Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☑ Bound with other material/ Relié avec d'autres documents
- ☑ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☑ Quality of print varies/ Qualité inégale de l'impression
- ☑ Continuous pagination/ Pagination continue
- ☐ Includes index(es)/ Comprend un (des) index

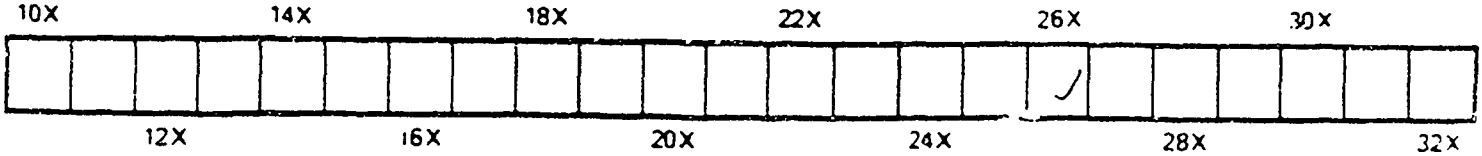
Title on header taken from:/ Le titre de l'en-tête provient:

- ☐ Title page of issue/ Page de titre de la livraison
- ☐ Caption of issue/ Titre de départ de la livraison
- ☐ Masthead/ Générique (périodiques) de la livraison

☑ Additional comments:/ Commentaires supplémentaires: Pagination is as follows: [XLVII]-L, 147-170, LIV, LIV, LIII-LIV p.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X 12X 14X 16X 18X 20X 22X 24X 26X 28X 30X 32X



VOL. IV. TORONTO, JULY, 1858. NO. 7.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

W. D. ARDAGH, Barrister-at-Law; ROBT. A. HARRISON, B.C.L., Barrister-at-Law.

PRINTED AND PUBLISHED BY MACLEAR & CO., 17 & 19 KING STREET EAST, TORONTO.

FOUR DOLLARS A YEAR, IN ADVANCE FIVE DOLLARS OTHERWISE.

Business Card of Non-subscribers. not exceeding four lines, $4 a year; Business Card *and* Subscription for one year only, $6.

LEGISLATIVE COUNCIL,
Toronto, 4th September, 1857.

EXTRACT from the Standing Orders of the Legislative Council.

Fifty-ninth Order.—"That each and every applicant for a Bill of Divorce shall be required to give notice of his or her intention in that respect specifying from whom and for what cause, by advertisement in the official Gazette, during six months, and also, for a like period in two newspapers published in the District where such applicant usually resided at the time of separation; and if there be no second newspaper published in such District, then in one newspaper published in an adjoining District; or if no newspaper be published in such District, in two newspapers published in the adjoining District or Districts."

J. F. TAYLOR,
Clerk Legislative Council.

10-tf.

LAW SOCIETY OF UPPER CANADA,

(Osgoode Hall.)

Easter Term, 21st Victoria, 1858.

During the Term of Easter, the following Gentlemen were called to the degree of Barrister-at-Law:—

William Baldwin Sullivan, Esquire.	Alexander Forsyth Scott, Esquire.
Henry Massingberd. "	Ward Hamilton Bowlby. "

Anthony George Lefroy, Esquire.

On Tuesday, the 25th day of May, in this Term, the following Gentlemen were admitted into the Society as members thereof, and entered in the following order as Students of the Laws, their examinations having been classed as follows:—

University Class:

Mr. Edmund John Hooper, B.A.

Junior Class:

Mr. Henry Robertson.	Mr. Frederick Nash.
" Theophilus Begue.	" James Frederick Smith, junior.
" Edward Robinson.	" Octavius Prince.
" David Lennox.	" Hamilton Douglas Stewart.
" John Hoskins.	" Robert Kerr Robb.
" James Graham Vansittart.	" Thomas Ferris Nellis.
" Augustus Roche.	" Franklin Metcalfe Griffin.
" John Bell Gordon.	" Thomas Wellesley McMurray.
" Patrick William Darbey.	" Michael Joseph McNamara.
" Edward James Denroche.	" John Joseph Landy.
" Alexander Forbes, junior.	" Jalez Manwaring Moffatt.
" Richard Stotesbury McCulloch.	" Thomas James Fitzsimmons.
" Morgan Goldwell.	" Edward Clarke Campbell, junior.
" Thomas Babington McMahon.	" Gilbert James Wetenhall.
" Kenneth Goodman.	" Henry Mann Briggs.
" Robert Smith.	" Edmund Baynes Reed.
" William Torrance Hays.	" Pedro Alma.
" George Augustus Hamilton.	" Robert John Keating.
" William Henry Walker.	" John Elley Harding.
" John Downey.	" Joseph Aloysius Donovan.

Mr. John McLean Stevenson.

Note.—Gentlemen admitted in the "University Class" are arranged according to their University rank; in the other classes, according to the relative merit of the examination passed before the Society.

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

For the Optime Class:

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

For the University Class:

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

For the Senior Class:

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

For the Junior Class:

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

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

Ordered—That in future, Candidates for Call *with honours*, shall attend at Osgoode Hall, under the 4th Order of Hil. Term, 18 Vic., on the last Thursday and also on the last Friday of Vacation, and those for Call, merely, on the latter of such days.

Ordered—That in future all Candidates for admission into this Society as Students of the Laws, who desire to pass their Examination in either the Optime Class, the University Class, or the Senior Class, do attend the Examiner at Osgoode Hall, on both the first Thursday and the first Friday of the Term in which their petitions for admission are to be presented to the Benchers in Convocation, at Ten o'clock A. M. of each day; and those for admission in the Junior Class, on the latter of those days at the like hour.

Ordered—That the examination of candidates for certificates of fitness for admission as Attorneys or Solicitors under the Act of Parliament, 20 Vic. chap. 63, and the Rule of the Society of Trinity Term, 21 Vic. chap. 1, made under authority and by direction of the said Act, shall, until further order, be in the following books and subjects, with which such candidates will be expected to be thoroughly familiar, that is to say:

Blackstone's Commentaries, 1st Vol.; Smith's Mercantile Law, Williams on Real Property, Williams on Personal Property, Story's Equity Jurisprudence, The Statute Law, and the Practice of the Courts.

Notice.—A thorough familiarity with the prescribed subjects and books will, in future, be required from Candidates for admission as students; and gentlemen are strongly recommended to postpone presenting themselves for examination until fully prepared.

Notice.—By a rule of Hilary Term, 18th Vict., Students keeping Term are henceforth required to attend a Course of Lectures to be delivered, each Term, at Osgoode Hall, and exhibit to the Secretary on the last day of Term, the Lecturer's Certificate of such attendance.

Ordered—That the Subjects of the Lectures, next Term, be as follows: Trusts—S. H. Strong, Esquire, Damages—J. T. Anderson, Esquire.

ROBERT BALDWIN,
Treasurer.

Easter Term, 21st Victoria, 1858.

STANDING RULES.

ON the subject of Private and Local Bills, adopted by the Legislative Council and Legislative Assembly, 3rd Session, 5th Parliament, 20th Victoria, 1857.

1. That all applications for Private and Local Bills for granting to any individual or individuals any exclusive or peculiar rights or privileges whatsoever, or for doing any matter or thing which in its operation would affect the rights or property of other parties, or for making any amendment of a like nature to any former Act,—shall require the following notice to be published, viz:—

In Upper Canada—A notice inserted in the Official Gazette, and in one newspaper published in the County, or Union of Counties, affected, or if there be no paper published therein, then in a newspayer in the next nearest County in which a newspaper is published.

In Lower Canada—A notice inserted in the Official Gazette, in the English and French languages, and in one newspaper in the English and one newspaper in the French language, in the District affected, or in both languages if there be but one paper; or if there be no paper published therein, then (in both languages) in the Official Gazette, and in a paper published in an adjoining District.

Such notices shall be continued in each case for a period of at least two months during the interval of time between the close of the next preceding Session and the presentation of the Petition.

2. That before any Petition praying for leave to bring in a Private Bill for the erection of a Toll Bridge, is presented to this House, the person or persons purposing to petition for such Bill, shall, upon giving the notice prescribed by the preceding Rule, also, at the same time, and in the same manner, give a notice in writing, stating the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers for the passage of rafts and vessels, and mentioning also whether they intend to erect a draw-bridge or not, and the dimensions of such draw-bridge.

3. That the Fee payable on the second reading of and Private or Local Bill, shall be paid only in the House in which such Bill originates, but the disbursements for printing such Bill shall be paid in each House.

4. That it shall be the duty of parties seeking the interference of the Legislature in any private or local matter, to file with the Clerk of each House the evidence of their having complied with the Rules and Standing Orders thereof; and that in default of such proof being so furnished as aforesaid, it shall be competent to the Clerk to report in regard to such matter, "that the Rules and Standing Orders have not been complied with."

That the foregoing Rules be published in both languages in the Official Gazette, over the signature of the Clerk of each House, weekly, during each recess of Parliament.

J. F. TAYLOR, Clk. Leg. Council.
Wm. B. LINDSAY, Clk. Assembly.

10-tf.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

W. D. ARDAGH, Barrister-at-Law, and

ROBT. A. HARRISON, B.C.L., Barrister-at-Law.

IS published monthly in the City of Toronto, at $4 per annum if paid before 1st March in each year; $5 if paid afterthat period.

It claims the support of Judges, Lawyers, Officers of Courts, Municipal Officers, Coroners, Magistrates. and all concerned in the adminstration of the Law, on the following grounds:—

1st. It is the only Legal Periodical published in Upper Canada.

2nd. Each number contains Reports of cases—many of which are not to be found in any other publication.

3rd. Chamber Decisions are reported expressly for the Journal.

4th. Each number contains original articles on subjects of professional interest.

5th. Each number contains articles in plain language for the guidance and information of Division Courts, Clerks, Bailiffs and Suitors, and Reports of cases of interest to all whose support is claimed.

6th. Each number contains a Ropertory of English decided cases on Points of Practice.

7th. It is the only recognized organ of intercommunication between Lawyers, Officers of Courts, and others concerned in the administration of law.

8th. It is the only recognized medium of advertising on subjects of legal interest.

9th. It circulates largely in *every* City, Town, Village and Township in Upper Canada.

10th. It exchanges with more than fifty cotemporary periodicals published in England, the United States, Upper and Lower Canada.

11th. It has now reached the fourth year of its existence, and is steadily increasing the sphere of its usefulness.

12th. It has advocated, and will continue to advocate sound and practical improvements in the law and its administration.

Vols. I., II. and III. on hand, $12 the three, or $5 for either separately.

SUBSCRIPTION: $4 per annum, if paid before March; $5 if afterwards; or five copies to *one address* for $16 per annum, in advance.

The Advertising Charges are:—

Card for one year, not exceeding four lines	£1	0	0
One Column (80 lines) per issue	1	0	0
Half a Column (40 lines) per issue	0	12	6
Quarter Column (20 lines) per issue	0	7	6
Eighth of a Column (10 lines)	0	5	0

Business Card not exceeding four lines—*and* subscription for one year, if paid in advance, only $6.

MACLEAR & CO., *Publishers*, Toronto.

CONTENTS.

REMITTANCES.

June. 1858.—O'R & J., Toronto $1; M. McP., Vroomanton, $2; D. A. S., Toronto, $13, G. B. R, Township Clerk Clarence, $4; N. C, Greenwood $4, B. U. S., Hamilton, $5; S. R. H., do. $4; W. A M., do. $5; J. C., $4; J. McK., $4; O'R. & J., do. $15; T. M. S., do $4, R. W L. do $4; E. & C., St. Catherines, $15; R. M. do. $4.

DIARY FOR JULY.

1. Thursday .... Sittings Heir and Devisee Commission. Long Vacation com.
4. SUNDAY ..... *5th Sunday after Trinity.*
5. Monday ..... Co. Court Term com and sittings Heir and Devisee Commission.
10. Saturday..... Co Court Term and sittings ends.
11. SUNDAY..... *6th Sunday after Trinity.*
12. Monday..... Legislative School Grant to be distributed.
17. Saturday..... Sittings of Heir and Devisee commission ends.
18. SUNDAY .... *7th Sunday after Trinity.*
25. SUNDAY..... *8th Sunday after Trinity.*

"TO CORRESPONDENTS"—*See Last Page.*

The Upper Canada Law Journal.

JULY, 1858.

CONSOLIDATION AND CODIFICATION.

In every community individuals may be found who live and die yearning for simplicity in law, and yet law instead of becoming simple, as if to spite theorists, becomes more complex.

It would be a blessing indeed if our law were such that every man could carry it in his pocket. It would be a further blessing if it were all not only reduced to writing within a small compass, but so written that no one could mistake its meaning. These are lofty aspirations; but known to every man of common sense, to be as insane as they are lofty. Easier far would it be, to build a castle in the air fit for the habitation of man, than to reduce human laws to the simplicity and brevity of a spelling-book.

