlords may possess in any of the cases herein provided for.

10. In the case of tenancies from week to week and from month to month, a week's notice to quit and a month's notice to quit respectively, ending with the week or the month, as the case may be, shall be deemed sufficient notice to determine, respectively, a weekly or monthly tenancy.

11. The proceedings under this Act shall be entitled in the County Court of the County or union of Counties in which the premises in question are situate, and shall be styled "In the matter of (giving the name of the party complaining) Landlord against (giving the name of the party complained against) Tenant."

12. Service of all papers and proceedings under this Act shall be deemed to have been properly served if made as required by law, in respect of writs and other proceedings in actions of ejectment.

13. In this Act the word "tenant" shall mean and include an occupant, a sub-tenant, under-tenant, and his and their assigns and legal representatives; and the word "landlord" shall mean and include the lessor, owner, the party giving or permitting the occupation of the premises in question and the person entitled to the possession thereof, and his and their heirs and assigns and legal representatives.

14. The following is the Schedule A referred to in this Act:

FORM No. 1.

Ontario, to wit: Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

[L. s.]

To the Sheriff of the ——— Greeting:

Whereas ——— Judge of the County Court of ——— by his order dated the ——— day of ——— A.D. 186 —, made in pursuance of the "Act respecting Overholding Tenants," on the complaint of ——— against ——— adjudged that ——— was entitled to the possession of ——— with the appurtenances in your Bailiwick, and that a Writ should issue out of our said Court accordingly, and also ordered and directed that the said ——— should pay the costs of the proceedings had under the said Act, which by our said Court have been taxed at the sum of ———. Therefore, we command you, that without delay you cause the said ——— to have possession of the said land and premises, with the appurtenances: And we also command you that of the goods and chattels of the said ——— in your Bailiwick, you cause to be made ——— being the said costs so taxed by our said Court as aforesaid, and have that money in our said Court immediately after the execution hereof, to be rendered to the said ———, and in what manner you shall have executed this Writ make appear to our said Court, immediately after the execution hereof, and have there then this Writ.

Witness ——— Judge of our said Court at ——— this ——— day of ——— A.D. 186—

——— *Clerk.*

Issued from the Office of the Clerk of the County Court of the County, or United Counties of ——— *Clerk.*

FORM No. 2.

Ontario, to wit: Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

[L. s.]

To the Sheriff of the ——— Greeting:

Whereas ——— Judge of the County Court of the ——— by his order dated ——— day of ——— A.D. 186 —, made in pursuance of the "Act respecting Overholding Tenants," on the complaint of ——— against ——— adjudged that ——— was entitled to the possession of ——— And ordered that a writ should issue out of our said Court accordingly: Therefore we command you that without delay you cause the said ——— to have possession of the said land and premises, with the appurtenances, and in what manner you shall have executed this Writ make appear to our said Court, immediately after the execution hereof and have there then this Writ.

Witness ——— Judge of our said Court at ——— this ——— day of ——— A.D. 186—

——— *Clerk.*

Issued from the office of the Clerk of the County Court of the County or United Counties of ——— *Clerk.*

AN ACT

As to Executions against Goods and Lands.

[Assented to March 4, 1868..]

Whereas by an Act passed in the session of Parliament held in the twenty-ninth and thirtieth years of Her Majesty's reign, chapter forty-two, intituled "An Act to Amend the Common Law Procedure Act of Upper Canada," the principle is recognized of allowing persons who have priority of executions in regard to goods, to retain the same in regard to lands; but difficulties exist in applying the said Act by reason of its enactment that the Sheriff shall return writs against goods only, in the order of priority in which they come to his hands, whilst, nevertheless, a person having a first execution against goods is entitled to renew the same indefinitely without any return thereof: Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows:

1. Sections five and six of the said Act, and the two hundred and fifty-second section of the Common Law Procedure Act, are hereby repealed and the following substitued therefor:—

"Any person who now is or hereafter may become entitled to issue a writ of execution against goods and chattels, may, at or after the time of issuing the same, issue a writ of execution against the lands and tenements of the person liable, and deliver the same to the Sheriff to whom the writ against the goods is directed, at or after the time of delivery to him of the writ against goods, and either before or after any return thereof; Provided, always, that the Sheriff shall not expose the lands for sale, or sell within less than twelve months from the day on which the writ against the lands is delivered to him."

2. No sale shall be had under any execution against lands until after a return of *nulla bona*, in whole or in part, with respect to an execution against goods in the same suit or matter by the same Sheriff.

3. No Sheriff shall make any return of *nulla bona*, either in whole or part, to any writ against goods until the whole of the goods of the execution debtor in his county have been exhausted.

4. If the amount authorized to be made and levied under the writ against goods be made and levied thereunder, the person issuing the

writ against lands shall not be entitled to the expenses thereof, or of any seizure or advertisement thereunder; and the return to be made by the Sheriff to the writ against lands shall be to the effect that the amount has been so made and levied, as aforesaid.

5. The said writs against lands and goods shall have the same operation and binding effect as heretofore, and the law applicable heretofore on executions shall continue applicable, except so far as variance is requisite, by reason of the enactment hereof.

AN ACT

To Amend the Act, chapter 35 of the Consolidated Statutes of Upper Canada, entitled An Act respecting Attorneys-at-Law.

[Assented to March 4, 1868.

Whereas it is expedient to amend the Act chaptered thirty-five of the Consolidated Statutes of Upper Canada, by making provision for additional examinations in certain cases of persons desiring to be admitted as Attorneys and Solicitors; Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows:

1. Notwithstanding anything in the said Act contained, no persons being of either of the classes of persons mentioned in sub-sections one and two of section two of the said Act shall be admitted or enrolled as an Attorney or Solicitor, unless he has at some time during the year next but two before the time of his final examination, and at some time not less than one year thereafter and during the year next but one before the time of his final examination, passed examinations to the satisfaction of the Law Society.

2. The examinations by this Act required shall be held under the direction of the Benchers of the Law Society, and the said Benchers and Society shall in respect thereof have the same powers, and, so far as may be, follow the same directions as are by the said Act given to them respectively in reference to the examinations by the said Act required.

3. The first of the two examinations by this Act required shall not be requisite in the case of any person, now under articles whose term of service is, at the date of the passing of this Act, within four years of its expiration.

4. The second of the two examinations by this Act required, shall not be requisite in the case of any person whose term of service is at the date of the passing of this Act within two years and six months of its expiration.

5. The preceding sections of this Act shall not apply to any person whose term of service is at the date of the passing of this Act expired.

6. In case any person is prevented by illness or other unadvoidable cause, from presenting himself for, or fails to pass either of the examinations by this Act required, within the time specified, the said Benchers may, in their discretion, permit such person to pass such examination at other times; Provided that not less than nine months shall elapse between the first and second of such examinations, and not less than nine months shall elapse between the second of such examinations and the final examination.

7. The second section of the Act passed in the twenty-eighth year of Her Majesty's reign, chaptered twenty-one, and intituled "An Act to amend the Act respecting Attorneys," is hereby amended by adding thereto the words, "or who, on the the eighteenth day of March, one thousand eight hundred and sixty-five, were entered on the books of the Law Society of Upper Canada as Students-at-Law."

8. The seventh section of the said recited Act is hereby amended by adding thereto the words, "and although the applicant for admission was not, at the time of such service, actually bound by contract in writing, by reason of unintentional omission, and which contract was subsequently executed; Provided, nevertheless, that such service was *bona fide* for three or five years, as the case may be, and commenced on or before the first day of July, one thousand eight hundred and fifty-eight."

9. This Act may be cited for all purposes as "The Attorneys Act, 1868."

AN ACT

To remove doubts as to the authority of certain Commissioners to take affidavits and Bail.

[Assented to February 28, 1868.]

Whereas, it is expedient to remove doubts, respecting the authority of Commissioners appointed under the provisions of chapter thirty-nine of the Consolidated Statutes of Upper Canada, section one, for a union of Counties within this province, to continue to act as such Commissioners and to take and receive affidavits, affirmations and bail, in and for the Junior County, after its separation from such Union of Counties; Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows:

1. All Commissioners appointed under the said Act, for any Union of Counties, and resident within the Junior County or any city set apart from a county for judicial purposes, at the time of the separation thereof from such union, have had since such separation, and still have and may exercise the same powers within such Junior County or city to take and receive affidavits, affirmations and bail, as if they had received their commissions or appointments, respectively for such Junior County at the time of the separation of such Union of Counties, anything in any law or statute to the contrary notwithstanding.

2. No such Commissioner shall after the passing of this Act have or exercise any such powers by virtue of such commission save in such Junior County.

AN ACT

Respecting Voluntary Conveyances.

[Assented to February 28, 1868.]

Whereas it is expedient to amend the Law respecting Voluntary Conveyances: Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows:

1. Notwithstanding the provisions of the statute passed in the twenty-seventh year of the reign of her late Majesty Queen Elizabeth, and chaptered four, no conveyance, grant, charge, lease, estate, encumbrance, limitation, of use or uses which is executed in good faith, and duly registered in the proper Registry Office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance to any subsequent purchaser from the same grantor of the same lands, tenements or hereditaments or any part or parcel thereof, or any rent, profit or commodity in or out of the same, shall be or be deemed or taken to be merely by reason of the absence of a valuable consideration void, frustrate, or of none effect as against such purchaser, or his heirs, executors, administrators or assigns, or any person claiming by, from, or under any of them.

2. Nothing in this Act contained shall have the effect of making valid any instrument which is for any reason other than or in addition to the absence of a valuable consideration void under the said Statute or otherwise; nor shall anything in this Act contained have the effect of making valid any instrument as against any purchaser who has, before the passing of this Act, entered into a binding contract for or received his conveyance upon such purchase.

3. This Act may be cited for all purposes as "The Voluntary Title Conveyances Act (1868)."

AN ACT

Respecting Proceedings in Judge's Chambers at Common Law.

[Assented to March 4, 1868.]

Whereas, it is expedient to make provision for proceedings in Judge's Chambers in the Superior Courts of Common Law: Therefore, Her Majesty, &c., enacts as follows:—

1 Any person acting as Judge of Assize and Nisi Prius in the City of Toronto, whether for the business of the County of York or for the City of Toronto, shall, while so sitting or acting as such Judge, or while the sittings shall last, be enabled to act as a Judge in Chambers in all matters as if he were a Judge of one of the Superior Courts of Common Law.

2. Any person acting as a Judge of Assize and Nisi Prius, shall, in and for the County for which he is acting, and while the sittings of the said Court shall last, be enabled to act as a Judge in Chambers in all matters entered for trial before him, as if he were a Judge of one of the said Superior Courts.

3. In case at any time the two Chief Justices of the said Superior Courts, or in the absence of one of them, the other Chief Justice and one of the Puisne Judges of either of the said Courts, or in the absence of both Chief Justices, then in case two Puisne Judges of the said Courts shall consider it convenient for the dispatch of Chamber business, to appoint a person for any particular time to act as Judge in the transaction of Chamber business, they may, by writing under their hands, appoint either of the Clerks of the Crown and Pleas of the said Superior Courts, or a Barrister of at least five years' standing, to act as Judge for the time to be named in such writing, but such time shall not, on any occasion, exceed the period of one week, and the said time may be renewed from time to time, as often as there may be occasion therfor.

4. This Act shall continue in force for one year from the passing thereof, and no longer.

AN ACT

To amend the Law relating to purchases of Reversions.

[Assented to March 4, 1868.]

Whereas it is expedient to amend the Law as administered in Courts of Equity with respect to purchases of Reversions. Therefore, Her Majesty, &c., enacts as follows:

1. In construing this Act, the word "purchase" shall mean any kind of contract, conveyance or assignment, under or by which any kind of property may be acquired.

2. In case any purchase made before the passing of this Act of any reversionary interest in Real or Personal Estate shall hereafter be sought to be opened or set aside on the ground of undervalue, the onus of proving undervalue shall lie upon the plaintiff.

3. No purchase made after the passing of this Act *bona fide*, and without fraud, of any reversionary interest in Real or Personal Estate, shall be opened or set aside on the ground of undervalue.

4. This Act may be cited for all purposes as "The purchases of Reversions Act (1868)."

AN ACT

For amending the Law of Auctions of Estates.

[Assented to March 4, 1868.]

Whereas there is a conflict between the courts of Law and Equity in respect to the validity of sales by auction where a puffer has bid, although no right of bidding on behalf of the seller was reserved, and it is expedient that an end should be put to such conflict; and, whereas, as sales by auction are now conducted, many of such sales are illegal and could not be enforced against an unwilling purchaser, and it is expedient for the safety of

both seller and purchaser that such sales should be so conducted as to be binding on both parties. Therefore, Her Majesty, &c., enacts as follows:

1. In construing this Act, "auctioneer," shall mean any person selling by public auction: "Land," shall mean any interest in any messuages, lands, tenements, or hereditaments of whatever tenure.: "Puffer," shall mean a person appointed to bid on the part of the seller.

2. Unless in the particulars or conditions of sale by auction of any land, it is stated that such land will be sold subject to a reserved price, or to a right of the seller to bid, the sale shall be deemed and taken to be without reserve.

3. Upon any sale of land by auction, without reserve, it shall not be lawful for the seller or for a puffer to bid at such sale, or for the auctioneer to take, knowingly, any biding from the seller or from a puffer.

4. Upon any sale of land by auction, subject to a right for the seller to bid, it shall be lawful for the seller, or any one puffer to bid at such auction, in such manner as the seller may think proper.

5. Nothing in this Act contained shall be taken to authorise any seller to become the purchaser at the sale.

6. This Act shall not apply to any sale which has taken place before its passage.

7. This Act may be cited for all purposes as "The Auctions of Estates Act (1868)."

JUDGMENTS.

COMMON PLEAS.

Present:—Richards, C. J.; Adam Wilson, J.

Saturday, March 7, 1868.

Corporation of Burleigh v. *Campbell.*—Rule absolute for new trial without costs.

Thompson v. *Leach.*—Judgment for defendant on demurrer, with leave to amend. Rule absolute for new trial on special terms.

Nettle v. *Burke.*—Rule for new trial without costs.

Smith v. *Wallbridge.* — Rule discharged with costs.

Weatherley v. *Hosker.* — Rule of defendant Toms discharged, and rule of defendant Moore to be re-argued.

Anglin v. *Minnis.*—Appeal allowed and judgment to be given in court below for defendant on demurrer to second avowry, and for defendant on demurrer to plea to said avowry.

Cole v. *Buckle.*—Rule discharged.

Strong v. *Skillbeck.* — Rule absolute for new trial, costs to abide the event.

Todd v. *London and Liverpool Ins. Co.*—Rule discharged.

Doyle v. *Eccles.*—Rule to stay proceedings on payment of all costs of suit on or before 1st day of April next, and on delivery of the books to plaintiff on or before first day of next term, then damages to be reduced to 1s ; and plaintiff on entry of judgment and taxation of costs to give credit for any costs he may have received, and in event of non-payment of costs by the day specified, or non-delivery of books by day named, rule nisi to be dischaaged, and, on taxation of costs, credit to be given for any costs that may have been paid.

SELECTIONS.

BOOK ABOUT LAWYERS.

(*Continued from page* 41.)

The Chancellors were required to guard the royal seal with their utmost care, preserved in its crimson purse of state; but, in spite of all their diligence, the seals appear to have been subjected to a number of curious mischances. When James the Second was fleeing from Whitehall, in 1688, he crossed the Thames by night, in a boat rowed by a single sculler, and, when in the middle of the river, drew forth the seal and dropped it overboard; but, wonderful to say, it was not long after brought to shore in the net of a fisherman, who restored it to its proper keepers. When Thurlow was Chancellor, the seal was stolen from his dwelling-house, by a burglar who had forced his way in, and was never recovered. A similar attempt was made to steal the Clavis Regni from Lord Chancellor Nottingham: but it happened that the faithful man was sleeping with the precious trust hidden under his pillow; so that the thief, one Thomas Saddler, failed to find it, and only carried away the mace, for which offence he was afterwards tried and hanged. Lord Eldon's country house once caught fire, and, upon the first alarm, the Chancellor, running out of doors with the seal, which he too kept in his bed chamber, buried it in the flower bed. The conflagration increased, and even Lady Eldon's maid-servants helped to supply the water. "It was," wrote Lord Eldon, "really a pretty sight; for all the maids turned out of their beds, and they formed a line from the water to the fire-engine, handing the buckets; they looked very pretty, all in their shifts." Perhaps this sight turned the old gentleman's head; for, when the fire was out and the sun rose, he had forgotten where he had buried the seal, and had to form his whole household into a digging party, who searched some time before they discovered the buried treasure. In ancient days, the discarded seals were always broken to pieces, and until recent times, with great completeness. When Charles the First's seal was surrendered to Fairfax, in 1646, it was, by order of Parliament, brought to the Bar of the House of Peers, and there broken to pieces by a smith, amidst loud acclamations. In turn, on the Restoration, in 1660, the Commonwealth's seal met a like

fate. For several generations, the custom of breaking discarded seals has been discussed; but the ceremony of *damasking*, as it is termed, is still observed. The sovereign, when he desires formally to set aside an old seal, taps it gently with a hammer, at the same time ordering his loyal subjects to regard it as smashed and ground to powder. The chancellor in office at the time regards the seal so "damasked" as his special perquisite; and a curious controversy on this subject arose between Lord Lyndhurst and Brougham, with regard to their respective claims to George IV.'s great seal. On William IV.'s accession, when an Order in Council for a new seal was made, Lord Lyndhurst was Chancellor; but before this was complete, and while George IV.'s seal was in use, Henry Brougham became keeper of the king's conscience. When at last the old seal was "damasked," the question arose to whom it fell as a perquisite of office. Lord Lyndhurst claimed, that, as the order was made during his tenure of office, the seal was actually discarded during his chancellorship, and therefore it fell to him. On the other hand, Lord Brougham argued, that the order for a new seal was but a step prudently taken in anticipation of the act by which George IV.'s seal was destroyed; that whilst the order was being executed by the engraver, the seal of George IV. was in fact as well as theory the seal of William IV.; that he (Lord Brougham) had held this seal, and had done business with it, no one venturing to hint that its virtue was impaired, or in any way affected, by the Order in Council; that the seal was not destroyed until Wm. IV. damasked it, at which time he was the holder. This dispute was warmly carried on, until William IV., acting as arbitrator by the consent of the parties, terminated the contest by a decision, which, like most decisions arrived at by arbitration, was directly in defiance of principle and precedent, but probably the only one which would have suited both contestants. The seal is made in two parts—the obverse and reverse—being, indeed, separate and distinct seals. The king, therefore, causing each part, at his own expense, to be set in a rich silver salver, gave judgment for both parties, who doubtless both "acknowledged satisfaction."

The gentlemen of the bar who donned the blue in the late rebellion, will find many a precedent for their conduct in Mr. Jeaffreson's book. "As to the sarcasms on lawyers for not fighting," said Bulstrode Whitelock (afterwards Lord Keeper) in the House of Commons, "I deem that the gown does neither abate a man's courage or his wisdom, nor render him less capable of using a sword when the laws are silent. Witness the great services performed by Leutenant-General Jones and Commissary Ireton, and many other lawyers, who, putting off their gowns when the Parliament required it, have served stoutly and successfully as soldiers, and have undergone almost as much and as great hardships and dangers as the honorable gentlemen who so much undervalue them." This same Bulstrode Whitelock was captain in Hampden's regiment of horse. On the side of the king fought Herbert, afterwards Lord Keeper to Charles II. in exile, and Hyde, afrerwards Lord Clarendon. About the same time, Lord Keeper Littleton also drilled a corps of volunteers. John Somers, attorney-at-law, father of Lord Chancellor Somers, raised a troop of horse, at the head of which he rode as captain in Cromwell's army. During the civil war, a royalist rector, in the parish church near which his troop was quartered, preached violent sermons on Divine Right and Non-Resistance, and called down Heaven's vengeance upon the rebels. Somers sent the rector a polite message, requesting him to preach more moderately; but this only served to increase his wrath. One Sunday, therefore, when the enemy was in full action, the captain took aim and sent a bullet through the sounding-board over the parson's head, and subsequently explained, that each repetition of denunciation would produce a similar interruption; and, further, that on each successive occasion, for pistol practice, the ball would strike a litfle lower. This "military despotism" soon put a stop to political sermons.

Chief Justice Hale, in his hot youth, burned with military ardor, and sought to fight under the Prince of Orange in the Low Countries. Though he was persuaded not to go, he sang to his expostulating brothers of the law—

> "Tell not us of issue male
> Of simple fee, and special tale,
> Of feoffments, judgments, bills of sale,
> And leases!
>
> Can you discourse of hand-grenadoes,
> Of sally ports and ambuscadoes,
> Of counterscraps and palisadoes
> And trenches?"

In the next century, Erskine commanded a voluntcer company of lawyers of Temple Bar, christened by Sheridan with the sobriquet of "The Devil's Own." The rival corps was composed of Lincoln's Inn men, and nicknamed by the populace "The Devil's Invincibles." Although Erskine had been a lieut. in the army, and used to eat his obligatory law dinners in his scarlet regimentals, he seems to have forgotten the Casey of the period; for Lord Campbell says, "I did once, and only once, see him putting his men through their manœuvres, on a summer's evening in the Temple Gardens; and I well recollect, that he gave the word of command from a paper which he held before him, and in which I conjectured that his 'instructions' were written out, as in a brief." Eldon and Ellenborough were in the rival corps—"The Devil's Invincibles,"—but both, unhappily, in the awkward squad. Lord Eldon used to say, "I think Ellenborough was more awkward than I was; but others thought it was difficult to determine which of us was the worst." This corps had attorneys in its ranks, and it was said of it,

when Lieutenant-Colonel Cox, the Master in Chancery, who commanded it, gave the word "Charge," two-thirds of its rank and file took out their note-boaks and wrote down 6*s.* 8*d.* As a counterpart of this story should be told one, which Mr. Jeaffreson has not inserted, of the volunteer company of lawyers, which was raised a few years since, during the apprehension of the French invasion. It is said, that, when the drill-master gave the order "About-face," not a man of these logical patriots stirred, but that they all stood still, and cried "Why?" Certainly, these learned gentlemen cannot be said to have felt with the six hundred—

> "Theirs not to make reply,
> Theirs not to reason why,
> Theirs but to do and die."

Naturally no English book of the present day, giving any account of social life, would be complete without some reference to that noble animal, the horse. So the author has introduced some five chapters about lawyers on horse back. He dwells with fond regret on the early days, when the law was forced to have more dependence on the saddle, and less on the express train; and notices, with evident admiration, the hunting lawyers of the present day, and one in particular whose name he does not give, and whom our acquaintance with the English bar gives us no means of knowing, whose "pale, handsome face, many readers have doubtless seen through the open window of the raildroad carriage, as, clothed in pink, he has been carried past them to the happy hunting grounds." He extols, too, with vivid admiration and fine writing, how "crimson-gold, burnished steel, and floating ancient, gladdened the eye," and of the "blare of trumpets, rattle of armor, tramp of iron, neighing of horses, and joyous hum of riders," in the circuit under the Plantagenets. Without any hope for a revival of the floating ancient or blare of taumpets, the wish may well be expressed, that our profession in America were obliged to have more familiarity with horses than essays on warranty suffice to give. It is a notorious fact, that the health of a large number of our leading advocates is broken down by overwork, and by a neglect out-of-door exercise, of which that in the saddle is the best; while, in England, the large number of their most distinguished lawyers, who have without doubt done an equal amount of work, and have far exceded threescore years and ten, is a striking proof, that the English habits in this regard are far better than our own. If, then, it is not permitted to the hard-worked advocate among us to be clothed in pink and ride after hounds, at least a good horse, a good road, and a bracing air, are always open to him.