Assuming ideas such as these to be chimerical in the extreme, it must still be admitted that laws may be in some degree simplified. The law of England is the accumulated wisdom of ages. It is the product of many centuries. It consists, as every one knows, of the unwritten or common law, and the written or statute law. The unwritten or common law, though to the sight unseen, is of much greater importance than the written or statute law, though contained in scores of weighty tomes. It is the basis of all written law—the groundwork of all legislation—the keystone of an Englishman's liberty. It resembles the constitution of England—which is unwritten. It enjoys an elasticity and an omnipotency that no code or form of words can ever embody. To reduce the common law within the covers of a single volume or of many volumes is, we apprehend, a work beyond the power of any finite being.

But there is a class who although not demanding codification of the common law, ask for codification of the statute law. This, though more reasonable is scarcely less practicable. We lament with the most constant grievance-monger, the mighty maze of statute law with which England abounds. We believe that much of it is dead matter, which might, with advantage, be separated from the living body of law. We are sensible that much of it is tautology and useless repetition. We acknowledge that it deserves much of the obloquy and the ridicule that is cast upon it. When we have, as Sheridan if we mistake not, said, a bill imposing a tax,—a bill to amend the bill that imposed the tax,—a bill to explain the bill that amended the bill that imposed the tax,—a bill to remedy the defects of the bill that explained the bill that amended the bill that imposed the tax; and such measures ad infinitum, it is time to reduce and to consolidate. Then let there be a reduction by expurgation. Let the product be well consolidated. Nay if possible, let the subject matter be classified. But each step even of this process, is attended with immense difficulty. More than twenty years since, commissioners were in England appointed to consolidate the statute law of the kingdom, and some years afterwards, having effected little or no good, were sent about their business. Plans the most magnificent,—rockets the most brilliant,—have from time to time fallen mere sticks when subjected to the test of actual experience. Putting aside the lofty visions of Bentham we need go no further than the scheme of Lord Cranworth, announced on the 14th February, 1853. He on that day announced that he intended to consolidate the statute law. He explained the manner in which he proposed to carry his intention into effect. First, to expunge from the statute book every enactment which had either expired, become obsolete or been repealed. Secondly, to classify the existing enactments according to the particular subjects to which they related. Thirdly, to consolidate into single acts the *disjecta membra* thus classified. Fourthly, to devise some machinery for correcting the errors of future legislation. A board of five commissioners was forthwith appointed and maintained at a great expense to the kingdom, and to this day has done absolutely nothing in the realization of the scheme. Here was a scheme apparently feasible,—within the comprehension of all men, whether matter of fact or matter of fiction, and yet after five years sitting there is every probability of the work being abandoned!

If such be the difficulty of consolidating the statute law how much more would be the difficulty of consolidating the common *and* statute law—how much more still the difficulty of *codifying* the whole law of Great Britain? These questions are not of less interest to us than to the parent country. The laws of England, that is, statute and common law relative to property and civil rights existing on 15th Oct. 1792, were made the laws of Upper Canada. Previously the criminal laws of England became the laws of Canada. We are then as much interested as the people of England in all attempts made to simplify English laws. But, though we did in 1841 revise the statutes of Upper Canada, and

though we are now striving to revise the public general statutes of Upper and Lower, and of Canada, we must not forget that these are only drops in the bucket compared with the unwritten law of England which is our law, and of the statute law of England before 1792, which is also our law. True the legislature of New York, the laws of which State are as old, as widely scattered, in a word as stupendous as ours, is about to *attempt* the codification of its laws. We know by experience that it is not every attempt to do a thing which succeeds, and moreover we believe that no attempt to consolidate the whole law of New York, including so much of the common law of England as applies to that State will ever be really effectual. Let us turn to the experience of the past. Look at the code of Justinian and the code of Napoleon to each of which every stickler for codification refers us. Have these codes succeeded? Did the former reduce the laws of the Roman Empire to a bulk so small and to language so clear that every man might understand them, or that Law Reports, Treatises, or Compendiums were all swept away never again to return? Has the code Napoleon effected these things?

Without doubt the code of Justinian as far as it goes is an admirable abridgment of law; but even in the country where it originated, it did not answer the purpose of its creation. It was never more than what our common law now is, the basis of subsequent law making. Fresh codification afterwards became necessary at Constantinople and a new Digest of the laws called "The Basilica" was established. Such must always be the case so long as man lacks the attributes of the Divinity. He sees little by little as new circumstances surround him, and according as new wants arise, endeavors to provide for them. General law must adapt itself to the want of the age in which it is enacted, and cannot be made a rule of conduct for all ages to come. A few principles of moral ethics may be proclaimed, and like the decalogue, may be engraved on stone, but these cannot be applied as a rule for all cases, all circumstances, all disputes in human affairs. These principles may be made the heart of the living body—the seat of life—but the body itself must be allowed *to grow*. So human law must be open to amendment—and what is more—amended as the daily, hourly demands for change present themselves. We cannot be brought to look upon any code as the perfection of wisdom. We can only view it as a great consolidated statute open to doubt in its construction, and susceptible of amendment like any other statute of less dimensions. More than this, we view it as a dangerous experiment—dangerous because it removes the landmarks of interpretation exhibited in the growth of successive statutes. We go so far as to contend that obscurity and uncertainty are more likely to exist where there is a code than where there is not.

Let us turn to the much boasted Code Napoleon. The laws of Napoleon are not embraced in a single code. There is the Code Civil, the Code de Procédure Civile, the Code de Commerce, the Code d'Instruction Criminelle, and the Code Pénal. But even all these taken together do not contain the *whole* law of France. Portions such as the Code Forestier have been since codified, and there is to this day a great mass of law not at all codified. All laws passed by the Legislature for the time being are published in the "Bulletin des Lois," a work of great size, yearly increasing. Nay more, the codes have not been spared. Stripped of the lion's skin they have been boldly cut up and amended like less pretentious pieces of legislation. Then look at the text-books and commentaries which these codes have caused to be published? We have Locré in thirty-one volumes, Touillier and Traplong in nearly fifty volumes, Pailliet in several volumes, and those of D'Auvilliers, Teulet, and of many other writers too numerous to mention. Why! here on codes scarcely half a century old, we have more law text books than there are to be found on the whole common law of England! Add to these the "Bulletin des Lois," already mentioned, a publication which rivals our Statutes at large, and then point out the advantages of codification!

Though we deem consolidation in some respects practicable, and in many respects desirable, we look upon codification, applied to English law, as impracticable and objectionable even if practicable. Let the body of our law, like our constitution, remain unwritten—except by the finger of God in the hearts of the people, and when necessary for the public good, let there be so far as necessary, the addition of statute or written law admitting upon its face the imperfection of human wisdom, manifesting the inferiority of human, compared with divine laws, and honestly confessing the humility of the human law giver, however able, however industrious, however far-seeing when compared with the Divine law giver of the world.

TRIAL BY JURY IN CIVIL CASES.

Of late much attention has been given by thinking men to the subject of this article. There is a feeling more or less strong that the prevailing system of trial by jury in civil cases in Upper Canada is not perfection. Accompanying this feeling there is, as there ought to be, a desire for substantial improvement.

When in April last we expressed our views at great length on trial by jury, we had a presentiment that something would be essayed during the present session of the legislature towards amending the law on this important head of jurisprudence. The honour of making the attempt

is due to Mr. Mowat. He has introduced a bill, intitled "An Act respecting the trial of issues of fact by a judge in certain cases in Upper Canada," the preamble whereof recites that it is expedient "to provide for the trial of issues of fact by the court without a jury whenever all the parties to a cause prefer that mode of trial."

Nothing can be more just or more reasonable than the assertion thus made. It is a maxim of law, that "*volenti non fit injuria.*" If all the parties to a cause prefer to have that cause tried without a jury surely there can be no objection. They are the parties interested in the result, and if satisfied, instead of putting themselves "upon the country," to put themselves upon the common sense, tried skill, and trained judgment of the court, though consisting of a single judge, it is not for mere speculists to interpose.

In Lower Canada, at first, trial by jury in a civil case was a thing unknown as well as unauthorized. In 1785 a provision was made, "that all and every person having suits at law, and actions in any of the courts of Common Pleas, grounded on debts, promises, contracts, and agreements of a mercantile nature only, between merchant and merchant, and trader and trader, so reputed and understood according to law, and also personal wrongs, proper to be compensated in damages, may at the option or choice of either party have and obtain the trial and verdict of a jury, as well for the assessment of damages on personal wrongs committed as the determination of matters of fact in any such cause." (25 Geo. III., c. 2, Art. 9.) In 1829, it was enacted, that "in any personal action whatever in which the remedy sought is compensation in damages interest and costs only for some wrong sustained by reason of some *delits* or *quasi delits* to moveable property only, it shall and may be lawful to and for the plaintiff and plaintiffs, defendant and defendants therein, and to and for either of them, at his, her, or their option and choice, to have and obtain the trial and verdict of a jury, as well for the determination of matters of fact as for the assessment of damages in such action, in due course of law, &c." (9 Geo. IV., c. 10), but in 1849 it was enacted, "that no trial by jury shall be allowed in any civil suit or action wherein the sum of money or value of the thing demanded or in dispute shall not exceed twenty pounds currency, &c." (12 Vic., c. 38, s. 88.) Such is now the law of Lower Canada.

In Upper Canada, as early as 1792, an act was passed reciting that trial by jury had long been established and approved in the mother country, and then enacted, that after 1st December, 1792, "all and every issue and issues of fact which shall be joined in any action, real, personal, or mixed, and brought in any of His Majesty's courts of justice, &c., shall be tried and determined by the unanimous verdict of twelve jurors duly sworn for the trial of such issue or issues, &c.," (32 Geo. III., cap. 2, s. 1.) In 1853, when the jurisdiction of Division Courts was increased to £25, it was provided that "the judge of the County Court or his deputy (acting as judge of a Division Court) shall be the sole judge to determine all actions brought in the said Division Court in the summary manner authorized by this act, and all matters and questions of fact relating thereto, unless the amount claimed shall in cases of tort or trespass exceed £2 10s., in other cases where the same shall exceed £5, and where either of the parties shall require a jury to be summoned, &c.," (13 & 14 Vic., c. 53, s. 30), and it is then enacted, that "in all actions of tort or trespass where the sum of money sought to be recovered shall exceed £2 10s., and in all other cases where the same shall exceed £5, it shall be lawful for the plaintiff or defendant to require a jury to be summoned to try the said action, &c." (s. 32). So, "in case any judge before whom a suit shall be tried in a Division Court shall think it proper to have any fact or facts controverted in the cause tried by a jury in such case a jury of five persons present shall be instantly returned by the clerk of the court to bring such fact or facts as shall seem doubtful to such judge, &c." (16 Vic., cap. 177, s. 11). This is now the law of Upper Canada.

In what respect does Mr. Mowat propose to change this law? He proposes to enact that "in every cause in the Superior Courts of Common Law, (Queen's Bench and Common Pleas), and in the County Courts, all issues shall be tried and all damages shall be assessed by the Court unless some one of the parties requires the same to be by a jury," (s. 1), and that "when a jury is not so required, any judge who might have presided at the trial or assessment of damages by a jury, shall be competent to try the cause and assess the damages; and the verdict of the judge shall have the same effect, and the proceeding upon and after the trial as to the powers of the Court or judge, the evidence or otherwise, shall be the same as in the case of trial by jury." (s. 2). The law as to juries in Division Courts is to remain intact.

Comparing the law of Lower, with that of Upper Canada, and the latter with the bill proposed by Mr. Mowat, we have the following results. Where the demand in Lower Canada is less than £20 no trial by jury can be had. Where in Upper Canada the demand exceeds £2 10s. and is less than £25 a jury may be required by either party, and if not required, the trial may be had without a jury. In Lower Canada, if the demand exceed £20, and be for a claim of a mercantile nature, or for damage to moveable property, either party to the cause may demand

a jury. In no other civil cause in Lower Canada can a trial by jury be had. In Upper Canada where the demand exceeds £25 there must as a general rule be a trial by jury. Thus it will be seen, that in Upper Canada trial by jury in civil cases is the rule, while in Lower Canada it is the exception. It is proposed by Mr. Mowat to make trial by jury in Upper Canada the exception—not the rule.

We do not think his experiment altogether undeserving of support. As he intends that *some one* of the parties *may* demand a jury, no trial without jury can be had without the assent of *all*. Those with bad cases who now prefer a jury to a judge, in the hope of mystifying, or as it is classically expressed, "bamboozling"—the former, when they would have no hope of deceiving the latter, will be able as much as ever to choose their mode of trial. Whether it is prudent to preserve this privilege to the dishonest, may hereafter be made a question, but at present had better be allowed to rest. In the main, therefore, we approve of Mr. Mowat's measure, and shall, with modifications hereafter noticed, be glad to see it take its place in the statute book. It is a pity that the learned author of it did not at an earlier period introduce the measure. Its opponents may, with some show of reason, argue that a change so radical as that which the bill contemplates should not be made at the heel of a session.