In the seventeenth century, it would seem that some knowledge of horsemanship was necessary to all lawyers. Samuel Pepys enters in his diary, on Oct. 23, 1860: "I met the Lord Chancellor and all the judges riding on horseback, and going to Westminster Hall, it being the first day of the term." He also records how Sergeant Glynne, an eminent lawyer, came to grief at the coronation of Charles II., "whose horse fell upon him yesterday, and is like to kill him." Later than this, the barristers rode their circuits in the saddle, while the judges were carried in their private carriages. Lord Kenyon, when a young man, appeared on a small Welsh pony from his native hills, Erskine, too, rode a pony; and Thurlow's ingenious method of hiring a horse without paying for him, has already been related. In those days, there was peril not only from highwaymen, but from flood and field. An amusing story is told of Eldon, travelling the Northern Circuit, which is thoroughly Scotch in its literal humor. The lawyer was about to cross some dangerous sands, contrary to the advice of his landlord. "Danger, danger," he exclaimed, impatiently; "have you ever *lost* anybody there?"—"Nae, sir," answered mine host, slowly, "naebody has been *lost* on the sands: the puir bodies have 'a been found at low water." In spite of such dangers, all historians of lawyers in England of former days are wont to extol the pleasures of the circuit, with its feasting and balls and circuit mess—when Scott was Attorney-General of the Circuit Grand Court, and used to prosecute offenders "against the peace of our lord, the junior;" when Campbell opened the court, with a fire-shovel in his hand as an emblem of office; and when an eminent lawyer was duly indicted and fined a dozen of wine, for the heinous crime of being "the best special pleader" in England. Pepper Arden (afteawards Lord Alvanley) was indicted for having said that "no man would be such a——fool as to go to a lawyer for advice, who knew how to get on without it." The archives of the court record:—

> "In this he was considered as doubly culpable: in the first place, as having offended against the laws of Almighty God, by his profane cursing, for which, however, he made a very sufficient atonement by paying of a bottle claret; and, secondly, as having made use of an expression, which, if it should become a prevailing opinion, might have the most alarming consequences to the profession, and was therefore deservedly considered in a far more hideous light. For the last offence he was fined three bottles. Pd."

While the barristers were thus in the saddle on the circuit, they had doubtless left their wives in those dusty, dirty inns of courts which are now never graced by women's presence; unless, indeed, when a visit is made by a pretty girl, such as Thackeray records, with—

> "A smile on her face, and a rose in her hair,
> And she sat there and bloomed in my cane bottomed chair."

But, in those days, young couples began housekeeping in chambers where they had six rooms at their disposal, including "a trim compact little kitchen."—"Frequently," says Mr. Jeaffreson, "the lawyer over his papers

was disturbed by the uproar of his heir in the adjoining room." The admirer of Dickens will recall Tommy Traddles, with his "dearest girl in the world;" and her five sisters and "the beauty," playing in his chambers. We take down our volume of Copperfield, and find that Mr. Traddles remarks, "Even Sophy's being here is unprofessional,"—a saying which may possibly be valuable to the student of legal manners some centuries hence.

Of another sort was Sarah, Duchess of Marlborough, who came to take advice of Mansfield when a young man. The lawyer was supping out, and his clerk told him, "I could not make out who she was, for she would not tell her name; but she swore so dreadfully, that I am sure she must be a lady of quality."

The subject of fees cannot but be an agreeable one to any lover of his profession, however disinterested. The author needs no excuse for all he can say upon it. Going back as far as the reign of Richard II., it is found, that lawyers were so unprofessional as to go to their clients' houses and give them advice. William de Beauceamp, claiming the earldom of Pembroke, "invited," says Dugdale, "his learned counsel to his house in Paternoster Row; amongst whom were Robert Charlton (then a judge), William Pinchbek, William Branchesly, and John Catesby (all learned lawyers); and, after dinner, coming out of his chapel in an angry mood, threw to each of them a piece of gold, and said, 'Sirs, I desire you forthwith to tell me whether I have any right or title to Hastings' lordship and lands.' Whereupon Pinchbeck stood up (the rest being silent, fearing that he suspected them) and said, 'No man here nor in England dare say that you have any right in them except Hastings do quit his claim therein; and should he do it, being now under age, it would be of no validitie.'" The scene is full of character; the counsel waiting; the Norman baron coming out after dinner, and flinging them each their fee, as to a dog; the haughtiness of his language, "I desire you forthwith to tell me;" and, spite of all this, the manly independence of the lawyer's opinion. At this time, and for many years later, it was customary for clients to provide food and drink for their counsel. Mr. Foss gives the following list of items, taken from a bill of costs made in the reign of Edward IV.:—

	s.	d.
For a breakfast at Westminster, spent on our counsel	1	6
To another time for boat hire in and out, and a breakfast for two days	1	6

In like manner, the accountant of St. Margaret's Westminster, entered in the parish books, "Also, paid to Robert Fylpott, learned in the law, for his counsel given, 3*s.* 8*d.*, with 4*d.* for his dinner." Here are some items in an old record of disbursements made by the corporation of Lyme Regis:—

	£	s.	d.
Paid for wine carried with us to Mr. Poulett	0	3	6
Wine and sugar given to Mr. Poulett..	0	3	4
Horse hire, and for the sergeant to ride to Mr. Walrond, of Bovey, and for a loaf of sugar, and for conserves given there to Mr. Poppel.....	1	1	0
Wine and sugar given to Judge Anderson	0	3	4
A bottle and sugar given to Mr. Gibbs.	3	3	0

The value of money in the sixteenth century is so different from the present, that it is difficult to make comparison of the fees of that period with the present. Sir Thomas Moore, in the reign of Henry VIII., "gained, without grief, not so little as £400 by the year." Lord Campbell regards this as "an income which, considering the relative profits of the bar, and the value of money, probably indicated as a high station as £10,000 a year at the present day. This is but relative, however, and compares but poorly with Francis Bacon's income, which, when he was Attorney-General, not very many years after, amounted to £6,000, and was a royal income for those days. Cope made a still larger income during his tenure of office, the fees and official practice amounting to no less a sum than £7,000 a year.* These were very extraordinary income; for, in the reign of Charles II., Somers was thought a fortunate and rising man, and made £700. Pepys, as usual, gives some valuable information. Being about to go before the House of Commons to argue an Admiralty cause, he records, "To comfort myself, did go to the 'Dog' and drink half a pint of mulled sack, and in the hall did drink a dram of brandy at Mrs Hewlett's; and with the warmth of this did find myself in better order as to courage, truly." He acquitted himself so well with this Dutch courage, that "a

*"The salary of the Attorney-General," says Lord Campbell, in a note to the "Chief Justices," "was £81 6*s.* 8*d.*; but his official emoluments amounted to £7,000 a year. His private practice, too, must have been very profitable." It is extremely difficult to say to what sum of our present money this is equivalent. Coke was Attorney-General from 1594 to 1606. The importation of American gold began to effect the value of silver in England in 1578, according to Adam Smith, and ceased in 1640. During this time, this value sank in relation of one to four. The value of silver remained about the same until the present century, when a further decrease of fifty per cent. up to the present day may be predicated of it. Coke's term of office occuring just in the middle of the period before mentioned, it may be fair to take the the average, and to consider it as worth double what it would have been worth in 1640, or £14,000: add an increase of fifty per cent., and it becomes £21,000 as the *actual* equivalent in money. But its comparative equivalent is far larger. Macaulay, writing of the period of James the Second, nearly a century later, gives the income of the richest peer in England, the Duke of Ormond, as £22,000, and the and the average income of a peer as £3,000. "A thousand a year," he says, "was thought a large revenue for a barrister. Two thousand a year was hardly to be made in the King's Bench, except by the crown lawyers. It is evident, therefore, that an official man would have been well paid if he had received a fourth or fifth part of what would now be an adequate stipend." (History of England, vol. i. ch. iii.) Further on (vol. iv.) he rates £80,000 so late as the time of William III. at "more than £300,000 in our time when compared with the value of estates." To double Coke's income, even with the fifty per cent. already added, cannot therefore be excessive, in order to arrive at its relative value. This makes it £42,000, or $210,000 in gold—equivalent to $294,000 in our currency of to-day. This was, it will be remembered, exclusive of his private practice, and yet is to be regarded as an extremely moderate estimate.

gentleman said that I could not get less than £1,000 a year, if I would put on a gown and plead at the Chancery bar." These incomes, though good, were not in the highest; for there is preserved a fee-book of Sir Francis Winnington, showing that, in 1673, he received £3,371; in 1674, £3,560; and in 1675, when he was Solicitor-General, £4,066. Roger North records of his brother Francis (afterwards Lord Keeper Guildford), that his income, when Attorney-General, was £7,000. Doubtless these enormous incomes were not gained by the chief law officers of the Stuarts, without the doing of much dirty work. The lawyers of this period were wont to keep the money paid them in their skull-caps; and Roger North says of his brother, "His skull-caps, which he wore when he had leisure to observe his constitution, as I touched before, were now destined to lie in a drawer to receive the money that came in by fees, One had gold, another the crowns and half-crowns, and another the smaller money." It appears too from "Hudibras," that this money was sometimes kept for show on the table, as calfskin and paper may be kept to-day in Court Street:—

> "To this brave man the knight repairs
> For counsel in his law affairs.
> And found him mounted in a pew,
> With books and money placed for show,
> Like nest-eggs, to make clients lay,
> And for his false opinion pay."

Pemberton's fee for defending the "Seven Bishops" shows that legitimate business at this time gave but slight rewards. His retaining fee was five guineas; he received twenty guineas with his brief, and three for a consultation.

In the eighteenth century, Charles Yorke's (afterwards Lord Hardwicke) receipts afford an excellent example of the progress of a rising lawyer. They were for the first year's practice, £121; second, £201; third and fourth, between £300 and £400 per annum; fifth, &700; sixth, £800; seventh, £1,000; ninth, £1,600; tenth, £2,500. This gradually increased, until during the last year of his tenure of his office of Attorney-General, he received £7,322. Lord Eldon used to say about himself, that he agreed with his wife, on beginning practice, that what he got the first eleven months should be his, and what in the twelfth hers; and that for the first eleven months he had made not one shilling, and in the twelfth half-a-guinea. Out of this "eighteenpence went for charity, and Bessy got nine-shillings." Whether this was so, or merely told to make a good story, it appears from his fee-book, that in 1786, ten years after he began practice, he made £1,833. 7*s.*, and that in 1796 his receipts were £12,140. 15*s.* 8*d.*

It seems, from the extract from Dugdale already given, that one of William de Beauchamp's learned counsel was a judge. From this and other sources it appears that judges were not precluded in ancient time from giving opinions to, and taking money from, private clients; though they were forbidden to take gold or silver from any person having "plea or process hanging before them." Indeed, down to the time of James I., and somewhat later, the salaries paid to judges were merely retaining fees, and their chief remuneration consisted of a large number of smaller fees. They were forbidden to accept *presents* from actual suitors; but no suitor could obtain a hearing from any one of them, until he had paid into court certain fees,—of which the fattest was a sum of money for the judge's personal use.

That the salaries of the judges in the time of Elizabeth were small, in comparison with the sums which they received in presents and fees, may be seen from the Table of Judges' Allowance, of which the following is an extracts:—

The Lord Cheefe Justice of England.