For ourselves, we are not at all satisfied but that the bill, as an experiment, goes a little too far. Mr. Mowat makes trial without jury the rule, and trial with jury the exception. This is not consistent with the preamble of his bill. The bill recites, as we have seen, that it is expedient to provide for the trial of issues of fact by the Court, without a jury, whenever all the parties to a cause *prefer* that mode of trial; that is, as we construe it, whenever the parties signify their wish to have a cause so tried. And yet the bill proposes to enact that a cause shall be tried without a jury, unless the parties signify their desire *to the contrary!* Our idea is, for the present, to continue trial by jury in civil cases as the rule, leaving to the *parties*, whenever so disposed, a right to claim the exception. Indeed we would not even extend this right to *all* cases. For example: actions for slander, crim. con., malicious arrest, malicious prosecution, and actions of a similar nature, are, we think, best triable by jury. As to such actions, the law, in our opinion, ought to remain unchanged.

Our legislators of to-day as much pride themselves in copying the institutions of "the mother country" as did the legislators of 1792. Let us then trace the amendments made in the English system of trial by jury since 1792.

The Courts in England which resemble our Division Courts are termed "County Courts." In England there are no intermediate Courts corresponding with our County Courts. The inferior c. County Courts in England have jurisdiction in all personal actions where the debt or damage claimed does not exceed £50, (13 & 14 Vic., c. 61), and by agreement of the parties to any amount, (s. 9). The judge of the County Court is the sole judge in all actions brought in his court, and determines all questions as well of fact as of law, (9 & 10 Vic., c. 95, s. 60) Where the amount claimed exceeds £5 either party may require a jury to be summoned to try the action: (s. 70). All actions not brought in the County Court are brought in one or other of the Superior Courts of Common Law; and the parties to any such action may by consent in writing leave the decision of any issue of fact to the Court; and the verdict of the judge or judges is of the same effect as the verdict of a jury, save that it cannot be questioned upon the ground of its being against the weight of evidence: (17 & 18 Vic., c. 125, s. 1.)

It is not necessary to go further to show that taking "the mother country" as our model, we may make great changes in our system of trial by jury. There is no reason under the sun why a single judge should not as well determine an ordinary question of fact as twelve tradesmen or farmers. Nay, there are many reasons for believing that the judge could do so better than any jury. Nothing but prejudice prevents men seeing and acknowledging this to be the case. Possibly the judges would rather not be called upon to discharge duties hitherto performed by jurors. On their part there may be a reluctance to do so. They may be of opinion that their duties would be in consequence increased. Should these be the views of the judges, they are not our views. It would be as easy for a judge after hearing evidence at once to determine in his own mind for or against a party litigant as to deliver a long address in order to assist twelve men less capable than himself of arriving at a just conclusion. Indeed, under the law as it stands, judges there have been and judges there are who invariably direct juries to find one way or the other according to the impression produced on the judicial mind. Of these, the most noted were Lord Ellenborough, Lord Tenterden, and Lord Abinger. Of existing judges Lord Denman is an illustrious example. These great men, free of timidity, instead of charging—if you think so and so, find for plaintiff, and if you think so and so, find for defendant—having by grasp, intellect seized the truth, rather than allow it to be smothered by the ignorance or stupidity of jurors, boldly charged in accordance with the dictates of truth and the demands of justice. We have nothing to fear on this head from the Superior Court judges of Upper Canada. Suitors wanting confidence in County judges will have it in their power to give them the go-by and summon juries. This power we have seen suitors now have in Division

Courts. How often is it exercised? Not in one case in one hundred and fifty. Surely this is an argument of some weight in favor of the principles contained in Mr. Mowat's bill.

MOSES R. CUMMING.

It will be remembered that this individual was last year tried at Toronto for embezzlement.

He was indicted on two counts.

The first charged that on 11th March, 1857, he being a clerk then employed in that capacity by the Bank of Upper Canada, did then and there in virtue thereof *receive* a certain sum of money, to wit: £1,449 15s. for and on account of the said Bank of Upper Canada, and the said sum of money feloniously did embezzle.

The second count charged that he, on 11th March, 1857, being a clerk, &c., (as in first count), did then and there and in virtue thereof *receive* a certain valuable security, to wit, an order for the payment of £1,439 15s. for and on account of the said Bank of Upper Canada, and the said valuable security feloniously did embezzle.

The jury found a general verdict, "guilty of embezzlement," upon which verdict there was judgment.

The form of the indictment is that given in the schedule to Statute 18 Vic. cap. 92, which, from its language, seems to refer to Statute 4 & 5 Vic., cap. 25, s. 39, which enacts, that "if any clerk or servant of any person employed for the purpose or in the capacity of a clerk or servant, shall by virtue of such employment *receive* or take into his possession any chattel, money, or valuable security, for or in the name or on account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master," &c.

The evidence did not prove an offence under this Statute but rather one under Statute 19 & 20 Vic., cap. 121, s. 40, which enacts, that "if any cashier, assistant cashier, manager, or clerk of the said Bank, (Bank of Upper Canada), shall secret, embezzle, or abscond with any bond, obligation, bill, obligatory or of credit, or other bill or note, or any security for money, or any money or effects *intrusted to him* as such cashier, &c., the cashier, &c., so offending, &c., shall be deemed guilty of felony."

The counsel for the prisoner contended that the indictment charged an offence under Statute 4 & 5 Vic., cap. 25, for embezzling money, &c., received by a clerk, &c., *from* third persons *for* his master, of which there was no evidence, and upon this ground, among others, moved the Court of Queen's Bench, under the recent Statute, 20 Vic. cap 61, for a new trial. The counsel for the Crown opposed the motion upon the ground among others that the form of indictment given in Stat. 18 Vic., cap. 92, applies not merely to acts of embezzlement under Statute 4 & 5 Vic., cap. 25, but to acts of embezzlement generally, including embezzlement under 19 & 20 Vic., cap. 121, of money, &c., entrusted *to* a cashier, &c., *by* his master, &c.

The Court of Queen's Bench discharged the rule, and from its decision the prisoner appealed to the Court of Error and Appeal, consisting of the ten judges.

On Saturday last, 26th July, judgment in error was given that the order of the Court of Queen's Bench refusing a new trial be reversed and that the rule be made absolute for setting aside the verdict and for granting a new trial, and that the prisoner be remanded to the same custody and be detained upon the same warrant and authority as before the verdict was rendered until therefrom discharged by due course of law. Chief Justice Draper and Mr. Justice Burns dissented from this judgment, and Justices McLean and Hagarty, being stockholders of the Bank of Upper Canada, declined to express any opinion. Mr. Justice Richards not having been present at the argument also declined to express an opinion. The Chief Justice of Upper Canada who in the Court of Queen's Bench gave judgment refusing a new trial, in the Court of Error and Appeal said that his judgment in the Court below was not given without much doubt, and that since it was given he had seen reason to change his opinion. He therefore concurred with the majority of the judges in appeal in granting a new trial. The majority consisted of The Chief Justice of Upper Canada, Mr. Chancellor Blake, Chief Justice Macaulay, Vice-Chancellor Esten, and Vice-Chancellor Spragge.

LAW REFORMS OF THE SESSION.—GENERAL REVIEW.

(*Continued from page* 128.)

The Bill "to amend and extend the Act of 1857, for diminishing the expense and delay in the administration of justice in certain cases," is of great importance. So far as it proposes to explain and amend the Act which it recites, it is unobjectionable; but so far as it proposes to extend the operation of that Act, it is not free from objection. It is all very well summarily to try persons accused of larceny when such persons assent so to be tried, but it is another thing summarily to try persons for criminal offences with or without assent, who hitherto were entitled to trial by jury. Much as we are prepared to dispense with trial by jury in a certain class of civil cases, we would not without fear and trembling deprive a party accused of crime of its benefits, where that party demands so to be tried. Life and liberty in England are more free than in the Continental

States of Europe. This is in no small degree attributable to the *right* of the subject to be tried by his peers. The famous words of Magna Charta are, "Nullus liber homo capiatur, vel imprisonetur, aut disseisiatur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis, aut utlagetur, aut exulit, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus nisi per legale judicium parium suorum vel per legem terræ." This Charter of our liberty is the bulwark of our freedom. It is not only the pride of our people, but the admiration of all foreigners who take the trouble to understand it. Rather than dispense with trial by jury in a criminal case, against the will of the party accused, we had better adopt the system in vogue in more than one State of the Union, of summoning a jury on the spot, in the same manner as on coroner's inquests. The criminal law of England is merciful—that of France is arbitrary. We must not be induced by any admirers of the latter country to substitute cruelty for mercy, when liberty is at stake.

Though several clauses of this bill correspond with English enactments, it is not to be forgotten that there is a wide difference between the circumstances of the two countries. The magistrates of Canada are not to be compared with the magistrates of England. There might be no risk in allowing a magistrate in England, under proper restrictions, to deprive of liberty; whereas in Canada that power dare not be entrusted to one magistrate in one thousand. Owing to this difference, a measure which might be in England a blessing, in Canada would be a curse. It is not safe to trifle with the liberty of the subject, or to pass any law abridging it, unless in cases of clear necessity.

It is with pleasure that we have seen this bill since its introduction deprived of some of its most objectionable features. It is now so altered that, no longer a monster, it may become law and prove a really good law.

A Bill "for the protection of Hotel Keepers in certain cases," is upon the whole a prudent measure. It is now a rule that an innkeeper is liable for the loss of the goods of his guest, but it is also a rule that the guest may by his own conduct discharge the innkeeper from responsibility. Though the law casts its protection on a traveller who resorts to an inn (and *all hotels* are not inns), it does not discharge the guest from the exercise of all prudence. Were the law so, the effects of it upon innkeepers would be ruinous as well as unjust. This bill is nothing more than an extension of the sound and wise principle of protection to the innkeeper as much as to his guest. It recites, that it is expedient to limit and declare and place upon an equitable basis the liability of *Hotel* keepers to their guests, for the loss of monies, jewels or ornaments, belonging to or in the custody of such guests With respect to these things, the innkeeper may keep a safe for their safe keeping, and may notify his guests that he has such a safe, in which he is ready to keep their valuables, and if the notification be neglected, notwithstanding a loss, the innkeeper is to be discharged from liability. The liability of an innkeeper as regards all property of a guest, not above enumerated, is to remain as heretofore. We cannot say that the bill goes too far. Now that travellers are in the habit of carrying upon their persons costly articles of jewelry, and travellers are so numerous, it is, we think, time for the law to cast a little more of its protection over the innkeeper than it does. The rule, as to the responsibility of innkeepers, owes its origin to the reign of "good Queen Bess;" and Calyes' case was decided in 1584. Though the people of that day were famed for many good qualities; yet they were not accustomed to travel in the pursuit of health, wealth and information, as do the people of the present day. There might have been the disposition, but there was not the ability. The want of steamboats and railcars was a serious obstacle to universal peregrination. Times change, and so do we; and as we change, so must the law.

The bill "for the protection of the owners of saw logs and other timber, and to afford *them* (*qu.* saw logs and other timber) summary relief in certain cases," is dictated by a knowledge of the wants of the country. The transition from a bill to protect hotel keepers to a bill to protect the owners of saw logs is an easy one. Protection is, we think, as much needed in the one case as the other. One of the staples of this country is the timber trade. Many are engaged in the pursuit of it. The law of *meum* and *tuum*, though pretty well understood, is not at all times respected. One saw log very much resembles another. And where there are thousands braced together, it is no easy matter to distinguish "mine from thine." Hence the temptation to appropriate the property of another is in this business great, and to many persons irresistible. It is often the subject of wonder why the law of England is so severe upon horse stealers. One and the chief reason is that the animal is so easily stolen, that great is the temptation of stealing him. So in proportion to the temptation to commit the crime is the severity of the punishment. The same rule applies equally to saw logs. It is proposed that the owner of every mill shall have particular marks for his timber. These marks are to be exhibited in a conspicuous place. Any mill owner exhibiting marks not his own is to be made subject to summary conviction before a magistrate. Persons in the employment of mill owners, cutting logs bearing any marks other than those of the mill owner, or defacing marks, are also to be subjected to summary conviction and punishment. As in other enactments

of a similar tendency, some explanation is here necessary. The seller of saw logs may have *his* marks; and if a mill owner who buys them, or his employees who cuts them, are to be punished because bearing a mark *other* than that of the mill owner, few will buy marked timber. Amendment is here required. We merely direct attention to it; confident that the introducer of the bill will be too glad to make the bill as useful as possible, and as practicable as useful.

The bill "to Provide for the Establishment of Separate Registry Offices in Cities, Towns, Counties, and Ridings of Counties, in Upper Canada," we propose next to consider. The present law is that of 9 Vic. cap. 34. It is enacted by s. 4, that there shall be a register appointed to be resident in each and every county in Upper Canada, &c. Other statutes have been passed, allowing each county, whether senior or junior county, which sends a member of Parliament—such as Durham, one of the United Counties of Northumberland and Durham—to have a separate registry office. So Peel, one of the United Counties of York and Peel. But no statute exists, allowing a junior county, not sending a member to Parliament, such as Bruce, one of the United Counties of Huron and Bruce, to have a separate registry office, though much needed. To remedy this defect in the law, the present bill is proposed. It goes further. It proposes to allow separate registry offices, not only for junior counties, but for ridings. This, it is presumed, will not be carried into effect for some time yet to come. So far as it is proposed to have separate registry offices for cities, the bill is worthy of support. The principle of a city being equal to a county for municipal purposes is admitted by the municipal law; and not only on principle, but for the sake of convenience, a large city like Toronto should have its own registry office, distinct from the county or counties in which it is situate. It is to be left to the Governor of the Province, so often as he shall deem the circumstances of any city, or of any junior county of an union of counties, or riding of a county or counties, not set apart for judicial or municipal purposes, such as to render expedient the establishment therein of a separate registry office, to proclaim and set apart a registry office for such city, &c. Provisions more than this bill contains, for the transfer of books to and making of extracts to be sent to the new registry office, are required. Before the bill becomes law, more attention ought to be given to this branch of it, else there will be great inconvenience and delay in carrying the act into effect.

The bill postponing the day for ss. 4–9 of C. L. P. A., 1857, to come into operation, was assented to by the Governor General on 30th ultimo.

HISTORICAL SKETCH OF THE CONSTITUTION, LAWS, AND LEGAL TRIBUNALS OF CANADA.

(*Continued from Page* 131.)

On the death of Champlain the colony was, subject to the privileges of the Company of the hundred associates, committed to the care of Monsieur de Montmagny. H appears to have been a person of integrity and ability. It was during his rule that the Island of Montreal was granted to the St. Sulpicians of Paris. The grant was made on 17th December, 1640, and confirmed by the King of France on 13th February, 1644. Obedience to a body of laws known as the Prévôte and Vicomte de Paris was especially enjoined—and resort to a contemplated Court or Sovereign Council to be established by the Company at Quebec, was also made the subject of stipulation. Before this time there was no Court of Justice of any kind in the colony. In 1640 there was established the Court of the Grand Seneschal or Steward, who had a limited jurisdiction. In weighty causes he was assisted by a Council.

On 6th June, 1645, de Montmagny received a royal commission, in which his previous services were honorably mentioned, and by which he was re-appointed governor and lieutenant-governor for a further term of years; but in 1647 he was recalled, and succeeded by Monsieur D'Aillebout. It was the custom of the time to limit each governor to a term of three years only, and in 1650 the term of office of D'Aillebout expired. His successor was Monsieur de Lauzon, who had been one of the associates of the Company, and who therefore had some knowledge of the wants of the colony. In addition to the ordinary powers of government, authority was given to him to settle disputes between the colonists, to try crimes, and to punish criminals even with death These powers he exercised until 1654, when Monsieur Nicolas Denys was appointed his successor. To this gentleman was confided the power of appointing subordinate officers of justice, and, with the advice of a Council, to make laws, statutes and ordinances. We have no record of any laws ordained by him. His government, so far as we can learn, was satisfactory to the colony and to the mother country. His term of office having, in 1657, expired, Viscount D'Argenson relieved him. Scarcely had the latter landed in the colony when he was surprised to hear the cry of "To arms," and was informed that a number of Algonquins had been massacred under the guns of the fort by a scouting party of the Five Nations, who had been for years the deadly foes of the French, and of such Indians as received their protection or acknowledged their authority. No serious rencontre took place. The hostile Indians upon the first manifestation of resistance fled, and though pursued were not overtaken.

D'Argenson's health failed him, and having at his own request been recalled he was succeeded by Baron d'Avangour, who upon his arrival examined into the condition of the colony, and found that owing to the neglect of the Company everything was in a wretched plight. Trade, and not good government, was the aim of the Company, and now for the first time it became manifest either that possession of the colony should be taken from the Company, or that the Company and the colony should be left a prey to the Indians. A direct appeal for protection was made by the inhabitants to the throne of France. The fruit of this appeal was the despatch of Monsieur de Monts from France, as a special commissioner to inquire into the state of the colony. He arrived in 1662. It was during this year that Canada was the scene of a terrific earthquake, which it is said lasted, with little intermission, for the space of six months. At the Bay of St. Paul's a mountain was thrown into the River St. Lawrence and formed an Island. At Point aux Allouettes an entire forest was detached from the land and thrown into the river. The ice which at the time covered the St. Lawrence was hurled into the air, and fell in masses of appalling grandeur. Rivers were diverted from their courses. Some rivers became in color red, others yellow; while the St. Lawrence, from Quebec to Tadousac, was white. The earth, the heavens, and all that was visible during this earthquake is described as having presented an awful appearance. The desolation that ensued was not at all calculated to lessen the dissatisfaction of the colonists suffering under the misrule of the Company.

No sooner had Monsieur de Monts returned to France than arrangements were made to deprive the Company of its privileges; but on 14th February, 1663, they voluntarily surrendered them, and the surrender was, in May following formally accepted. Monsieur de Mézy was forthwith appointed governor of the colony for a period of three years from his arrival at Quebec. M. Robert, a counsellor of State, was appointed Intendant of Police, Finance, and Marine, but never arrived in the country; and on 7th May, 1663, Monsieur Gaudais was appointed a special commissioner to obtain information, among other things, of the situation of the colony, the length of the days and nights, the salubrity of the air, the regularity of the seasons, the fertility of the soil, the quantity of land under cultivation; the population of Quebec, Montreal, and Three Rivers—their occupation and means of subsistence; the tenure of lands, the production of wheat, and the nature and extent of debts and other obligations. In the instructions to Monsieur Gaudais, the want in the colony of some system of law was mentioned, and his Majesty, Louis the Fourteenth, declared his intention of creating a Sovereign Council, to consist of the Governor, the Intendant, and five other leading residents. In November, 1663, Monsieur Prouvelle de Tracy was commissioned Viceroy of the French Colonies in America, and by name over Canada, Acadia, Newfoundland, and the Islands of the Antilles. His authority was of the most extensive kind, paramount to that of all governors or lieutenant-governors of particular colonies.

When Monsieur de Gaudais arrived in the colony he administered the oath of allegiance to the inhabitants, regulated the Police, and made rules for the administration of justice. When de Mézy reached the colony, which he did at the same time as de Gaudais, he published a Royal Edict, creating a Sovereign Council, composed of de Mézy as Governor-General, representing the Crown, de Laval, Bishop of Petrée, and five other councillors, to be elected by them, one to be Attorney General, and a Clerk for the preservation of arrets decrees, or orders of the Council; the Clerk to hold his appointment at the pleasure of the Governor and Bishop. The powers of the Sovereign Council were to take cognizance of all causes, civil as well as criminal; to judge sovereignly and in the last resort, according to the laws and ordonnances of France, and therein to proceed as near as possible in the form and manner practised and observed in the jurisdiction of the Court of Parliament at Paris; reserving, nevertheless, to the Monarch power to change, reform and amplify the said laws and ordonnances, and them to alter, repeal or renew, or such other regulations, statutes or constitutions as the Monarch might conceive .. be useful to his service and the welfare of his subjects in the colony. Attached to the Sovereign Council there were Assessors, or men known to be well versed in the laws. These officers had a deliberative voice in causes in which it was their duty to report upon the law. The Sovereign Council was thus both a political and judicial body. It met regularly every Monday at the Intendant's palace, and special sessions were held at the pleasure of that officer. The custom of Paris and the ordonnances of France were made the law of the colony.

During the year 1664, a powerful West India Company was chartered, and by the edict chartering it the Company became possessed of the territory lying between the Rivers Amazon and Oronoko, the Charibee Islands, Canada, Acadia, Newfoundland and Africa. This immense territory was granted to the Company in seigneurie, but subject to be governed by the laws and ordonnances of France, and the custom of the Vicomte and Prevoté of Paris. Under this charter the Marquis de Tracy was ordered first to visit the West Indies, and then to visit Canada, to adopt such measures as he might see fit for the safety and tranquillity of the colonies.

De Mézy, as Governor of Canada, was in 1665 succeeded by Daniel de Remi, Seigneur of Courcelles; and on 23d

March of the same year, in lieu of Monsieur Robert, who never reached the colony, Monsieur Talon was appointed Intendant of Justice, Police and Finance. He was authorized to do justice on the complaint of the military and others; to hear and determine criminal and civil cases under certain reservations, which we shall hereafter more fully explain.

Shortly after his appointment, the government of France having learned the disproportion of men and women in the colony, sent out 700 women. When they arrived the men of the colony were informed of it, and such of them as felt competent to support wives were offered their choice. The collection was described as tall, short, fair, brown, fat and lean. In less than fifteen days, the demand was so great that not one of the seven hundred women remained without a lord and master.

After this period, that is in 1672, de Courcelles was relieved by the Count of Frontenac, whose name a County in Upper Canada still bears.

In December, 1674, the West India Company, having given no greater satisfaction in their government of the colony than did the previous Company of the hundred associates, surrendered their charter to the Crown. De Chesneau was in the year following appointed Intendant of the colony; he was especially enjoined to see that the Sovereign Council conformed in all things to the custom of the Prévoté and Vicomté of Paris, and had power conferred on him to act without the Council when necessary to avoid delay. In 1678 an elaborate code of practice was decreed; and in the month of June, 1679, an edict was issued, by which the King approved of certain articles of the Code Civil, repealed others as inapplicable to the then state of the colony, and substituted new regulations.

In process of time, besides the Sovereign Council, inferior or District Courts were instituted at Quebec, Montreal, and Three Rivers. In the first two there was a magistrate, called Lieutenant General, who exercised criminal and civil jurisdiction; a magistrate who was also Judge of the Admiralty, called Lieutenant Particulier; a Crown Attorney, and a Clerk. In the Court at Three Rivers, with the exception of there being no Lieutenant Particulier, the officers were similar to those in Quebec and Montreal. Two sittings of these Courts were held every week throughout the year, except about six weeks in the month of September and October, and a fortnight at Easter. From each of the three District Courts an appeal lay to the Sovereign Council, and a further appeal to the King of France, in his Council of State.

It may not be out of place here to notice the powers of the Intendant as a Minister of Justice by virtue of the first part of his commission—Intendant de la Justice.

He had power to determine matters of civil property in a summary way. His jurisdiction was not limited to contests under any particular value, but was seldom exercised except in trifling cases, such as complaints of abusive language and the like. He was authorized to delegate his power to other persons, by commissions in writing for that purpose, and the persons so appointed by him to exercise judicial authority were called his Sub-délegués. There were usually seven appointed—two at Quebec, one at Three Rivers, two at Montreal, one at Detroit, and one at Michilimackinac—which two latter places, though now lying without the boundaries of the Province, were within the Province as bounded in the time of the French government. To the inhabitants of the western part of the Province, though few, the residence of the Deputies at these points was a great convenience, preventing as it did the necessity for journeys to Montreal, Three Rivers or Quebec, to attend the regular Courts. Though the jurisdiction of the Intendant himself was not circumscribed, with that of his deputies it was otherwise. They had no jurisdiction for money demands exceeding fifty livres, or about forty shillings sterling. They had, however, power to determine complaints concerning abusive words and the like small offences as much as the Intendant himself.

In addition to the several jurisdictions established by the King, and in which justice was administered in his name, there were in many seignories seignorial jurisdictions, in which justice might have been administered by the authority of the Seigniors. These Seigniors were persons to whom the King of France had granted large tracts of land to hold immediately of the Crown, upon certain conditions and with certain reservations. The right of a Seignior to administer justice was derived from the following words when used in his grant "Nous donnons et concedons une telle étendue de terre à un tel á tétre de Fief et Seigneurie, avec haute moyenne et basse justice." Thus there were three kinds of justice which might have been administered by them, viz., high, middle, and low justice. "La haute Justice," or the highest of these jurisdictions, consisted in a right to decide criminal matters of the highest nature, that were punished by loss of life or limb. "La moyenne Justice," was a right to determine inferior crimes that did not affect life or limb but were punishable by fine or imprisonment, or such as in the English law are termed misdemeanors. "La basse Justice" was a right to determine only civil actions or matters of property, and very trifling offences, such as abusive language or other injuries coming under the denomination of Le petit criminel, being a class of crimes still lower than those that were the objects of the moyenne justice. A Seignior who had the jurisdiction was obliged to keep a Judge to sit in the Seignorial Court, and

likewise a prosecuting attorney, a register, and a bailiff, and to maintain a place for the confinement of criminals. Very few of the Seigniors were rich enough to bear this expense; the jurisdiction was in consequence little exercised; moreover, the exercise of it was very much checked and controlled by the officers of the Crown, particularly with respect to the prosecution of capital crimes. There was in every case, whether criminal or civil, a right of appeal to the District Court of the District in which the Seigniory lay. No execution could be had of any sentence affecting life or limb against a criminal without a revision and confirmation of it by the Supreme Council, even though the criminal himself did not appeal.