	£	*s.*	d
Fee, Reward, and Robes	208	6	8
Wyne, 2 tunnes at £5	10	0	0
Allowance for being justice of assize..	20	0	8

It is unnecessary to say, that this system of presents, countenanced and practised even by Queen Elizabeth, gave occasion to great corruption. In it is concerned the whole question of the bribery of Lord Bacon, on which it would be useless here to enter. The very handsome salaries, as well as retiring pensions, paid to judicial officers in England, has long since put a stop to this system, and set us an example which we should do well to copy.*

In a review of the ancient chronicles of England, it is apparent that the law university was a much more conspicuous feature of London than it has been in more modern generations, and that its members exercised a much greater influence than at present, — circumstances which render its history not only more interesting, but important. "To appreciate," says Mr. Jeaffreson, "the great influence of the law university in the fifteenth aud sixteenth centuries, it must be borne in mind, that the gownsmen (judges, sergeants, ancients, readers, apprentices, and students being comprised by this term) maintained to the townsmen almost as large a proportion as the gownsmen of Oxfork or Cambridge maintain at the present time to the townsmen of those learned places." All that the "season" is to modern, the London, the "term" was to old London, from the accession of Henry VIII. to the death of George II.; and many of the existing commercial and fashionable arrangements of a London "season" may be traced to the old world "term." Besides those students who

	Annual salary.	Annual pension on retirement.
* Lord Chancellor of England	£10,000....	£5,000
Lord Chief Justice of King's Bench ..	8,000....	3,750
Lord Chief Justice of Common Pleas ..	7,000....	3,750
Master of the Rolls	6,000....	3,750
Lord Justices (each)	6,000....	3,750
Vice-Chancellor of England	5,000....	3,500
Chief Baron of the Exchequer.....	7,000....	3,750
Each Pusine Judge or Baron	5,000....	3,500

went to the Inns to study, there were a large number who merely lived there for the sake of the position and convenience it gave them for enjoying the pleasures of the metropolis. In the fifteenth century, the students numbered two thousand. In Elizabeth's time the number fluctuated between one and two thousand. In Charles II.'s reign, there were about fifteen hundred. Many of these young men were among the gayest gallants of their periods. Under the court, they set the fashion in dress, slang, amusement, and vice. They performed plays and masques, or were critics of the plays acted upon the stage; and no actor could achieve popularity, if the students of the Temple or the Inns conspired to laugh him down. Mr. Jeaffreson relates, with much smack and gusto, the pomps and processions, the masques, amateur theatricals, the jests, the drinking-bouts, and revels, in which these young men took part under the Stuarts. We shake our pious, proper heads, in these sober days of the nineteenth century, at such routs; but it was an age of debauchery, and even the veterans of the bar exceeded the limits of strict propriety. Chief Justice Saunders was a hard drinker, taking nips of brandy (so says Roger North) with his breakfast, and seldom appearing in public "without a pot of ale at his nose, or near him," which was even served in court. Evelyn tells how, at Mrs. Castle's wedding, "Sir George Jeffreys, newly made Lord Chief Justice of England, with Mr. Justice Withings, danced with the bride, and were exceeding merry."—"Where," asked Lord Chief Justice Holt (if the story is true), of a criminal just sentenced to death, whom he recognized as a boon-companion in the days of his hot youth,—"Where are all our friends of the Devil's Tavern?"—Ah, my Lord!" said the man, "they are all hanged but myself and your lordship. It is to be remembered, that in those times are to be found the foulest blots on the administration of justice which our common law has ever known. Much later than this, that sound old port wine, which used to be the pride of Britain, caused other high legal functionaries to perform curious freaks. "Returning," says Nathaniel Wraxall, "by way of frolic, very late at night, on horseback, to Wimbledon from Addiscombe, the seat of Mr. Jenkinson, near Croydon, where the party dined, Lord Thurlow the Chancellor, Pitt, and Dundas found the turnpike gate, situated between Tooting and Streatham, thrown open. Being elevated above their usual prudence, and having no servant near them, they passed through the gate at a brisk pace, without stopping to pay the toll, regardless of the remonstrances and threats of the turnpike man, who, running after them, and believing them to belong to some highwaymen who had recently committed some depredations on the road, discharged the contents of his blunderbuss at their backs. Happily, he did no injury." Lord Eldon was a great lover of port wine. He and his brother William, afterwards Lord Stowell, used to dine together, on the first day of each term, in a tavern near the Temple. Mr. Jeaffreson tells a story, in amusing way, of Lord Stowell's recalling, when an old man, these terminal dinners to his son-in-law, Lord Sidmouth. The latter observed, "You drank some wine together, I dare say?" Lord Stowell, modestly: Yes, we drank some wine." Son-in-law, inquisitively: "Two bottles?" Lord Stowell, quickly putting away the imputation of such abstemiousness, "More than that." Son-in-law, smiling, "What! three bottles?" Lord Stowell, "More." Son-in-law, opening his eyes with atonishment, "By Jove, sir, you don't mean to say that you took four bottles?" Lord Stowell, beginning to feel ashamed of himself, "More; I mean to say we had more. Now don't ask any more questions."

The following amusing tale of virtuous indignation, may in this connection be repeated. Alex. Wedderburn's (Lord Loughborough) forte was never virtue. Though not a noted gambler, he was a constant frequenter of Brooke's and White's, and was well known to the world to be versed in all the mysteries of gambling and dicing. Sitting one day at *nisi prius*, he exclaimed with great warmth, "Do not swear the jury in this cause, but let it be struck out of the paper. I will not try it. The adminstration of justice is insulted by the proposal that I should try it. To my astonishment, I find that the action is brought on a wager as to the mode of playing an illegal, disreputable, and mischievous game called 'hazard,'—whether, allowing seven to be the main and eleven to be the nick to seven, there are more ways than six of nicking seven on the dice? Courts of justice are constituted to try rights and to redress injuries, not to solve the problems of gamesters. The gentlemen of the jury and I may have *heard* of 'hazard' as a mode of dicing by which sharpers win, and young men of family and fortune are ruined; but what do any of us know of 'seven being the main,' or 'eleven the nick of seven'? Do we come here to be instructed in this lore? and are the unusual crowds (drawn hither I suppose, by the novelty of the unexpected entertainment) to take a lesson with us in these unholy mysteries, which they are to practice in the evening in the low gaming houses in St. James Street,—pithily called by a name which should inspire a salutary terror of entering them? Again, I say, let the cause be struck out of the paper. Move the court, if you please, that it may be restored; and, if my brethren think I do wrong in the course I now take, I hope that one of them will officiate for me here, and save me from the degradation of trying 'whether there be more than six ways of nicking seven on the dice, allowing seven to be the main and eleven to be a nick to seven.'—*a question, after all, admitting of no doubt, and capable of mathematical demonstration.*" *

*See *Brown* v. *Leeson*, 2 H. Bl. 43, when the same degree of virtue is shown *in banco*.

Speaking of cards, the eminent puisne judge, Mr. Justice Buller, although he did not entertain progressive ideas on the law of libel, and gave evidence of former good character a curious turn against prisoners,† was certainly right in his view of whist,—that best of all games for a lawyer; for he used to say, that his idea of heaven was to sit at *nisi prius* all day, and play whist all night. Had he been living, he would have appreciated an excellent repartee of Lord Chelmsford's. As Frederick Thesiger, he was engaged in the conduct of a cause, and objected to the irregularity of the opposing counsel, who, in examining his witnesses, repeatedly put leading questions. "I have a right," maintained the counsel, doggedly, "to deal with my witnesses as I please."—"To that I do not object," retorted Sir Frederick. You may *deal* as you like; but you shan't *lead*."

The subject of the non-professional culture possessed by lawyers presents an interesting study. In olden times, a large proportion of the best students from universities entered what was then pre-eminently the profession of letters,—the Church. During the last fifty years, however, the bar has so far invaded on the province of the clergy, as to occasion no little alarm to the ecclesiastics. "The number of men," says Mr. Jeaffreson, "now upon the books of Lincoln's Inn, who have won the 'high honors' of Oxford and Cambridge, is a suggestive fact." A list, compiled from the last volume of Foss' "Judges of England," is given, containing eighty-two names of the most distinguished judges of the last three reigns, some of whom are still living. Of these, it is stated that thirty-two received no education at Oxford, Cambridge, Edinburgh or Dublin; one was educated at Edinburgh, four belong to Dublin, eleven were trained at Oxford; and thirty-four came from Cambridge, twenty-three of these being from a single college,—that of Trinty, Cambridge, which can fairly boast of being, above all others, the nursery of English lawyers. Of the lawyers thus educated, among those who have taken very high honors, may be mentioned Lord Tenterden, of Copus Christi College, Oxford, winner of the only two honors then open to competition,—the Chancellor's medals for Latin and English composition; Lord Landale, of Caius College, Cambridge, senior wrangler and senior Smith's prizeman; Sir J. Taylor Coleridge, Corpus Christi College, Oxford, first classman, winner of three Chancellor's prizes; Lord Lyndhurst, Fellow of Trinity College, Cambridge, second wrangler, Smith's prizeman; and Sir Edward Hall Alderson, Caius College, Cambridge, senior wrangler, Smith's prizeman, senior medalist. It was the latter whose classical ears were shocked, when Baron of the Exchequer, by the application of counsel for a *nolle prosē qui*. "Stop sir," he said, "consider that this is the last day of the term, and don't make things unnessarily long." A fellow story to this, not told by Mr. Jeaffreson, of Sir J. L. Knight Bruce, late one of the Lord Justices of Appeal, properly finds its place here. A barrister, lately called, who had been a double first-class man at his university, was making a long and tedious argument before him, and quoted with unction and emphasis the maxim "Expressio unius est exclusio alterius," giving the *i* in *unius* short. The Lord Justice, arousing himself from a sort of half-slumber, said, "*Ūnius*, Mr.———; *ūnius*. We always pronounced it *ūnius* at school."—"Oh yes, my lord!" replied Mr. ———; "but some of the poets make it short, for the sake of the metre."—"You forget, Mr. ———," said the judge, "we are *prosing* here." In an anecdote told of Lord Campbell, the advantage was on the side of the counsel. In an action brought to recover for damages done to a carriage, one of the counsel repeatedly called the vehicle in question a "broug-ham," pronouncing both syllables of the word *brougham*. Whereupon Lord Campbell with considerable pomposity, observed, "*Broom* is the more usual pronunciation: a carriage of the kind you mean is generally, and not incorrectly called a 'broom.' That pronunciation is open to no grave objection, and it has the great advantage of saving the time consumed by uttering an extra syllable." Half an hour later, in the same trial, Lord Campbell, alluding to a decision given in a similar action, said, "In that case, the carriage which had sustained injury was an *omnibus*———"—"Pardon me, my lord," interposed the counsel with such promptitude that his lordship was startled into silence; "a carriage of the kind to which you draw attention is usually termed a *buss*. That pronounciation is open to no grave objection, and it has the great advantage of saving the time consumed by uttering *two* extra syllables." The interruption was naturally followed by a roar of laughter, in which Lord Campbell joined more heartily than any one else.

In adverting to an anecdote of this useful vehicle with the Roman name (the plural of which is still in dispute among scholars), the topic of the classics has not been quitted, and, as an offset to the nice ear of these judges, the Latinity of Lord Kenyon may be noticed. "Modus in rebus," his Lordship would remark, if a trial was too long: "there must be an end of things." When a case of glaring fraud was brought before him, he exclaimed, "The dishonesty is manifest; in the words of an old Latin sage, apparently 'Latet anguis in herba.'" Again he said, with a face of great wisdom, "In *advancing* to a conclusion on this subject, I am resolved *stare supra antiquas vias*." He is even said to have informed a jury, that, in laying their heads on their pillows with a consciousness of duty performed,

† Buller was a very severe man. One of his sterner dicta was, that previous good character was a reason for increassing rather than for lessening a culprit's punishment. "For," he argued, "the longer the prisoner has enjoyed the good opinion of the world the less are his excuses for his misdeed, and the more injurious his conduct to public morality."

they might apply to themselves the words of the heathen philosopher, "Aut Cæsar aut nullus." But this is too bad. Coleridge, in his "Table Talk," is, however authority for the story, that, in a trial for blasphemy, he said to the jury, "Above all, gentlemen, need I name to you the Emperor Julian, who was so celebrated for the practice of every Christian virtue, that he was called *Julian the Apostle.*" His knowledge of the poets was certainly peculiar. "The allegation," he once exclaimed indignantly during the examination of an unsatisfactory witness, "is as far from truth as old Booterium from the Northern Main,—a line I have heard or met with, God knows *where ;*" and there is something unspeakably funny in the metaphor addressed by him to a prisoner convicted of stealing a large quantity of wine belonging to his employer, that "he had feathered his nest with his masters bottles," and in the magnificent pathos of this touching peroration: "Prisoner at the bar, a bountiful Creator endowed you with a powerful frame, a comely appearance, and more than ordinary intelligence; and, through the care of your respectable parents, you received at the outset of life an excellent education: *instead of which you have persisted in going about the country and stealing ducks.*"—*American Law Review.*

COUNTY COURT JUDGES.