(To be Continued.)

JUDICIAL CHANGES IN ENGLAND.

Ma. Justice Coleridge is about to quit the bench, and he will be succeeded by Mr. Hugh Hill, Q.C. The *Daily News* says:—

Sir John Taylor Coleridge, the retiring judge, has been for more than twenty-three years on the bench, having succeeded Sir William Taunton, one of the judges of the Court of Queen's Bench, on the 28th January (Hilary Term,) 1835. Sir John Coleridge was educated at Oxford, and took his degree in Easter Term, 1812, when he was the only man of his year in the first class in classics; in 1810 he obtained the prize for Latin verse, and in 1813 the two prizes for the Latin and English essays. Mr. Justice Coleridge, while at the bar, went the Western Circuit, and became a serjeant in 1832, three years before he was raised to the bench.

Mr. Hugh Hill, Q.C., the newly-appointed judge, was called to the bar in 1841, before which time he had practiced with great success as a pleader for a considerable number of years Mr. Hill's pleading connection early introduced him to business, and from the date of his call his practice was considerable, especially in mercantile cases. On the Norther Circuit he soon stepped into the first junior business, and was extensively retained in the City of London. In the year 1851 he was called within the bar; and latterly, in consequence of a failure in health, arising from the over-pressure of business, he had given up answering cases, confining himself to practice in open court. Mr. Hill's age is sixty, or thereabouts; he has never taken an active part in politics, but is understood to be a strong Conservative.

LAW AND EQUITY.

It seems that in England, as in Canada, there is a belief that the fusion of Law and Equity is only a question of time. Day by day—little by little—the fusion is being effected. There are now before the English legislature two bills—the one to confer upon Equity Courts the right to award damages like Courts of Common Law; the other to increase the Equity powers of Courts of Common Law. On a future occasion we shall probably fully advert to them.

If there be any probability of the idiocrasy of the English administration of justice being removed, we in Canada may well live in hope. There can not be to our mind anything more illogical, or more ridiculous, than the administration of justice by rival Courts of Law and Equity. England alone, among European nations, enjoys this unenviable system of *bellum in pace*. Subjected to the test of reason, the system falls to the ground. Its only support is the tolerance of the people, who, born and living under it, know nothing better, and scarcely hope for better. It is to foreigners an incomprehensible absurdity, and like other absurdities, now no more, we hope is destined to be numbered among the things that are past.

SINGULAR FACT.

In the names of the fifteen English Judges, there are no fewer than six bearing the initial "C.," and four that of "W." There are Campbell, Cockburn, Coleridge, Crompton, Crowder, and Channell; and Wightman, Williams, Willes, and Watson, leaving only five names to all the rest of the letters, Bramwell, Erle, Martin, Pollock, and Byles. Still further adding to the "C's" Chelmsford the Lord Chancellor, the ex-Chancellor "Cranworth," and Cresswell the Judge Ordinary.

DIVISION COURTS.

OFFICERS AND SUITORS.

ANSWERS TO CORRESPONDENTS.

To the Editors of the Law Journal.

2nd June, 1858.

SIRS.—In the April and May numbers of the *Law Journal*, under the above heading, I observe that the power of the Division Courts to try the *possession* of corporeal or incorporeal hereditaments is commented upon. In reference to this subject I would beg leave to submit the following to the consideration of those interested in this question.

The words of the Statutes limiting the jurisdiction of the Division Courts in this Province, are respectively—

13 & 14 Vic. chap. 53, sec. 23,—"Nor for any cause involving the *right* or *title* to *real estate*," &c.

16 Vic. chap. 177, sec. 1,—"Or of any *action of ejectment*, or in which the *title* to any *corporeal* or *incorporeal* hereditaments," &c.

In the County Courts' Acts of this Province, the words are 8 Vic. chap. 13, sec. 57,—"And where *titles* to *land* shall not be brought into question." 13 & 14 Vic. chap. 90, sec. 20,—"And where the *title* to *land* shall not be brought in question." 19 & 20 Vic. chap. 90, sec. 20,"—Where the *title* to *land* shall be brought in question.

In the County Courts' Acts in England the words are,

Imp. Stat. 9 & 10 Vic. chap. 95, sec. 58,—"In which the *title* to any *corporeal or incorporeal hereditament*," &c., shall be brought in question.

The last mentioned Act was judicially noticed in the case of Latham v. Spedding, 17 Q. B., 440; 20 L. J., Q. B. 302, which was an action trespass, qu. cla. fregit. The pleas were not guilty, and *not possessed*. A verdict was rendered for the plaintiff for 40 shillings. No question arose on the trial as to the title of the plaintiffs to the house in question; and the Judge who tried the case refused to certify that it was a proper case to be tried in the Superior Courts. Subsequently, *Patteson, J.*, in Chambers conceiving that the plea of *not possessed* put in issue the *title* to *land* and ousted the jurisdiction of the

County Court, made an order for costs. The Queen's Bench afterwards rescinded the order, upon the ground that the jurisdiction of the County Court was not ousted, because the defendant had so pleaded that the title might possibly come in question, nor would it be until the question actually came on at the trial, and was really and bona fide in issue. "Surely said Lord Campbell, "*A County Court can try the question of possession or non-possession.*" In the case of Overholt v. Faris and Dundas Road Co., 7 U.C. C.P., 293, the Court treats the words in the English County Court Act and the Provincial County Court Act as having the same meaning and effect. See also the cases of Trainor v. Holcombe, 7 U.C. B.R., 549; Thompson v. Ingham, 14 Q. B., 710; 19 Law Jour., B. R., 189.

Yours, &c., D.

[We have much pleasure in giving a place to the above. Such communications are valuable in every point of view, and if practitioners generally would occasionally do has D. has done contribute an item for the "benefit of those interested" in questions, it would largely benefit all. This is the first communication we have received from D. and we trust it will not be the last.—Eds. L. J.]

To the Editors of the Law Journal.

Owen Sound, June 1st, 1858.

Messrs Editors.—A question has arisen in my practice which I conceive to be of importance to suitors in Division Courts. It is this: the 8th section of the Division Courts Extension Act allows a suit to be tried "where the cause of action arose;" Now suppose a promissory note is given at the farthest extremity of Upper Canada, say at Ottawa city, and is held by a party at Owen Sound, *when it falls due* can it be tried in in the Division Court here?

The assumption by those who would answer this question in the affirmative, is that there was no cause of action until the note fell due, that the "cause of action" under the Statute arose here. We are assuming of course that the defendant lives in Ottawa and not here.

Now, does not this look very like a quibble? Could it be intended by the Legislature that the defendant, who we will suppose to have a good defence, shall appear *here*, when he lives in a distant city, and the transaction on which the note was founded, occurred *there* also?

It may be answered in the affirmative that it would be quite as unjust to compel the plaintiff to go to Ottawa to attend Court, as to compel the defendant to come to Owen Sound, especially when the defendant neglected the precaution of stating in the body of the note where it should be payable.

My answer would be, that the cases are not equal. The plaintiff in buying the note would buy it at a reduction corresponding to his estimate of the trouble and risk of collecting a note from a man in Ottawa, who could only be sued there —while the defendant would have no such option. He was not a party to the transfer, and was not even aware of it.

Your opinion on this point would be interesting, I am sure, to suitors, and important to your obedient servant,

William Smith,
Clerk 1st D. C. Grey.

[We understand there is much diversity of opinion in the several Counties on the point our correspondent notes and would prefer reserving the expression of our opinion till those who take different views have an opportunity of advancing them. This opportunity we will gladly afford in the *Law Journal* and beg to solicit communications on the subject. Discussions of the kind serve a good pur ose.

In the meantime we would refer to the following cases as bearing upon the point. Roff et al v. Nuller, 19 L. J. C.B., 278; Buckley v. Hann, 19 L. J., Ex. 151; Wilde v. Sheridan, 21 L.J., Q.B. 260; Heath v. Long, 19 L. J. Q. B. 325.

MANUAL ON THE OFFICE AND DUTIES OF BAILIFFS IN THE DIVISION COURTS.

(*For the Law Journal.*—By V——.)

[CONTINUED FROM PAGE 133. VOL. IV.]

ACTIONS GENERALLY BY AND AGAINST BAILIFFS.—IN WHAT DIVISION COURT TO BE BROUGHT.

By the 62nd section of the Division Court Act, it is enacted that when any Clerk or *Bailiff* either by himself, or jointly with any other person, is liable to be sued or may sue any person for a debt or demand within the jurisdiction of the Division Court of which he shall be Clerk or Bailiff, then and in every such case the Clerk or Bailiff may sue, and shall be liable to be sued for any debt due, &c., in the Court of *any next adjoining Division* in the same County in the same manner to all intents and purposes, as if the cause of action had arisen within such next adjoining Division, or the defendants were resident therein

This enactment, it is conceived, embraces all actions that may be brought by or against Bailiffs, in a Division Court, as well as those actions which are independent of their official character, as those for acts done or connected with the performance of their duties as such Bailiffs, and the effect appears to be compulsory, in other words, that Bailiffs cannot sue or be sued in their own Courts.

In some Counties a different practice prevails and officers are allowed to sue in their own Courts; the words "may sue" in the clause being taken to give a cumulative right to officers. Such construction, it is submitted, is erroneous.

No officer entrusted with the power of carrying the law into effect, should be allowed to place himself in a position to advance his peculiar interests by forwarding his own claims or otherwise, to the disadvantage of others having a right to avail themselves of his services as a minister of justice. Bailiffs are required to serve summonses, and the service of the summons is the very foundation of the Judge's jurisdiction to receive confessions and to execute warrants of execution. A judgment is given in default of defendant's appearance, on proof in most cases of service merely. Should the plaintiff as Bailiff give jurisdiction to the Court by such proof, rights attach in respect to the time of the Bailiff receiving executions and taking action thereupon. And these officers might have at the same time in their hands an execution in their own favor, and one in favor of a third party against the same defendant, and they might be able without danger from the law, to take care of their own interest in the first place leaving the other plaintiff without remedy. And then the affidavit required of a Bailiff on proof of a confession that he has no interest in the demand sought to be recovered, he could not of course make in a case in which he is plaintiff.

It may be said that, in such cases, the confession might be taken by the clerk; but the enactment is for the benefit of defendants, and if they find it more convenient to give a confession to the bailiff, they have a right to do so; so that, with reference to the position of bailiffs, it would be holding out a premium to fraud and placing ordinary suitors in a less favorable position than officer suitors to hold that they had a right to sue directly, or indirectly, in their own

courts. If, as it is contended, the words "may sue" are designed to give a cumulative right to bailiffs to sue in their own courts when the cause of action arises within their division, or the defendant resides therein, or to sue in an adjoining division, *at their option*, it is difficult to understand on what principle a right should be given to an officer suitor, which is not given to other suitors generally. But the words "may sue," in their connection with and reference to the subject, are evidently imperative, and mean that the bailiff *must* sue in the next adjoining Division Court; such construction being in furtherance of the public good. Recent Division Court Acts confer certain powers and require certain duties, which never could have been intended to apply to a bailiff *party* to a suit, and so the Legislature could not have supposed they possessed any right to sue in their own county.*

To quote the language of a judge who examined the language of this clause, and declined hearing cases brought by officers in their own courts—"It is most important that the administration of justice, in every department, should be free even from the breath of suspicion; and in every aspect in which the alleged right has presented itself to my mind, I see opposed to it inconvenience, public distrust, and possible fraud. The clause having the effect, I take it, to have shut out these evils."

THE MAGISTRATE'S MANUAL.

BY A BARRISTER-AT-LAW.—(COPYRIGHT RESERVED.)

[*Continued from page* 135, VOL. IV.]

III.—SUMMONS OR WARRANT.

Warrant when indictment found.—When a party is at large, and an indictment is found against him by the Grand Jury either at the Assizes or Quarter Sessions, and he does not appear and plead to the indictment, it is the duty of the Clerk of Assize or Clerk of the Peace at Sessions, as the case may be, upon application of the prosecutor, and on payment of one shilling to deliver to the prosecutor a certificate of such indictment having been found—in this form.

† I hereby certify that at a Court of (Oyer and Terminer, *or* General Gaol Delivery, *or* General Sessions of the Peace) holden in and for the (*County or United Counties, as the case may be,*) of ——, at ——, in the said (*County &c.,*) on ——, a Bill of Indictment was found by the Grand Jury against A. B., therein described as A. B. late of ——, (*laborer,*) for that he (*&c., stating shortly the offence,*) and that the said A. B. hath not appeared or pleaded to the said indictment.

Dated this ——, day of —— one thousand eight hundred and ——

Z. X.

Clerk of the Crown *or* Deputy Clerk of the Crown for the (*County or United Counties, as the case may be,*) *or* Clerk of the Peace of and for the said (*County or United Counties, as the case may be.*)

On the production of this certificate to any magistrate, having jurisdiction where the offence was committed or where the person charged therewith is supposed to be, it is the duty of the latter to issue a warrant for the apprehension of the person charged with the offence—in this form:—

* Province of Canada, (*County or United Counties, or as the case may be,*) of ——

To all or any of the Constables, or other Peace officers in the said (*County or United Counties, or as the case may be*) of ——:

Whereas it hath been duly certified by J. D., Clerk of the Crown of (*name of the Court*) (*or* E. G. Deputy Clerk of the Crown) (*or* Clerk of the Peace, *as the case may be*) in and for the (*County or United Counties, or as the case may be*) of —— that (*&c., stating the certificate*); These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*), or some other Justice or Justices of the Peace in and for the said (*County or United Counties, or as the case may be,*) to be dealt with according to law.

Given under my Hand and Seal this —— day of ——, in the year of our Lord ——, at ——, in the (*County, &c.*) aforesaid.

[L. S.] J. S.

On the apprehension of the party charged, and on proof on oath or affirmation that he is the person named in the indictment, the magistrate may commit him to trial by warrant thus—

† Province of Canada (*County or United Counties, or as the case may be,*) of ——

To all or any of the Constables, or other Peace officers, in the said (*County, &c.*) of —— and to the Keeper of the Common Goal, at ——, in the said (*County or United Counties, as the case may be*) of ——:

Whereas by a Warrant under the Hand and Seal of ——, (one) of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be,*) of —— under —— hand and Seal, dated —— the day of ——, after reciting that it had been certified by J. D. (*&c. as in the certificate,*) (——) the said Justice of the Peace commanded all or any of the Constables, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*him*) the said Justice of the Peace in and for the said (*County or United Counties, or as the case may be*) of —— or before some other Justice or Justices in and for the said (*County or United Counties, or as the case may be,*) to be dealt with according to law; And whereas the said A. B. hath been apprehended under and by virtue of the said Warrant, and being now brought before (*me*) it is hereupon duly proved to (*me*) upon oath that the said A. B. is the same person named and charged by ——, in the said Indictment; These are therefore to command you the said Constables and Peace Officers, or any of you, in Her Majesty's name, forthwith to take and convey the said A. B. to the said Common Gaol at ——, in the said (*County or United Counties, or as the case may be*) of ——, and there to deliver him to the Keeper thereof, together with this Precept; and (I) hereby command you the said Keeper to receive the said A. B. into your custody in the said Gaol, and him there safely to keep until he shall thence be delivered by due course of law.

Given under (*my*) Hand and Seal, this —— day of ——, in the yeas of our Lord ——, at ——, in the (*County, &c.*) aforesaid.

[L. S.] J. S.

Instead of committing him however he may, as hereafter directed, admit him to bail.

Should the person indicted be confined in prison for any offence, at the time application is made for a certificate, as above mentioned, the magistrate may on proof of the identity of the person, issue a warrant of detainer in this form:

‡ Province of Canada (*County or United Counties, or as the case may be*) of ——

* It is quite possible that a construction of the clause, allowing officers to sue in their own courts, has given dissatisfaction, and produced the bill to prevent merchant clerks from holding office; for the principle of what is said above would apply to clerks, as well as bailiffs; and a more rigid construction of the clause would have saved this appeal to Parliamant. We confess that, unless the clause has the effect contended for in the text, we should be disposed to advocate the disability of merchants and traders for office in a Division Court. [EDS. L. J.]

† 16 Vic. c. 179. sch. F.

* 16 Vic. c. 179, sch. G. † *Ib.* sch. H. ‡ 16 Vic. c. 179, sch. I.

To the Keeper of the Common Gaol at —— in the said (*County or United Counties, or as the case may be*) of ——;

Whereas it hath been duly certified by J. D., Clerk of the Crown of (*name, the Court*) or Deputy Clerk of the Crown, or Clerk of the Peace of and for the (*County or United Counties, or as the case may be*) of —— that (*&c. stating the certificate*); And whereas (*I am*) informed that the said A. B. is in your custody in the said Common Gaol at —— aforesaid, charged with some offence, or other matter; and it now being duly proved upon oath before (*me*) that the said A. B. so indicted as aforesaid, and the said A. B., in your custody as aforesaid, are one and the same person: These are therefore to command you, in Her Majesty's name, to detain the said A. B. in your custody in the Common Gaol aforesaid, until by Her Majesty's Writ of *Habeas Corpus* he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall otherwise be removed or discharged out of your custody by due course of law.

Given under (*my*) Hand and Seal, this —— of ——, in the year of our Lord ——, at —— in the (*County, &c.,*) aforesaid.

[L. S.] J. S.

Apprehension without a warrant.—When a person is found in the actual commission of a felony, he may be apprehended at once without any warrant, and taken before the nearest magistrate, to be dealt with according to law. So also where a felony is committed under such circumstances as to leave no doubt in the prosecutors mind as to the identity of the offender, it will be prudent for him sometimes to procure the assistance of a constable, and cause the offender to be apprehended without warrant. This more particularly if the delay occasioned by an application for a warrant be likely to admit of the offender's escape. Great caution, however, must be exercised in the case of an arrest without a warrant. A magistrate's warrant is a great shield. Where an arrest is made without it if it should turn out that the wrong person is arrested, or that proof is so slight that he is of necessity discharged, the prosecutor would be liable to an action for false imprisonment which he would not be if shielded by a magistrate's warrant. (Stone's Petty Sess. Prac. 264, 6 Ed.)

Search Warrants.—It now remains for us to notice this most useful form of attaining the ends of justice. Whenever any credible witness proves upon oath before a magistrate that there is reasonable cause to suspect that any property whatsoever on or with respect to any larceny or felony shall have been committed is in any dwelling house, outhouse, garden, yard, or other place or places, the magistrate may grant a warrant to search such dwelling or place. On an accusation for stealing, the finding of the stolen property is strong evidence of guilt, and the utility of the search warrant is thus very obvious. The oath or information to ground a search warrant may be in this form—

* Province of Canada (*County or United Counties or as the case may be*) of

The information of A. B. of the ——, of ——, in the said (*County, &c.*) (*yeoman*), taken this —— day of ——, in the year of our Lord ——, before me, W. S., Esquire, one of Her Majesty's Justices of the Peace, in and for the (*County or United Counties, or as the case may be*) of ——, who saith that on the —— day of ——, (*insert description of articles stolen,*) of the goods and chattles or Deponent, were feloniously stolen, taken and carried away, from and out of the (*Dwelling House &c.,*) of this Deponent, at the (*Township, &c.*) aforesaid, by (some person or persons unknown, *or name the person,*) and that he hath just and reasonable cause to suspect, and doth suspect that the said goods and chattels, or some part of them, are concealed in the (*Dwelling house &c., of C D*) of ——, in the said (*County*) (*here add the causes of suspicion, whatever they may be*): Wherefore, (*he*) prays that a Search Warrant may be granted to him to search (*the Dwelling House, &c.,*) of the said C. D. as aforesaid, for the said goods and chattles so feloniously stolen, taken and carried away as aforesaid.

Sworn before me the day and year first above mentioned, at day —— in the said (*County*) of —— W. S. *J. P.*

The search warrant if granted may be in this form—

* Province of Canada, (*County or United Counties, or as may be*) of ——

To all or any of the Constables, or other Peace Officers, in the (*County or United Counties, or as the case may be*) of ——:

Whereas A. B. of the ——, of ——, in the said (*County, &c.,*) hath this day made oath before me the undersigned, one of Her Majesty's Justices of the Peace, in and for the said (*County or United Counties, or as the case may be,*) of ——, that on the —— day of —— (*copy informatson as far as place of supposed concealment*); These are therefore in the name of our Sovereign Lady the Queen, to authorize and require you, and each and every of you, with necessary and proper assistance, to enter in the day time into the said (*Dwelling House, &c.,* of the said, *&c.*) and there diligently seach for the said good and chattels, and if the same or any part thereof shall be found upon such search, that you bring the goods so found, and also the body of the said C. D. before me, or some other Justice of the Peace, in and for the said (*County or United Counties, or as the case may be*) of —— to be disposed of and dealt with according to law.

Given under my Hand and Seal, at ——, in the said (*County, &c.*) this —— day of ——, in the year of our Lord, one thousand eight hundred and —— *W. S. J. P. (Seal)*

This warrant may be issued on Sunday the same as on any other day of the week.†

* 16 Vic. cap. 179, sch. E. 1.

* 16 Vic. cap. 179, sch. E. 2. † *Ib.* sec. 3.

U. C. REPORTS.

QUEEN'S BENCH.

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

HILARY TERM, 21 VIC.

Hooker et al. v. Gurnett.

The Clerk of the peace is not entitled to any fee from the parties to a cause for striking a special jury.

This was a special case stated for the the opinion of the court.

The plaintiffs brought four actions, in this court and the Common Pleas, in which they applied for and obtained a judge's order in each to strike a special jury of merchants and traders, under the 13 & 14 Vic., ch. 55, sec. 45.

Elisors were accordingly duly appointed in each case, who attended at the office of the Clerk of the Peace (the defendant) in Toronto, for the purpose of striking such jury.

The Clerk of the Peace, by his deputy, having been notified that special juries were to be struck at his office, at an appointed hour, was in attendance, and prepared the lists from the jury books, and provided the ballot-box and panels (which are kept in his office), and he acted in striking the said juries, the elisors also assisting.

The lists having been made up the elisors signed them, and certified them to the sheriff, according to the directions of the statute.

The Clerk of the Peace afterwards rendered his account for striking such special juries, to the plaintiffs attorney, amounting in the four cases to £27 7s. 6d., made up as follows, viz:

Drafting mixed special jury, 600 names on list, at 20s. per 100 . . .	£6	0	0
Entering panel	0	10	0
Certificates after panel	0	5	0
119 ballot tickets	0	2	6

And he referred to the 19 & 20 Vic., ch. 92, as warranting his charges, in connection with 13 & 14 Vic., ch. 55, secs. 43, 46, 49, 81.

In one of the said cases, which came before the Master for taxation, the charge of £6 17s. 6d., as paid the Clerk of the Peace for striking such special jury, was disallowed by the Master, as not being warranted by the acts, and on appeal to the presiding judge in Chambers the Master's decision was confirmed.

In the other cases the plaintiffs faile' and so had no opportunity of bringing the questions up in them on taxation, but in all they contend they were called on to pay and did pay what the defendant was not legally entitled to demand. They have also paid the elisors.

The questions for the opinion of the court are,

1st. Whether such charges so made by the defendant as Clerk of the Peace, were warranted by the statutes, or any part of them?

2ndly. If not, whether having been paid the plaintiffs are entitled to recover them back again as money paid to the defendant "*colore officii*," or how much?

If the court shall be of opinion that the Clerk of the Peace was not entitled to make such charges, or any part of them, and that the plaintiffs are entitled to recover them back, then judgment to be entered for the plaintiffs for £27 7s. 6d.

If that the charges were properly made, under the act, or though not warranted, yet that having been paid the defendant is not liable to refund the amount, then judgment to be entered for the defendant.

But if the court be shall of opinion that the defendant is entitled to retain any portion of the said charges, but liable to pay back the difference, then judgment to be entered for that amount.

M. R. Vankoughnet for the plaintiffs.

Hallinan for defendant.

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

Our opinion in this case is, that the claim of the Clerk of the Peace to the fees specified in the statement of the case cannot be maintained, under the statutes referred to, or on any other footing.

The table of fees established by this court in civil proceedings between party and party contains no allowance to the Clerk of the Peace for any service in striking a special jury, and the judges could not by law have made such an allowance.

What is said in the 49th section of the Jury Act, 13 & 14 Vic., ch. 55, can only be understood to refer to the fees payable to any officer of the superior courts under the established table of costs. The 81st section of the same act, on the other hand, as amended by 14 & 15 Vic., ch. 65, did provide fees for county officers for services to be rendered by them under the Jury Act, including services relating to the selection of jurors; but it is quite clear that the services for which fees were provided in that clause were not services to be rendered at the call of either party in a cause, but services exacted from the respective officers in the course of proceedings for selecting grand and petit jurors for the year, and preparing jury-books. Those are services rendered to the county, and the fees given for them in the act are expressly made payable out of the county funds. There could be no pretence for exacting from either of the parties in a cause any fee that is assigned to a public officer by that clause. No alteration was made in this respect by the amending act, 16 Vic., ch. 120; on the contrary, by comparing the provision made in that act for nominating the clerk of the peace with that made for nominating the sheriff, it is plain that the legislature did not contemplate that they had assigned any duty to the clerk of the peace which could give him a claim to a fee other than such as were to be paid out of the county revenue, while they expressly state that the fees which they assign to the sheriff are to be exclusive of such fees as he may be entitled to from parties in any suit.