"A Templar" thus writes to a contemporary: "It has been suggested in a letter from 'A Working Solicitor,' that puisne judges should by a statutable provision be appointed from the County Court judges of so many years' standing. Of course, so long as County Court judges remain as they are, this would be impossible, but the object being to improve the character of County Court judges, and to induce a higher order of men to accept such posts, it may be thought that this provision would do much good, and comparatively little harm. 'The chief objection,' says your correspondent, 'seems to be a diminution of patronage to the ministry of the day,' and that, to lawyers, is the reverse of an objection. I think, however, there are other reasons against any such limitation of the choice of puisne judges. Whatever may be the tendency of the new Act to raise the character of County Court business, the limits fixed by the several sections will exclude the heaviest cases. Thus one of the most valuable elements of legal practice will be taken away from the man who accepts a County Court judgeship. The highest legal authorities of his own standing will no longer set their minds to his, and no longer sharpen up his intellect by their antagonism. He will be compelled to hear a multitude of very small details, and to decide between two sharp local attorneys, or between an attorney and a defendant in person. Up to a certain point this is very good practice, but it does not enable a man to grapple with the real difficulties of heavy business, as it is known at the Guildhall or at Liverpool. An advocate who has been forced to comprehend a difficult case in order to bring it before a jury, has so much the more chance of mastering the same problems when he sits on the bench. We should no doubt secure better judges by raising the present scale of salaries, but without some chance of promotion this would not be enough: with a certainty of promotion it would, I fear, defeat its own object. If it were possible to unite the County Court system with that of quarter sessions, and to give the present recorders of boroughs a civil jurisdiction which would give them an insight into the general work of a judge, while it left them time for the business of an advocate, I think many of the present objections to the County Courts would be overcome, and the whole course of business might be elevated."—*Law Times.*

ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law, Reporter in Practice Court and Chambers.*

In re Miron v. McCabe.

Division Courts—Jurisdiction—Reduction of claim by payment or set-off—Prohibition—Stay of proceedings.

Held, 1. That a balance of an account which originally exceeded $200, but had been reduced by *payment* (not set-off) to under $100, was within the jurisdiction of a Division Court.

2. Affidavits, to be used on an application for a prohibition, should be entitled in the court to which application is to be made, but should not be entitled in any cause.

3. There is no authority in this country for a judge to stay proceedings in court below pending prohibition.

[Chambers, Dec. 14, 1867.]

A summons was granted in this matter by Mr. Justice Morrison, on the 29th November last, calling upon Miron, the plaintiff in a suit in the Ninth Division Court of the County of Hastings, against McCabe, defendant, and upon the judge of the said court, to show cause why a writ of prohibition should not issue to the said judge to prohibit him from further proceeding in the said Division Court on the said plaint, and from enforcing the judgment therein, on the ground that the said court and judge had no jurisdiction of the said plaint; and that the plaintiff's claim is not within the jurisdiction of the Division Court, and so appears from the particulars thereof, being for a balance due upon an unsettled account exceeding the sum of $200; and why the said Miron should not pay the costs of the application; and in the meantime that all further proceedings in the said court be stayed.

It appeared that the summons in the court below was issued on the 23rd October last, stating the plaintiff's claim at $67 47½.

The particulars of claim attached to the summons claimed a *balance* of account, as follows:

Terence McCabe, Esq.,

1867. To Joseph Miron, the younger, Dr.

May. To 6 months 23½ days service, at the rate of $34 per month.....$234 55

Cash paid men..... 2 00

$236 55

Cr. By 169 07½

Balance due $67 47½

The affidavit filed by the defendant stated that this was a balance claimed on an unsettled account, as appeared by the particulars of claim; that when the case came on for trial, on the 4th November, he appeared in person to defend the same, and objected that the court had not jurisdiction in the matter, as the unsettled account exceeded in amount two hundred dollars; that the judge overruled the objection, heard the cause, and gave judgment in favor of the plaintiff for $9 97c. and costs; that the plaintiff's application for a new trial is still pending; that no execution has issued on the judgment, and the defendant has not paid the amount of the judgment; that he does not owe the plaintiff anything; and that the sum of $169 07½c. credited by the plaintiff on his claim, is part of a set-off which the defendant has against the plaintiff's claim; and that no agreement or settlement had taken place between them in reference to the said claim or set-off, or any part thereof.

The plaintiff, in his affidavit, stated that the defendant paid him on account of his wages, and in liquidation of the account, at different times, in all, the sum of $155 15c. in cash: that the sum of $42 was paid by the defendant to one Gordon, on the plaintiff's written order, as he believes; that the extent of contra account of the defendant against the plaintiff was, as he believes, no more than $13 92c.: that his claim was for a balance of wages for the sum of $67 47½c., and it would only have been for $25 47½c. if he had known of the order in favor of Gordon, for $42 had been paid: that the defendant, at the trial, fully entered into his defence; and that the sum awarded to the plaintiff by the judge is justly due to him.

It was sworn on behalf of the plaintiff that an execution had been issued on the judgment, on which the deponent believed certain cattle of the defendant's had been seized.

Spencer showed cause.—*Siddall* v. *Gibson*, 17 U. C. Q. B. 98. shews that it was an irregularity to entitle the affidavits used on this application in any court as these affidavits were entitled*. On the merits he referred to *McMurtry* v. *Munro*, 14 U. C. Q. B. 166; *Wallbridge* v. *Brown*, 18 U. C. Q. B. 158; *Turner* v. *Berry*, 5 Exch. 858.

Osler supported the application. The affidavits, it is laid down expressly in Arch. Pr. 12 Edn. 1755, in a case of prohibition, "should be entitled in the court to which, or to the judge of which, the application is to be made, but not in any cause or matter." See also 11 Edn. 1727. And on the merits he referred to *Re Denton*, 32 L. J. Exch. 89; see also 1 H. & C. 654; *Furnival* v. *Saunders*, 26 U. C. Q. B. 119; *Hodgson* v. *Graham*, 26 U. C. Q. B. 127; *Higginbotham* v. *Moore*, 8 U. C. L. J. 68.

Adam Wilson, J.—The Division Courts have jurisdiction of "all claims and demands of debt, account or breach of contract or covenant, or money demand, where the amount or balance claimed does not exceed one hundred dollars." The amount of the plaintiff's side of the account did not exceed one hundred dollars; but the question is, whether the amount or balance claimed exceeds that sum?

That depends upon the meaning to be placed upon the expression, "the amount or balance claimed." In the case of *Woodhams* v. *Newman*, 13 Jur. 456, the wording of the English County Courts Act was, that those courts should have jurisdiction of "all pleas of personal actions, wkere the debt or damage claimed is not more than twenty pounds, whether on balance of account or otherwise;" and there it was held that the meaning of the words "balance of account or otherwise," was where the parties themselves had balanced the account, or where it was balanced by payments made on account; but that the plaintiff was not at liberty to reduce his claim by crediting the defendant with a set-off; for he could not compel the defendant to rely on his set-off, by giving him credit for it. *McMurtry* v. *Munro*, 14 U. C. Q. B. 166, is to the same effect, and is founded upon *Woodham* v. *Newman*, cited by Mr. Justice Burns, as in 7 C. B. 654. *Turner* v. *Berry*, 5 Exch. 858, points to the same distinction between payment and set-off; and so also does *Furnival* v. *Saunders*, 26 U. C. Q. B. 119.

The distinction between the two is quite plain. A *payment* is a sum expressly applicable in reduction of the particular demand on which it is made; that demand is therefore reduced by the extent of the payment. To constitute a payment, the transaction must have the assent of both parties, and for such payment no action is maintainable; while a *set-off* is a separate and independent demand which one party has against the other, and in respect of which he is as much a creditor of the other, as that other is to him, and for which he can as well maintain a separate action, as his creditor can for his demand.

In a case of payment, the payment must be pleaded (if the plaintiff do not credit it), when the demand is sued for in respect of which the payment was made, otherwise it is entirely lost, and can never be recovered back: *Marriott* v. *Hampton*, 7 T. R. 269; 2 Smith's Leading Cases 375; while a set-off need not be pleaded, and credit for it cannot be forced upon the party against his will.

A payment was always a deduction at the common law, while it required a statute to enable a set-off to be made to an action.

I am satisfied, therefore, that if the balance claimed here be a balance resulting from *payments* made by the defendant, and not from a set-off credited to him against his will, the judge below had jurisdiction.

It is stated in Archbold's Practice, that on a question of prohibition, the court will look, not merely at the plaint and particulars, but at the actual facts; and if it appear that the claim is in substance for damage arising out of a matter excluded from the jurisdiction of the court (as malicious prosecution), a prohibition will be granted.

Referring, then, to the summons and particulars in this case, it appears the demand sued for was a debt or account, in which *the balance claimed* did not exceed one hundred dollars.

*The case referred to only decided that the "affidavit, &c., should not have been entitled in any *cause*."—Eds. L. J.

The defendant undertakes to show that although this does so appear in the summons and particulars, yet it was not for such a claim in fact, because the *balance claimed* was an arbitrary, unwarranted balance, struck by the plaintiff himself, for the mere purpose of making it appear that his claim was within the jurisdiction of the inferior court, and was not such a balance as was within the provisions of the statute.

I have already stated that a balance which is less than $100 of a claim exceeding that amount, but reduced below it by payment, is a balance within the meaning of the statute—does the defendant show that this balance was not arrived at in that way, but in some way unauthorized by the statute? The defendant calls it the balance of an *unsettled* account, as appears by the particulars, that he objected at the trial that the *unsettled* account exceeded two hundred dollars, and that the sum of $169 07½c. credited by the plaintiff on his claim is "part of a set-off which the defendant has against the plaintiffs claim, and that no agreement or settlement had taken place between them, in reference to the said claim or set-off or any part thereof." This does not plainly show that the credit was a set-off in its proper signification, as distinguished from a payment, nor does it show of what the alleged set-off consisted, so that I could have determined whether it was or was not a set-off, while the plaintiff distinctly swears the defendant "paid him on account of his wages and in liquidation of the account at different times, in all, the sum of $155 15c. in cash," and "that the defendant's *contra account* was, as he believes, no more than $13 92c." This latter sum is, I presume, a set-off, but leaving that out of consideration, there is the full claim of $236 55c. reduced by payments amounting to $155 15c., leaving a balance claimed of debt or account of, $81 40c., and so not exceeding one hundred dollars. The Division Court had therefore clearly jurisdiction in this matter.

The defendant's affidavit read in connection with the plaintiffs, is not so candid as it should have been; he represents the credit of $169 07½c. *as part* of a set-off which he has against the plaintiff, leading one to suppose that *the whole sum of* $169 07½c. is a set-off, and that it is *part* of a *larger* set-off which he has against the plaintiff, while the plaintiff shows that it is only a part of this sum which is a set-off at all, and that such set-off is only $13 92, while all the rest of it is a payment.

I am glad to be able to come to this conclusion, in a case where the whole dispute is about the trifling sum of $9 97c., and where complete justice has been done between the parties.

If however it had appeared that the jurisdiction of the Division Court had been exceeded, I should have been obliged to have interposed, however small the sum in litigation might have been, for there can be no question of greater consequence at any time brought before a Superior Court, than the maintenance of all other Courts within their legitimate jurisdiction. I think there was no just cause for disputing the jurisdiction of the Court below.

I should notice also that the affidavits on which this motion is founded are rightly intituled in the Superior Court and not in any cause or matter.

And I should also say that the summons for a prohibition should not perhaps have stayed the proceedings of the Court below.

This power has been expressly given to the judge in England, by the Imperial Statute 19 & 20 Vic. c. 108, sec. 40, which is not applicable here. I state this that this particular summons may not be taken as an admitted precedent.

I must discharge this application with costs, to be paid by McCabe to Moore.

Summons discharged with costs.

Hall v. Remily et al.

Action on bail-bond—Stay of proceedings by bail.

H. had R. arrested on mesne process on 14th November, 1867. P. and H. became his bail to the sheriff. Special bail was *not put in within ten days*, and on 25th November H. took assignment of sheriff's bail bond and brought an action on it. Special bail was put in and perfected upon 28th November, and notice given.

Held, that the bail were entitled to have the proceedings stayed on payment of costs.

[Chambers, December 18, 1867.]

This was an application to stay proceedings on a bail bond at the instance of the bail, for their own indemnity.

Hall caused Remily to be arrested on mesne process on the 14th day of November, 1867. After his arrest, Partridge and Heathfield became his bail to the sheriff. Special bail was not put in within ten days, and on the 25th November the plaintiff took an assignment of the sheriff's bail bond, and brought this action.

Special bail was put in on the 28th, and perfected. On the same day notice thereof was given in the usual form, which concluded thus: "And that the said bail piece, together with the affidavit of justification, and of the due taking thereof, was this day filed in the office of the Deputy Clerk of the Crown in and for the County of Middlesex."

On the fifth day of December the bail obtained a summons to shew cause why the proceedings should not be stayed on the ground that special bail had been put in, in the original action, &c.

J. B. Read shewed cause and contended that though special bail was filed, and notice given after assignment of bond and before this application, yet that the bail were not in a position to apply, twenty days not having yet elapsed since the special bail was filed: that plaintiff has that time to except, because the notice of bail was not accompanied with an affidavit of justification: that bail did not therefore become perfected until that time should have elapsed, in the absence of any order for the allowance of the special bail (Rule 83 and 85 T. T. 1856), and that no notice of intention to justify had been given: *Goddard* v. *Jarvis*, 9 Bing. 88; *Turner* v. *Cary*, 7 East 697; Rule 55, T. T. 1856.

Marcellus Crombie supported the summons, and contended that the plaintiff had done all that was required of him, and was entitled to have these proceedings stayed on payment of costs. He cited *Burn* v. *Aguilar*, 3 East. 306; *Lepine* v. *Barrat*, 8 T. R. 223; *Turner* v. *Cary*, 7 East. 607; *Pairente* v. *Plumbtree*, 2 B & P. 35; *Yonge*

v. *Shore*. 2 O. S. 314; *Whitehead* v. *Phillips*, 2 B. & Ald. 585.

John Wilson, J.—This application has been resisted, I think, on a misapprehension of the terms used in reference to the perfecting of bail, and the manner in which it is done.

The courts will stay proceedings, when by reason of a breach of the condition of a bail bond, a suit has been brought upon the bond, either at the suit of the defendant, the sheriff, or the bail, if the defendant has been rendered, or bail has been perfected. The plaintiff does not deny this, but contends that bail has not been perfected.

It is conceded, that the C. L. P. A. left the practice relating to bail just as it was before that Act.

In our courts, the practice differed from the practice in England, so far as the 2 Geo. IV., 2 Sess., the 4 Wm. IV. and our own rules changed it, and it is now regulated by the Rules of Trinity Term, 1856.

The long established course of practice has been to put in bail as was done here. The bail piece had an affidavit of the due taking thereof, and where intended to be perfected, it was accompanied with affidavits of justification. After it had been filed, notice of all this was given, as has been done here. The plaintiff was at liberty to except. If he did so without good reason, he had to pay the costs, if with good reason, the defendant had to pay them; but the object of excepting to bail, was to compel them to justify. If they had justified, nothing was gained by excepting to them. Nor was justification or allowance necessary where the object was to surrender the defendant.

The case of *Hodgson et al.* v. *Mee*, 3 Ad. & El. 765, is not like this, but it has settled the new practice on the points there under discussion on the analogy of the old.

The King v. *Wilson*, 3 Dowl. 255, recognizes the practice, that it is necessary before a motion to set aside proceedings against a sheriff is made, that bail should justify.

Here the defendants have put in and perfected the bail, which the plaintiff has confounded with the allowance of it.

The proceedings will be stayed on payment of the costs to be taxed in the suit on the bail bond, up to and including the 6th day of December, when this application was made.

Summons absolute.

See *Call* v. *Thelwell*, 3 Dowl. 443; 1 Chit. Ar. Pr. 9 Ed. 760–7; Lush Pr. 646; Rules of Trinity Term, 1856, Nos. 69, 72, 81, 83.

CHANCERY CHAMBERS.

(*Reported by* Mr. Charles Moss, *Student-at-Law.*)

Cameron v. Upper Canada Mining Co.

Unstamped affidavit of service of office copy of bill—Service of bill on corporation—Order pro confesso on such service—Order of court of 1857 *in such cases.*

The affidavit of service of an office copy of the bill should shew that the copy so served was stamped with the stamp of the Registrar's or Deputy Registrar's office in which the bill is filed.

A plaintiff cannot obtain an order *pro confesso* against a corporation *ex parte* under the orders of 1857 relating to orders *pro confesso* against corporations, unless the bill was served upon some of the officers of the company specified in the order, even although the Act incorporating such corporation makes it competent to the plaintiff to serve process upon a director.

[Chambers, January 16, 1868.]

The act incorporating the Upper Canada Mining Company provides, that it shall be competent for any party to a suit to which the company is a party to serve process upon the company by serving the president, secretary or any director in any place, or by leaving it at the head office of the company.

The bill in this cause was alleged to have been served upon a director on behalf of the company on the 5th December, and was subsequently served upon the President on behalf of the company on the 14th December.

On the 10th January the plaintiff obtained an order *pro confesso*, *ex parte*, against the company upon an affidavit of the service upon the director. The affidavit was not stamped with the stamp of the Registrar's office, though stating that the office copy served was stamped with a stamp similar to that in the margin of the affidavit.

Moss moved to set aside the order *pro confesso* for irregularity on the grounds:

1. That no proof of service of an office copy the bill upon the company was produced or filed upon the application for the said order.

2. That the affidavit of service filed on said application did not shew that any copy of the said bill stamped with the stamp of the Registrar's office, was served upon the said director or the said company.

3. That the said order was unauthorized, having been obtained upon proof (if any) of service of an office copy of the bill upon a director of the said company only.

As to the first and second objections, he argued that no service of a duly stamped office copy of the bill upon any person on behalf of the company was shewn. The orders require that each office copy of a bill shall be stamped with the stamp of the office of the Registrar of Deputy Registrar with whom the bill is filed; and if the attention of the court had been drawn to the fact that the affidavit produced did not shew that such was the case with the copy served upon the director, the order would not have been granted.

As to the third objection, he contended, that even if the service upon the director had been duly proved it would not authorize the taking of the bill *pro confesso* against the company under the order of 1857. The act of incorporation was passed long before that order was promulgated. The order was intended to meet the difficulty raised in cases such as that of *Counter* v. *Commercial Bank*, 4 Grant 230, where an order *pro confesso* could not be obtained even when service had been effected upon the President and Cashier of the Bank. And it provides that upon service of the bill upon a corporation, by personally serving any of certain specified officials, an order *pro confesso* may be obtained *ex parte*. But a director is not one of the individuals specified in the order, and it is distinctly shewn that the director here served does not occupy any of the positions in the company mentioned in the order.

Unless the service was made on some of the officials specified in the order, the plaintiff had no right to an order *pro confesso*, except such as he had before the order was promulgated.

Smart, for the plaintiff, argued that the affidavit was in the form given by the court, except so far as it was varied in accordance with the orders of February, 1865. He could now, if permitted to file a further affidavit, shew clearly that a proper office copy had been served. Service upon a director was good service upon the company under the act of incorporation, and authorized the order *pro confesso*. If the order was set aside it ought to be without costs: *Davis* v. *Barrett*, 7 Beav. 171.

Moss in reply. The order *pro confesso* must be upheld, if at all, upon the materials upon which it was granted. The answer of the company was ready for filing, and could have been filed on the 11th had not the order been obtained, and if the order had been refused on the 10th, as it would have been if the attention of the court had been called to the omission in the affidavit, the answer would have been filed before a proper affidavit could have been obtained. The present order should be granted with costs if granted at all. The order *pro confesso* was taken very unnecessarily, inasmuch as the plaintiff was aware from a letter from the company's solicitor, put in by plaintiff on this application, that the company intended to answer, and if the service upon the President was recognized as the first valid service upon them, the answer was not due till the 11th.

The Judges' Secretary.—I decline to permit a further affidavit to be filed. The plaintiff had ample notice and knew that the service was questioned, and should have come prepared to support it. I think the order *pro confesso* should be discharged with costs. There was really no evidence of the defendants having been served with an office copy of the bill, even had service upon the director been good service upon the company for the purpose of enabling the plaintiff to obtain this order, which it was not. Service upon him would not enable the plaintiff to take the bill *pro confesso* under the order of 1857.

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

Upper Canada Mining Company v. Attorney-General.

Practice—Style of cause where bill dismissed as against one defendant.

Where the plaintiffs bill of complaint was dismisssed against one of the defendants only, and a motion to dismiss for want of prosecution was subsequently made by the other defendants, a technical objection that the style of the cause of the notice of motion was incorrect (the name of the defendant as against whom the bill was dismissed appearing therein) was overruled.

S. H. Blake, on behalf of the defendants, the Wallace Nickel Mining Company and others, moved for an order to dismiss the plaintiffs' bill for want of prosecution.

Moss appeared for the plaintiffs and objected to the motion, on the ground that the notice was not in the correct style of the cause. The bill had been already dismissed as against the defendant Metcalf, who therefore was out of court; his name consequently should not appear in the style of the cause in any proceeding taken since the order dismissing the bill as against him. He had no longer any interest in the suit—to retain his name in the style of the cause would be useless and might mislead.

Blake, in reply, said that the practice had heretofore been to retain the name of a defendant in like cases where the bill had been dismissed.

The Judges' Secretary having taken time to consider, delivered the following judgment—

I overrule the objection. There are advantages in keeping the style of this cause as it originally stood. Where the bill is amended and the name of a party struck out, there are generally amendments in the body of the bill also. Here it would appear from the body of the bill that Metcalf is a party, and yet his name would not be in the style of the cause. *Barry* v. *Croskey*, 2 J. & H. 136, shews that where a defendant demurs successfully, he has a right to have his name struck out of the style of the cause, but he must make an application for this purpose.

Miller v. Hill.

Practice—Striking name of person improperly made a plaintiff out of style of cause—Costs.

Where the plaintiff's solicitors made a person a party plaintiff without being instructed by him in that behalf, his name was, at the instance of such person, ordered to be struck out of the proceedings in the cause as a party plaintiff therein, with costs of the motion to be paid by the solicitors.

The bill was filed by the alleged directors of the Mutual Fire Insurance Company of Clinton, and the said Insurance Company, against certain persons now or at all events formerly directors of the said Company. The plaintiffs claimed to be the legally elected and acting directors; and one Stephen Haney, who had been a former director, as it was alleged, was included in their number. Steplen Haney, however, had given no instructions to the plaintiffs' solicitors to file a bill on his behalf, and had not in fact been consulted about the matter. He did not think the plaintiffs were right in filing said bill, and contended that he and the defendants were the legal directors of the company, and that the course of the plaintiffs was improper and illegal.

S. H. Blake, on behalf of Haney, moved, on notice, for an order to strike his name out of the bill and proceedings, with costs to be paid by the solicitors personally.

Hoskin, contra.

The Judges Secretary made the order, saying that the solicitors must pay the costs in so plain a case.

ENGLISH REPORTS.

HOUSE OF LORDS.

Xenos and Another *v.* Wickham.

Execution of Deed.

[16 W. R. 38.]

The main question in this case was whether a certain deed had been duly executed. A deed

is an instrument sealed and delivered, and it was contended, in *Xenos* v. *Wickham*, that there had been no sufficient delivery of the deed.

The plaintiffs, who were shipowners, instructed an insurance broker to effect an insurance upon one of their vessels. The broker agreed with the defendants, who were an insurance company (now sued in the name of their chairman) to effect a policy of insurance in accordance with the instructions he had received from the plaintiffs. The defendants made out the policy and signed and sealed it, and left it in the hands of one of their clerks to be given to the plaintiffs, or their broker whenever they might choose to call for it. After the policy was so made, the broker, without any authority from the plaintiffs, told the defendants that the insurance was cancelled. The defendants thereupon returned the premium they had received in respect of the insurance, and treated the policy as cancelled. Subsequently the plaintiffs vessel was lost, and the plaintiffs claimed the amount insured under the policy. The defendants refused to pay—first, on the ground that the policy had never been duly delivered as a deed, inasmuch as it had always remained in their possession. Secondly, on the ground that, even if the instrument had been duly executed it had been cancelled by the consent and at the request of the plaintiffs. The House of Lords decided both of these points in favor of the plaintiffs. Five of the judges delivered opinions on the case in answer to the questions of the House. M. Smith and Willes, JJ., thought that the defendants were not liable on the policy, while Pigott, B., Mellor and Blackburn, JJ., were of opinion that the defendants were liable. The House of Lords took this latter view of the case. The effect of the judgments of the Lord Chancellor and of Lord Cranworth is—that no technical act is necessary for the delivery of a deed. A deed may take effect although it is never delivered to the person who is to be benefited by it, or to any person on his behalf. "The efficacy of a deed depends upon its being sealed and delivered by the maker, not on his ceasing to retain possession of it." The deed purported to be signed, sealed, and delivered by the directors in the ordinary course of business, and if that did not make it binding upon the defendants, it is difficult to see what would have that effect. On the second point, viz, whether the broker had any implied authority to cancel the deed, so as to relieve the defendants from liability under it, the House also decided in favour of the plaintiffs. There was not so much difference of opinion on this question. Four out of the five judges who delivered opinions in this case thought that the broker's cancellation of the policy without express authority from his principals did not release the defendants: in other words, that an agent, to make a contract, has no implied authority to rescind it after it has been duly made by him. Willes, J., took a somewhat different view, holding that the transaction between the broker and the defendants was never completed and that the cancellation must be regarded as part and parcel of that transaction. The Lord Chancellor and Lord Cranworth followed on this point the opinion expressed by the majority of the judges.