The last statute upon this subject, 19 & 20 Vic., 92, is the only one now in force, and it proceeds consistently upon the same principle; and it is quite clear that the statute gives no sanction to any fee being demanded by the clerk of the peace from either party in a cause for any service to be rendered under the jury laws.

And we must add, that we do not see that the services for which fees were charged in this case were services necessary to be rendered by the clerk of the peace, in order to the striking of a special jury. He had but to attend and exhibit his jury-book to the elisors, in order to enable them to see who were qualified to be on such a jury as they were directed to select.

We think there was clearly no authority for demanding any of the fees which have been paid; and it is a maxim of law that for services rendered in the administration of justice no fee can be demanded except such as can be shewn to have a clear legal origin, either as being specifically allowed in some act of parliament, or as being sanctioned by some court or officer that has been permitted to award a fee for the service.

We refer on that point to Com. Dig. "Extortion" A. 2, "Officer" G. 15; to Co. Lit. 368; 2 Inst. 176, 208, 209; Graham v. Grill, 2 M. & Sel 294.

There have indeed been cases in which a right to fees has been supported upon evidence of such long and general usage as was considered to amount to proof that the fee must have had a legal origin. Nothing of that kind can be advanced in this case.

We are of opinion, on the other branch of the case, that the fees which have been illegally exacted can be recovered back in an action for money had and received.—Daw v. Parsons (2 B. & Al. 562), Morgan v. Palmer (2 B. & C. 729), Chitty on Contracts, 5th Ed. 555.

The plaintiffs are entitled, according to our opinion, to have a verdict entered in their favour for £27 7s. 6d.

Judgment for plaintiffs.

CHAMBERS.

(*Reported for the Law Journal, by* C. E. ENGLISH, ESQ., *and* A. MCNABB, ESQ.)

THE QUEEN v. PHIPPS.

Criminal law—Backing warrant—Apprehension of debtor in close custody.

Though an offender for whose arrest a magistrate's warrant is issued be in a County different from that from which the warrant issued, and though he be a prisoner for debt in close custody in such County, he may be removed under writs of *Habeas* and *Recipias*.

(May, 1858.)

A schooner called the Forest City having been insured by a chartered Assurance Company, was on the morning following the day on which the insurance was effected, burned in Port Stanley Harbor in the County of Elgin. The circumstances attending the fire were suspicious. The insurance though effected in the name of J. S. was said to be for the benefit of the defendant who was reputed to have an interest in the proceeds of the insurance if not to be the actual owner of the vessel. These facts and others not necessary to be here mentioned having been made to appear on oath to the satisfaction of A. Clovis, Esq., a Justice of the Peace of the County of Elgin, he issued his warrant for the apprehension of defendant. The defendant being a resident of London, in the County of Middlesex, the warrant was pursuant to Statute 16 Vic., cap. 179, s. 7, backed by a magistrate of that County. It was then discovered that defendant was a prisoner in close custody of the Sheriff of Middlesex,—confined for debt. The gaoler to whom application was made for his delivery to the authorities of Elgin, refused to comply with the demand.

Harrison applied upon affidavits disclosing the above facts for a writ of *Habeas Corpus ad Subjiciendum* to the gaoler of Middlesex, and a writ of *Recipias* to the Sheriff of Elgin.

HAGARTY, J., Having taken time to deliberate with his brother Judges, ordered the writs to issue.

CONTESTED PARLIAMENTARY ELECTIONS.

(Before His Honor A. Crewett, *Judge of the County of Essex.)*

In the matter of the Contested Election of the County of Essex.

The facts sufficiently appear in the judgment.

Crewett, Co. J.—After a substituted service of contestant's notice on the member (allowed for the time until the Select Committee should decide on its validity) an appointment to take evidence was obtained for the 20th February, 1858.

On the 18th February, 1858, at half-past six p. m., J. H. Wilkinson, attorney on behalf of John McLeod, the member declared to be elected for this county, produced a recognizance and an affidavit of justification by Thomas Paxton only. The answer and notice served by the contestant and a requisition to take evidence at the time and place appointed for the contestant, were filed by me.

On that day, though I considered the same not (according to my view) within the proper time, but so as to enable him to take such course as the law permitted or the Select Committee might sanction, on the 22nd March, a further affidavit of the sitting member as to his own belief of the sufficiency of the recognizance, was put in for the same purpose, under 17th sec. of Act of 1851.

On the 31st March, the contestant having ceased producing evidence, Mr. O'Connor saying he had no more then, except a Mr. Elliott and one Bently, and to re-call Mr. Monaghan (which was done on the 3rd April), and then that the member's agents could go on.

The member then having used such rebutting evidence as the cross-examination of the contestant's witnesses afforded, and produced other rebutting evidence, which closed on the 31st of May, with the exception of Mr. W. D. Baby's evidence, which from illness was not received, though waited for from the 27th May, but can be taken hereafter on his examination in chief, if he is so examined. And evidence having been tendered on the part of the sitting member, on that part of his answer not in rebuttal of the case, supposed to be made out against him, it was rejected and then required to be taken de bene esse.

For reasons that cannot be well stated fully, nor more than adverted to at present, but which will be appended hereafter in continuation of this statement, I am doubtful if this evidence ought not to be received unconditionally, according to the wording of the 2nd section of the Act of 1857, which apparently lets it in without the application, recognizance and affidavits of the sitting member, where the contestant has already, as in this case, brought the functions of the Court into operation by his notice and the answer to it, and his own application in the first instance to take evidence either on the issues formed on the notice served within 14 days by the operation of the statute itself, which lets in evidence in rebuttal only without answer; or on such issues as are actually joined by means of the answer served within the 14 days after the notice is served, which latter lets in other evidence than that in rebuttal—the application and recognizance, &c., being no more required apparently in the latter case than in the former.

It being, however, necessary that there should be a decision at once in limine, on this difficult point, I incline to and am rather of the opinion (though by no means fully and clearly satisfied that this view is correct) that this evidence (except in rebuttal of the case made out against the sitting member) was not intended to be examined, heard and received, without such application, with recognizance, &c., within the same time also after service of answer as required of the contestant in 4th sec. of the Act of 1857, as a security for the expense of the officers; which recognizance however is really no security for the member's own witnesses, nor to the contestant or his witnesses, as the contestant's recognizance is to the member and witnesses for expenses, as should seem reasonably to be the case; nor does it (as has been assumed) constitute or complete the issue, as that was done as before stated. Though it may be evidence or proof to show the commissioners what the issue is, provided that it becomes necessary to either party to take the initiative to bring into operation the functions of the Court, which would only be in case either of the opposing parties does not choose in the first instance to take the necessary means to do it; as until one or the other does so, by producing his opponent's pleading (as it were) with his own, the formal record of the issue made and joined is not before the commission, on which he can apply the evidence tendered for either party. In reality this answer is partly in the nature of a quasi cross action, like a plea of set-off, to be tried or here only examined into at the same time with the first or main action or proceeding, and the application when necessary to be made by the member to take evidence is like going down to trial by proviso by a defendant who gives notice of and makes up his record for trial, provided his opponent neglects to take the necessary steps to proceed to trial or countermands those he has taken; and by 4th sec., the application by any party requires the Judge to take the evidence on all matters of fact mentioned in the notice of the contestant, and in the answer (if any) of the member declared elected.

I think this view explains what would otherwise appear to be a superfluous production to the commissioner within six days after answer served of two sets of these notices, and answers or pleadings which constitute not the issue itself, but the record only of the issue, on which evidence is to be taken—which (unnecessary production of two sets) must be the case here if as is suggested is was really required of the member also to make up and bring down this record to the commission to take evidence on, when the contestant has already done it fully; or vice versa for the contestant to do so, when it had already been done by the member, *i. e.*, if he had happened to have first applied to take evidence, as might have been the case.

And this evidence so tendered to be taken on these issues in the first instance unconditionally, being formally refused, and so in that shape rejected, under these grave doubts as to the true intention of the two statutes, either as to their combined or separate meaning, the commissioner is required by the sitting member, under sec. 120 of the Act of 1851, to take the same evidence separate and apart from the other evidence, de bene esse, in the nature of a bill of exceptions, to be transmitted together with the other proceedings.

It is suggested that there are no sufficient issues before the commissioner on which to take this evidence, for want of an application and recognizance and affidavits by the member, within the same six days after answer served.

To which is suggested in answer that the evidence tendered is by sec. 120 to be taken either conditionally or unconditionally, according as the commissioner shall be of opinion that it ought or ought not to be examined, heard or received. If required by the party whose evidence is rejected—and that the question either as to the issues or the relevancy of the evidence tendered on them, must be determined by the Select Committee finally: but in the meantime it must be received in the one shape or the other, in order to reach the committee in the report.

I am of opinion there is an issue; indeed two sets of issues, as contemplated by the 120th sec., on which this evidence might be and ought to be taken, if it was clear and beyond doubt that it should be examined, heard and received, and on which it may and can, and I think must be taken, de bene esse, when so required.

But I think also, that as neither the 2nd nor 4th sections, taken together or separately, provide positively or clearly a sure and certain guide either the one way or the other in this respect, it becomes tantamount to an omission or casus omissus, as mentioned in the 155th and 160th sections, to be provided for by the commissioner under the same, as a party could not observe strictly or safely the directions respecting the right and proper course to be followed in the defence against this Election Petition as to this, where the statute was either silent or obscure, or imperfectly shadowed out, or pointed at two or more provisions inconsistent with each other and neither of which was effectual for the purpose for which either of them was supposed to be intended (*a*), and for which reason it could not well be considered that there were even affirmative, and certainly not negative issues, manifesting that a certain course and no other should be followed by the

(*a*) If no security is required under 2nd sec., it is defective apparently. If only recognizances to the officers (see Form) is required of members, that seems equally so.

member, as to time, place and circumstances, in preparing to meet with evidence the contestant's allegations, evidence on the petition and notice, or to support the answer.

And so, though I have formally refused to take this evidence in the first instance unconditionally, in order that its relevancy may be decided elsewhere, I do not think that under either of the abovementioned and specified views that I am at liberty (when so required under the statute) to refuse to take this evidence, at least separately and apart, de bene esse, in the nature of a bill of exceptions. The statute being imperative, and particularly where the obscurity of the enactments leaves it the same as if no express provisions had been made to guide either way in this respect.

This would be adopting a proceeding most consonant to the spirit and intent of these Acts, and of their express provisions, taking it either as a casus omissus or as a question whether this evidence should be rejected or be received unconditionally or conditionally, for the consideration and final decision of the Select Committee.

The recognizance and affidavits if really required, though not produced within the same six days as the contestants were, are however at hand and can be used for whatever purpose intended, if so ordered.

This course should be followed, the rather when it is considered that the contestant's evidence has been received on substituted service, on an omission or casus omissus, under the 155th & 160th sections, though protested against by the sitting member for want of service on himself or on a grown up member of his family, which under the effect of the two statutes is really taking evidence conditionally, or de bene esse, though not so designated in the Act. And so will the reception of the sitting member's evidence be taken, either de bene esse or as a casus omissus, though objected to for want of certain formalities said to be required by same Act within a certain time.

Both parties are much in the same predicament, and their different difficulties are provided for by the course adopted under the 120th, 155th and 160th sections, which will be reported to the House or the Select Committee, together with the rest of the proceedings and evidence, at the same time, for final decision as to what the law is, or is intended to be, in all the points submitted, according to the provisions of these Acts which guide the Committee, both as to the questions particularly mentioned, and also as to the Select Committee's powers under the 155th, 156th and 157th sections—that is, to decide on the situation of the contestant as to substituted service; to impose terms if necessary, on the member, of paying costs, or giving further security as full and effective as that given by and at present required of the contestant before allowing the evidence when so taken to be examined or used as an indulgence necessary to the full hearing of the parties, in such manner as to the Committee may appear just.

And this being the situation of both parties from the commencement, neither of them is in a position to make conditions or insist on extreme rights (even if we could certainly know what their respective rights really are or ought to be under the obscure enactments governing these, to us, novel proceedings), as they would have been if they both had not been obliged to put their respective cases in such a shape in the meantime as to enable them to obtain such indulgence under the statutes as might be in the power of the commissioner now, or in that of the Select Committee hereafter.

And for that reason both parties will be obliged for their own sakes as a matter of prudence and precaution, to follow, adopt and submit to such legal and reasonable terms and directions during the course and progress of this examination and scrutiny of votes (if such a "scrutiny" is gone into) as may be necessary to obtain a full and fair investigation on both sides of all the facts and circumstances, in order that the Select Committee may be enabled to do full justice in the premises.

HOUSE OF LORDS.

COOPER *v.* SLADE.

(Concluded from our last number.)