IRISH REPORTS.

TALBOT v. TALBOT.

Costs—Imputations on the character of a solicitor or other officer of the court.

Where, in the course of any proceeding in the court, imputations are cast on the character of one of its officers, as such, he is entitled to appear for the purpose of defending himself therefrom, and to get his costs if successful.

[December 9, 1867—16 W. R. 201.]

In this case a motion was made on behalf of George Henry Talbot, the petitioner in one of several matters, under the following circumstances:—

George Talbot was entitled to a sum of £68 for costs, under a decree made in the suit in 1864. John H. Talbot, the guardian of a minor respondent in the same matter, was entitled, also under the same decree, to a sum of £117 for costs. In taxing the former sum, the taxing master had taxed the costs under the decree, and they thereby became, under the express terms of the decree, a charge upon a certain estate called the Castledawson Estate. In taxing the latter sum, the taxing master had taxed the costs against George H. Talbot personally. This sum was due to the former solicitor for John H. Talbot, Mr. Stephens, who threatened to issue execution against George H. Talbot for the amount, and the latter served notice of the present motion for an order to stay the issuing of execution or other proceedings, and for liberty to set off the said sum of £68 against a like amount of the said sum of £117. In support of the motion the solicitor for George H. Talbot made an affidavit containing some reflections on the character of Mr. Stephens as a professional man. Mr. Stephens instructed counsel to appear on the motion, and defend him from these imputations. The motion having been disposed of, application was made on behalf of Mr. Stephens, for the cost of appearing thereon. This was resisted, on the ground that he could take nothing by the motion.

WALSH, M. R., gave Mr. Stephens his costs, on the ground, that whenever imputations were made on the character of an officer of the court, as such, in the course of any proceedings before it, he was entitled to appear and defend himself from them.

UNITED STATES REPORTS.

HUNTINGTON v. OGDENSBURGH AND LAKE CHAMPLAIN RAILROAD COMPANY.

Where a person employed for a certain term at a fixed salary payable monthly is wrongfully discharged before the end of the term, he may sue for each month's salary as it becomes due; and the first judgment will not be a bar to another action for salary subsequently coming due.

(7 Am. Law Reg. 143.)

This was an action brought to recover for constructive services from the 1st of July to the 1st of September, 1866.

The plaintiff proved a contract for services as station agent for ten months, from March 1st, 1866, at $100 per month, payable monthly; that on the 7th day of June he was discharged without cause; that he had at all times held himself

ready to serve under said contract, and frequently tendered his services in pursuance thereof, and that during the time he had no other employment.

The defendant proved that on the 21st day of July, 1866, the plaintiff commenced an action against the defendant in a justices' court, to recover services under said contract for the month of June; that on the trial the plaintiff proved the contract, his discharge, readiness and offer to serve during said month, and defendant's refusal to employ him, and recovered a judgment for said month's wages.

At the close of the evidence the defendant moved for a nonsuit, on the ground that said judgment in the justices court was a *bar* to this action. By direction of the court, a verdict was entered for the plaintiff for $150, and the case reserved for further consideration.

Averill & Kellogg, for plaintiff.

Brown & Hasbrouck, for defendant.

The opinion of the court was delivered by

James, J.—The single question is, was the judgment rendered before the justice for the wages of the month of June under the contract, a bar to a further recovery for services tendered but not accepted. "It is settled law that only one action can be maintained for the breach of an entire contract, and that a judgment obtained by the plaintiff in one suit may be pleaded in bar of any second proceeding; but the difficulty is, to determine in what cases the contract is entire, and the question becomes much complicated in the consideration of agreements to do specific acts at various prospective periods."

Originally, *debt* was the only action to recover a sum certain; and it was held no action would lie to recover instalments on a bond, *in debt*, until all the instalments were due. But when the action of *assumpsit* was adopted, the rule was modified, and the plaintiff was allowed to proceed on the first default, although a judgment in such action was still held a full satisfaction. But this rule was further modified by a decision in the King's Bench in *Cook* v. *Wharwood*, 2 Saund. 337, in which it was held—"that when in an action on an award to pay several sums at several times, an action might be brought for each sum when due, that the plaintiff should recover damages accordingly, and have a new action as the other sums became due."

In Massachusetts (*Badger* v. *Titcomb*, 15 Pick. 437), it was held that a contract to do several things at *several* times, is *divisible* in its nature, and that an action of *assumpsit* would lie for every default. A note at 224 marginal paging, 3d ed. of Sedgwick on Damages, purporting to be from the case of *Fowler* v. *Armour*, 24 Ala. 194, says:—"If one contract to serve another for one year at a stipulated sum, payable monthly, and is discharged without any fault on his part, before the expiration of the year, he may treat the contract as still subsisting, and sue in *assumpsit* for wages due according to its terms; or he may consider it rescinded, and sue for unliquidated damages for its breach. If he sue on the contract he can only recover the wages due by its terms before the institution of the suit; if he sue for damages for breach of contract, he is entitled to recover the actual damages sustained up to the trial."

In *Thompson* v. *Wood*, 1 Hilton 93, the plaintiff claimed to recover two months' salary on a hiring by the year, he having been discharged without cause, and being ready and willing to perform; the defendant set up a previous action by plaintiff against defendant, to recover a balance due for services actually rendered, and breach of contract; the latter claim was withdrawn on the trial, and judgment rendered only for the balance due at the time of plaintiff's discharge; and it was held that such judgment was no bar. Ingraham, Judge, said: "When an agreement of this kind is broken, the person employed has his election, either to sue for his wages as they become due from time to time, or to bring one action for damages for the breach of the contract. If such action is brought before the term of hiring has expired, and the party recover damages for a breach of contract, such recovery estops him from bringing another action; but if his action is merely to recover the wages due at the time of bringing the action, he is not thereby deprived of his right either to recover wages subsequently becoming payable, or an action for damages for the subsequent breach of the agreement in not employing plaintiff according to the contract." According to the dictum of this case, the former recovery by the plaintiff here, is no bar to the present action; but the point was not necessary to a disposition of the case, the former recovery having been for services actually rendered before breach."

The defendant cited and relied upon *Colburn* v. *Woodworth*, 31 Barb. 381. The facts there were much like those here, except in the first action the plaintiff in his complaint, in addition to a quarter's wages, claimed damages for a breach of the contract, and issue was joined thereon, and a trial had on such pleadings; but the recovery was only for the quarter's wages, no other quarter being due when said action was commenced. The second action was for the second quarter's wages, and the court held the first action a bar, on the ground that in that action the plaintiff had counted for a breach, and that no other action could be maintained on the contract after that.

The real question raised in the present case, is, whether the monthly payments, by the terms of the contract, were several and distinct causes of action, arising as they became due, or whether they were single and entire.

In *Secor* v. *Sturgis*, 16 N. Y. 548, Justice Strong lays down this rule: "The true distinctions between demands or rights of action which are single and entire, and those which are several and distinct, is, that the former immediately arise out of one and the same act or contract, and the latter out of different acts or contracts. Each contract, express or implied, affords one and only one cause of action. A contract containing several stipulations to be performed at different times is no exception, although an action may be maintained upon each stipulation as it is broken, before the time for the performance of the others, the ground of action being the stipulation, which is in the nature of a several contract."

What then was the contract in this case. It was a hiring at $100 per month. It was therefore a contract containing several stipulations—each stipulation giving a right of action on its breach. There is no doubt the plaintiff could have maintained a separate action for each instalment as it became due, had he not been discharged, but continued to serve. Having been discharged *without cause*, his rights were not lessened; he was not bound to treat the contract as at an end. He *could* have done so, and brought his action for damages on the breach: or he could have waited for the expiration of the whole time, and brought his action for all the monthly instalments—but he was not bound to do either. *He had the right to treat the contract as still subsisting, and could maintain an action for each instalment as it fell due.* I therefore hold, that the action before the justice was no bar to this, and direct judgment for plaintiff on the verdict.

SUPREME COURT OF PENNSYLVANIA.

Flanagan v. Mechanics' Bank.

Bills and notes—Garnishee.

1. Evidence of failure of consideration between the original parties is inadmissible to affect the claim of an indorsee for value of negotiable paper acquired before maturity, and without notice.
2. Where by proceedings in foreign attachment, and on the *sci. fa.*, by a creditor of the payee, judgment is had against the drawer of such note, without any notice to the indorsee, the latter is not bound thereby.
3. To protect himself from a double liability the garnishee should notify the holder of the note, and call on him to interplead: or, if he cannot ascertain the holder he may show the nature of the paper, and its actual transfer as an answer to the attaching creditor.

Error to District Court of Philadelphia county.

The opinion of the court was delivered at Alltsburgh, October 31st, 1867, by

Thompson, J.—The bill of exceptions contains no exception to the charge; consequently we are confined in this review to those exceptions relating to the two items of rejected testimony.

The first of these was an offer, in substance, to show failure of consideration for the notes in question, long after their date and negotiation, but before maturity. To be more specific: the notes were dated respectively in December 1860 and January 1861, and drawn payable to the Insurance Company of Virginia. They passed into the hands of the Bank of the Commonwealth, of Richmond, and by it were transferred to the Mechanics' Bank, the plaintiff, on the 29th or 30th of April, 1861, in payment of a balance due by the former to the latter bank. The proposi was to prove that in June following the policies, for which the notes were given, were cancelled by the company with the drawer's assent. The plaintiff's title had accrued before this; and even if it had not this would have been no defence without notice of the failure of consideration, the notes being negotiable, and not due when received, and credited on account to the Commonwealth Bank. All this is too plain to require elucidation. The court below properly rejected the testimony.

2. The other exception is to the rejection of the record in foreign attachment, and the judgment in the *Sci. Fa.* against the defendant. The plaintiff below had no notice of that suit, was no party to it, and was not bound by the judgment. If it be supposed that because the process of Foreign Attachment is sometimes said to be in the nature of a proceeding *in rem*, the judgment against the garnishees, like proceedings in bankruptcy, decrees of distribution and in admiralty, and other like cases, is conclusive on everybody, it is a great mistake. It is said to be in the nature of a proceeding *in rem* because it is a process against the thing belonging to the debtor in the first place, and the judgment against the garnishee has relation to its value: 9 W. 488. But the controversy with, and as to the liability of the garnishee, is *in personam*, and concludes only the parties legally actors in it: 12 S. & R. 287; 9 W. *sup.* The learned judge very properly held the attachment and proceedings on the *sci. fa.* as *res inter alios acta*, and not evidence. The complaint of error in this particular is not sustained.

I think it was competent for the garnishee to have protected himself against a double liability by satisfying the holder of the notes of the attachment, and calling upon him to interplead. Or if he could not ascertain the holder he might have shown the nature of the paper, and its actual transfer. This would have been an answer, one would suppose, to the attaching creditor. We cannot well say, as a rule, that a debt due by a negotiable instrument is not liable to be attached for a debt due by the payee. There is no reason for saying it would not be simply because of its form. It is only when actually negotiated that there is a reason against it, and it seems to me the garnishee might and ought to protect himself in one or other of the modes suggested above. But we need not definitely determine this point in order to decide this case.

The other questions argued in the paper books, and not above noticed, are not before us; and any opinion upon them would be extra judicial and should not be given. The charge of the court is not before us according to any mode of proceeding for bringing it up: Vol. 1, p 570, Fish's Tr. & H Had the counsel for the defendant in error examined the bill of exceptions carefully they would have saved themselves and us some trouble.

Judgment affirmed.

GENERAL CORRESPONDENCE.

The Law of Evidence.

To the Editors of the Law Journal.

Gentlemen,—A bill was lately before the Legislature of Ontario to change the law of evidence in this Province. It proposed to allow plaintiff or defendant to testify in his own behalf in all courts. Happily, for the present, the Legislature has thrown it out; but it may not be amiss to give here a few reasons why it should never become law, especially as

it may be again brought forward, and is supported by such lawyers as Mr. Blake and Sir Henry Smith. I observed also a long and studied letter in its favor from ex-judge Kenneth McKenzie, Esq., in the *Globe* lately. This is the age of change, and many of the changes proposed are very bad ones, betokening a very poor knowledge of human frailties and vices. No change in the law in Canada could be worse than this.

Notwithstanding the letter of Mr. McKenzie, I feel satisfied that nine out of ten, if not more, of our Division Court and County Court Judges would not agree with him. Some men are too apt to be led away with every new thing in law. I know at least one County Court judge, of twice his experience, who entirely dissents from his view. Mr. Mackenzie's reasons are not good, and facts would not bear them out.

The law as it stands in these small courts (Division Courts) allows the judge at his discretion to call either party, or both parties, to testify, and this is as far as it should go. It should not allow the plaintiff or defendant to obtrude his evidence on the court. Too many changes in the old common law are to be opposed, and this especially.

It is said, if it is not allowed, failures of justice will often occur. That may be true, but they will occur with it, and at times under any circumstances. The advocates for the change assume, that men's principles and love of truth are stronger than their passions, prejudices and interests. Is it not a melancholy fact, known to all judges and practitioners in courts, that they are not so. Interests and passions will bias the oaths of a large majority of men. Why put this new temptation in their way?

There are two strong arguments (as it is said) in favour of this proposed new rule of evidence. First, it has been adopted in England, and second, it is used or adopted in effect in chancery proceedings, where the plaintiff is allowed to swear to the contents of the bill filed, and the defendant to his answer. Mr. Blake relied very much upon this chancery practice. He is a chancery lawyer, and wedded to the system. These arguments can be easily answered by the circumstances of our country, its floating inhabitants, and by reference to the decisions of judges in chancery suits. The population of England is more homogeneous than ours, less roving, tied as it were to the soil and localities; perjury also is more strictly punished there. In Canada it is a very difficult thing, a rare thing, to convict a person of perjury. Yet hundreds of cases of wilful perjury occur in our various courts. Moreover, who has ever said, after a long experience of facts, that allowing plaintiffs and defendants to testify in their own behalf in England upon the whole, advances the ends of justice, and does not promote perjury.

I am not going to say that the standard of morality among the people is not as high in Canada as in England. Sentimentalists have assumed that the abolition of capital punishment for murder would cause a decrease of the crime: that leniency to criminals lessens crimes. How little such people understand human nature, and past experience! Criminals who commit deliberate crimes will naturally reason on the consequences of their crimes, if they are punished for them. What value can be weighed in the balance, to be compared with the death penalty, where life is at stake? Imprisonment for life is eagerly grasped at by the sentenced criminal. He sees in hope a hundred chances of escape or even pardon.

When perjury is committed it is committed because, upon reflection, the perjurer thinks his bosom only contains the secret of the truth. He will depend upon his assurance, his plausibility, his skill, in setting up a good case, whilst his opponent, from sheer stupidity may be unable even to explain a truthful one. Such conduct could easily deceive jurors or even judges. A merchant brings into court his books, has control over hundreds of the inhabitants, even the jury, it may be, and may swear hundreds or thousands of dollars into his pocket. A man may have done business by an agent and know little or nothing of the facts of a suit, and the defendant have done his part of the business himself. Now, suppose the agent dies, if this new rule prevailed, one party could swear to nothing at all; the other might swear as he chose. The only one who could convict him of perjury is dead!

Suppose the question in suit is the retainer of a lawyer or its terms, and the defending party a farmer, and the latter allowed to give his evidence of the whole matter to a jury of

farmers, who doubts the results? Suppose (as I saw within a month past) two persons, gentlemen in Toronto, appear in the Division Court to contest a question of the allowance of certain commissions, amounting to nearly one hundred dollars. The character of these gentlemen was unimpeachable. They were examined as to palpable facts in issue by the judge, and swore to facts quite different the one from the other. How was the judge to decide such a case upon their sole evidence (as was the case here) except he nonsuit, or in effect pronounces the one or the other perjured? Who has a right to pronounce the judgment of condemnation? How often would it happen that similar cases would occur if this new rule of evidence were in force in Canada?

Would it not be better, and more for the ends of justice, if each party to a law suit were compelled to make out his case by evidence, and if either plaintiff or defendant wished to call the other to testify, let him do it. In the smaller courts the discretion is with the judge, as it should be.

As for Chancery proceedings, I think I can safely say that, although the parties to the suit testify, the judge very seldom gives judgment, or relies upon the evidence of a party interested. It is, after all, extraneous evidence, circumstances or documents, that rule the judgment.

Whilst writing this, I noticed a judgment in a case of alimony, lately given by Vice-Chancellor Spragge—*McPherson* v. *McPherson*—from Prescott. It was decided on bill and affidavits filed on an application to discharge the husband from arrest, on a *ne exeat regno*, for alimony. Here was the wife, a young woman, swearing positively to specific acts of cruelty, desertion, and threats to leave Canada. On the other hand the husband, an aged and respectable farmer, swore in direct opposition to his wife, that she was the real culprit, and denied acts of cruelty, and any intent to leave Canada. Now, here is a sample of hundreds, perhaps thousands of cases that have been decided in the Court of Chancery in past years. Vice-Chancellor Spragge, not relying on the evidence of either husband or wife, but taking the affidavits of third parties, members of the family, with some circumstances, decided the case entirely on the latter. *Cui bono*, then, was this swearing of the parties.

Let curiosity dive into the musty files of bills and answers, affidavits and examinations in the Court of Chancery at Osgoode Hall, and see what a mass of contradictions, and prejudices too, can be found, where parties litigant have tried by their oaths to uphold their interests. Yet Chancery lawyers (some of them) love the rule. By the common law rule justice may fail at times for want of evidence, but it is gratifying to think at least that perjury did not cause it. People often lose their cases by bad management, for want of business tact, for want of written documents, for want of calling witnesses, and experience should teach them better. Merchants may take receipts for goods sold on credit, lawyers can take written retainers, verbal bargains can be reduced to writing. C. M. D.

Toronto, 26th Feb., 1868.

Assignees in Bankruptcy Matters—The operation of the Act.

To the Editors of the Canada Law Journal.

Gentlemen,—When the present Bankrupt act was passed, every one supposed that an act so long talked of, or should be nearly perfect. The working of the act since 1864, clearly, on the contrary, proves it to be a bungled, defective affair. I propose to point out a few of its defects, and in addition to refer to the conduct of *official assignees*.

Every one knows that the profession of the law is being over-crowded in Canada, and this is not a time when lawyers should silently permit persons who are not lawyers to take the business that legitimately belongs to the profession from them. I have waited in hopes that some other person would draw the notice of the profession to the fact, but seeing no person has done it, I will do so.

Every lawyer who has watched closely the actions of official assignees, especially in Toronto, knows well that these individuals are generally selected by the insolvent, to get him through for a certain fee, generally $50! This fee is in fact a retainer, and except in special cases of difficulty, a professional man is never thought of. One would have supposed, and such was certainly the intention of the act, that the assignee was peculiarly the officer of the creditors, or at least one who stood per-

fectly impartial and unbiased between insolvent and creditors. If the assignee is the paid agent, or rather the *pettifogging paid and unlicensed lawyer* of the insolvent, it is easy to be seen that he will use every means in his power *to slip his client through*, regardless of creditors! The Bankrupt act was passed to enable honest, but unfortunate men, who were willing to give up all their property, and who are not guilty of fraud, to obtain a discharge. A majority, I fear, in Canada who avail themselves of it, and not a few assignees who aid them in it, think that it was an act to white-wash debtors and to enable them to slip through its meshes, with as much property out of their hands, in trustees or corrupt agents possession, as possible. Many who go through do so honestly, but I verily believe, from a large observation of such things, that a majority of rogues get through, with large secreted funds. One of the essential requisites to a proper discharge of an insolvent, is the certificate of the assignee, that the insolvent has complied with all the provisions of the act, has attended all meetings, has filed a statement of his affairs on oath, fairly showing how he disposed of his property, &c.

This certificate, very improperly, is too often overlooked by judges. See *In re Wilson*, 9 L. T. N. S. 498; 12 W. R. 221; *Re Brooks*, 5 L. T. N. S. 727; Deacon's Law of Bankruptcy, 703–4. Now if the assignee has received his fee beforehand from the insolvent it is not his interest to see closely after such things. It is his interest, in league with his client, to publish his application for discharge, or other notices, in the cheapest and most obscure newspaper he can find, and having no *professional responsibility*, to get his client through, even if all is not right. And I believe yet that many an insolvent will find to his sorrow, that all his papers are not right.

And now as to the defects of the Act. I think it should be distinctly enacted, that if a man has once gone through the Insolvent Court he should not again go through without paying 10s. in the £; or some such clause should exist. It should be distinctly provided, that the insolvent should give personal notice, or at least through the post, to every creditor, of his last application for discharge. It seems this is not required of insolvents. I question the legality of this. It should be distinctly said that *no assignee should act as the agent* of the insolvent under a penalty. It should be enacted that judges should have power to impose terms of costs on assignees, creditors, or insolvents for improper conduct, contempts or delays. It should be enacted that a creditor should have power to appeal against a judge's order of discharge at any time within, say, three months, upon filing security. The eight days now given is too short. It should be enacted that judges should have power to require the insolvent, under certain suspicious circumstances, to pay a certain rate in the £ to his creditors, and in the meantime the discharge to be suspended. It should be enacted distinctly (there is now some doubt on the subject) that the insolvent shall be discharged only from the debts or liabilities mentioned in his schedule of debts, which schedule should be in all cases appended to, and be legally considered, a necessary part of his assignment. It should be enacted that the insolvent should assign to an assignee in the county where he became insolvent. This clause would be only just to creditors.

I might allude to other defects but space will not admit.

Scarboro.

Toronto, Feb. 20, 1868.

APPOINTMENTS TO OFFICE.

CLERK OF EXECUTIVE COUNCIL.

JOHN SHUTER SMITH, Esquire, to be Clerk of the Executive Council of the Province of Ontario, in the room and stead of Robert G. Dalton, Esquire, resigned. (Gazetted 1st February, 1868.)

COUNTY ATTORNEY.

JULIUS POUSSETT BUCKE, of the City of Ottawa, Esquire, to be County Crown Attorney in and for the County of Lambton, in the room and stead of Timothy Blair Pardee, Esquire, resigned. (Gazetted 1st Feb, 1868.)

DEPUTY CLERK OF THE CROWN.

SAMUEL REYNOLDS, Jun., Esquire, of the Town of Prescott, to be Deputy Clerk of the Crown and Pleas for the United Counties of Leeds and Grenville, in the room and place of W. H. Campbell, resigned. (Gazetted 8th February, 1868.)

POLICE MAGISTRATES.

DONALD BETHUNE, Esquire, Q.C., Barrister-at-Law, to be Police Magistrate in and for the Town of Port Hope. (Gazetted 1st February, 1868.)

NOTARIES PUBLIC.

JAMES F. MACKLEM, of the Village of Chippewa, Gentleman;

FRANCIS ALEXANDER HALL, of the Town of Perth, Gentleman;

JAMES FLEMING, of the Town of Brampton, Esquire, Barrister-at-Law, and

SAMUEL McCAMMON, of Gananoque, to be Notaries Public in and for the Province of Ontario. (Gazetted 1st February, 1868.)

CORONERS.

JOHN D'EVELYN, of the Village of Woodbridge, Esquire, M.D., to be Associate Coroner in and for the County of York. (Gazetted 1st February, 1868.)