WILLES, J.—I am of opinion that, assuming the letter to have been written and sent to Carter by the direction and authority of the defendant in error, there was evidence for the jury that the defendant was guilty of bribery within the true intent and meaning of the second section of 17 & 18 Vic. c. 102.

The bare reading of the letter, coupled with the circumstances under which it was written, satisfies my mind beyond a doubt that it was, and was intended to be understood as, a promise to pay the railway expenses of the voter, if he voted for the named candidates. The expenses were not to be paid for doing nothing. Then for doing what were they to be paid? Of course, for doing what was asked, namely, returning to Cambridge and voting for the named candidates. There is nothing to limit the condition to returning to Cambridge merely. Either, therefore, the consideration for payment of the travelling expenses was the voter returning to Cambridge and voting, or at least doing his best to vote for the named candidates; or the voter's expenses were to be paid though he did nothing or did the contrary. But the latter construction was not likely to suggest itself to the mind of the voter; and it savours, to my apprehension, of that excessive subtlety which is reprobated and disallowed of in law.

The question therefore is, in effect, whether a promise to a voter of his travelling expenses, conditionally on his voting for the candidate who makes the promise, is bribery within the second section of the statute. I am of opinion that it is.

That section describes the persons who shall be deemed guilty of bribery and the whole section is subject to a proviso in the following words:—"Provided always, That the aforesaid enactment shall not extend or be constructed to extend to any money paid or agreed to be paid for or on account of any legal expenses *bona fide* incurred at or concerning any election." Now, it is clear that a promise of "travelling expenses" is a promise of "money," and so within the words of the Act, which must therefore be constructed as including it, unless to do so would lead to some manifest absurity or incongruity with the rest of the statute, showing that such could not have been the intention of the Legislature.

I see no such absurity or incongruity, but the contrary. A voter who will obtain his travelling expenses if he vote for A., but not if he vote for B., has, when at the polling place, a direct pecuniary inducement to vote for A.; and a person who promises to pay expenses upon such a condition creates that inducement. If it be said that this may and practically will be counterbalanced by B.'s making a similar promise; I answer that B. is not bound to do so—may not be able, or if able, willing to bear the expense—and if he do not, the longer purse or greater profuseness of A. may prevail. Besides, bribery is not the less bribery because each candidate offers the same sum to those who vote for him. Moreover, if the payment of travelling expenses were allowed, there would be danger of such allowance being made a cloak for bribery. There is no reason why, if a man is to be repaid his disbursements because he has expended money, he should not also be remunerated for the inconvenience and loss of time he sustains in coming to the poll. But what a door this, if allowed, would open to abuse!

Whatever be the better opinion upon the justice of such payment as between the candidate and the voter, it may well have been the intention of the Legislature to forbid them, as being very likely to engender corrupt practices, the more dangerous because of their being plausible. I cannot find anything in the statute inconsistent with such an intention. As to the proviso at the end of the second section, in my opinion it obviously refers to the expenses of the candidate—not those of the voters, and so it is inapplicable to the present question. Therefore, construing the Act according to its express terms, and "so as to suppress the mischief and advance the remedy," I answer the first and most important question in the affirmative.

As to the second question, I am of opinion that there was evidence for the jury that the letter in question was written and sent by the direction and authority of the defendant in error.

In answer to the third question, I am of opinion that there was evidence that the defendant corruptly paid money to Carter on account of his having voted at the election. A promise forbidden by law as tending to corruption having been made by the defendant's agent, to pay money to Carter if he would vote as he did vote, such money, when subsequently paid to him by the defendant's agent accordingly, was paid in pursuance of a forbidden promise,

the only consideration for which was a vote influenced thereby, and therefore, in the sense already explained, it was paid "corruptly." And if the answer to the second question be right, that there was evidence of authority to write the letter, there was, of course, evidence of authority to make the payment promised therein.

I thus answer all the questions in the affirmative.

Crompton, J.—I think that, assuming the letter in question to have been written and sent by the direction of the defendant in error, there was evidence of bribery within the meaning of the late statute. That letter, under the circumstances stated in the bill of exceptions, seems to me to amount to a promise that the railway expenses should be paid to the voter if he voted for the candidates named in the letter. He is requested to come to Cambridge, and to vote for the specified candidates, and tell that his railway expenses will be paid. And I do not think it consistent with any fair and reasonable construction to suppose that any man could understand that his railway expenses were to be paid whichever way he voted. Neither do I think that the offer could mean, as suggested, that conveyances would be secured by railway, or that the letter referred to pre-payment of the railway fares by the candidates, leaving the voter to vote as he pleased. No arrangement appears to have been made for providing railway carriages by the candidates, and the arrangement acted upon was, that the voter should pay for himself, and afterwards receive back the money; and the expression in the letter seems to me to refer to a repayment of the expenses incurred by the voter. It was urged in argument that the money could not be a gift within the statute, because, as it was said, there was a consideration for the repayment by reason of the payment or expense incurred by the voter, being at the request of the party making the promise, and subsequently paying; and it was contended that a payment of a sum of money due for a valuable consideration would not be within the statute. This doctrine would, however, as it seems to me, go much further than could possibly be supported. It would, for instance, include a payment as a remuneration for loss of time, if a voter should, at the request of the candidate, abstain from work that he might come to vote for him.

It was said, also, that the voter really gets nothing, and if he could recover the money as a sum laid down by him for the candidate, at the candidate's request and as the candidate's money, so that the candidate would be liable to repay the amount whichever way the voter voted, as money paid by the voter for the use of the candidate at his request, the case would be much the same as if the candidate had provided travelling accomodation for the voter, and it would be necessary to consider how far such providing travelling accommodation would be legal; but, according to what I think the true construction of the letter, the money was not to be paid by the voter as the agent of the candidate, to be repaid back at all events, but I think the real agreement was, "If you vote for us, we will pay you the money you have expended for travelling expenses, which, in the event of your voting the other way, will fall upon yourself." And this seems within the principle which requires that the voter's mind should be left unbiassed to the last, and within the enactment of the statute as to the promise of money. Part of the consideration for which the money is to be paid is the voting for the particular candidates, and the promise is, therefore, to give money for so voting. I answer your Lordships' first question, therefore, in the affirmative. With regard to the second question, I think that there was evidence for the jury that the letter was written and sent by the authority and direction of the defendant.

I answer your Lordships' second and third questions, therefore, also in the affirmative.

Williams, J.—I am of opinion that all the questions ought to be answered in the affirmative.

The letter appears to contain an implied promise to pay money to the voter, namely, the amount of his railway expenses, if he shall have incurred them by reason of acceding to the request contained in the letter. And with respect to the motive of the promise I am unable to understand how any doubt can be entertained that the promise was made simply in order to get the voter to come to Cambridge and vote for Lord Maidstone and Mr. Slade; or in the words of the statute, "in order to induce him" ("any voter") "to vote."

As to the proviso in the statute that the enactment shall not extend to any money paid or agreed to be paid for or on account of any legal expenses *bona fide* incurred at or concerning any election, I agree with my brother Willes, that it refers to the expenses of the candidate, and not those of the voters, and is quite inapplicable to the present question.

As to your Lordships' third question, the answer to it necessarily follows from the answers I have given to the first and second; for, if the defendant authorized the making a promise to pay contained in the letter of the 12th of August, 1854, it is plain that he also authorized the performance of that promise; and the money so paid was, in my opinion, corruptly paid; because it was paid in performance of a promise which the statute says shall be deemed bribery.

Wightman, J.—In answer to your Lordships' first question, I am of opinion that, assuming the letter of the 12th of August, 1854, to have been written and sent to Carter by the direction and authority of the defendant in error, there was evidence for the jury that the defendant was guilty of bribery within the true intent and meaning of the second section. The answer to this question turns upon the meaning to be attributed to that letter. If it was an unconditional promise to pay Carter's railway expenses, it would not in my opinion, be evidence that the defendant was guilty of bribery within the meaning of the Act; but if it was a promise to pay Carter's expenses, "if he recorded his vote in favour of Lord Maidstone and the defendant," and upon that condition only, then I think it would be evidence of a promise of money to a voter to induce him to vote for Lord Maidstone and the defendant, and in that case evidence for the jury that the defendant was guilty of bribery within the meaning of the second section of the Act.

The mere promise to pay the railway expenses of a voter may not be evidence for the jury that the person promising was guilty of bribery, unless it also appears that the promise was given in order to influence the vote; as the second section, in order to bring a promise to pay money to a voter within the definition of bribery, requires the promise to be in order to induce the voter to vote or refrain from voting.

If the words of the section are taken literally, a promise of money to a voter to induce him to vote at an election, though without specifying or intending that he should vote for a particular candidate, would be within the definition of bribery in the second section; but giving a reasonable construction to the Act, it must be understood to mean, that to constitute the offence of bribery the promise must be to induce the person to whom the promise is made to vote for a particular candidate.

Any one who reads the letter in question may well be of opinion that the postcript was added to induce Carter to come to Cambridge and vote for Lord Maidstone and the defendant, by a promise that his railway expenses should be paid; and if so, it was evidence for the jury that the defendant was guilty of bribery within the meaning of the second section of the statute, assuming that it was written and sent to Carter by his direction and authority. In answer to the second question, it appears to me that there was no evidence for the jury that the letter in question was written and sent by the direction or authority of the defendant.

With respect to the third question, if there had been any evidence that the defendant knew of the postcript to the letter, the subsequent payment of the money with his concurrence, would be evidence of a corrupt payment of money to Carter on account of his having voted at the election; but unless there was evidence that the defendant knew of the precedent promise, the mere repayment of the railway charges for bringing the voter to Cambridge was not a corrupt payment of money to a voter on account of his having voted at the election, within the meaning of the Act.

Coleridge, J.—I am of opinion that, upon the assumption made in the first question, there was evidence for the jury that the defendant was guilty of bribery within the true intent and meaning of the second section. The letter was a promise of money in order to induce a voter to vote; and whether the payment of travelling expenses, *per se*, be legal or not, I am clearly of opinion that to promise to do so, in order to induce a voter to vote, is within the second section of the statute.

2. By "evidence for the jury" in the question, I understand any such evidence as the jury might reasonably found their verdict on; and so understood, I answer the question in the negative. The record shows that the circulars, of which the letter in question was one, had been prepared and printed in a perfectly unexceptional form, and signed by the chairman. That which I call the promise, was added in manuscript by the clerk to the defendant's agent for election expenses; merely as such clerk, I think he had no implied authority from the defendant to do so, nor had he any direct authority either from the agent or the defendant to do it. But according to his own account he did it because there being a discussion as to the legality of paying the travelling expenses of out-voters in the presence of the defendant, and the defendant being a lawyer, having been referred to for his opinion, consulted a law book, in which appeared to be an opinion of Chief Justice Tindal on the point, and then expressed his own, that such expenses were legal, and that nothing beyond such was to be paid. After the vote given the agent himself authorizes the election auditor to pay the sum admitted to be the bare legal expenses. These are all the material facts. Now, upon these the defendant may be taken to have authorized the payment of travelling expenses, because he says beforehand they may be paid, that it is legal to do so, and his agent for expenses afterwards in effect makes the payment. But unless the mere payment and the promise to pay in order to procure the vote are the same thing, or unless there be reasonable grounds from the evidence to impute to the defendant that he intended to convey to those present more than he expressed (of which I certainly see none), he, the defendant, clearly has furnished no evidence of authority, directly or indirectly given, to do more than to pay the expenses. Now, in my opinion, that is not the same thing with a promise to pay in order to procure a vote. The one I have already said I consider to be illegal; the other, simply and by itself, I look upon as legal, becoming only illegal when done corruptly. My reason for this latter opinion will be stated in my answer to your Lordships' third question.

3. I have already stated my opinion that there was evidence that the defendant paid money to Carter on account of his having voted at the election; and the learned judge who tried the cause is stated to have been of opinion that this was equivalent to his having paid the money corruptly. According to his view of the statute, the word "corruptly" is purely superfluous and otiose, for he expressly tells he jury that they ought to find for the plaintiff, if they were satisfied that the money was given by or for the plaintiff, and that the moving cause for the gift was that Carter had voted for the defendant, even though the amount was no more than the fair and reasonable expense incurred, and though the defendant honestly believed he was committing no offence thereby. After much consideration, I think that the judgment of the Court below, which is opposed to the ruling at Nisi Prius, stands on sounder foundations. It appears to me then, that it is material, in order to bring an Act within the section, that it should have been done "corruptly," and that whatever may be required to satisfy that word, the merely doing it because the vote had been given or withheld is not enough. As a general rule, no doubt, the party's knowledge of the law is immaterial, or perhaps is to be conclusively presumed; but here the statute expressly makes the operating motive in the mind of the party material, and it adds that that motive must be corrupt; which is as much as to say, that it may operate honestly and without intent to interfere with the purity of election.

In the present case nothing is found which affects the defendant, but that he expressed an opinion, founded on that of a great judge, that such a payment, confined within very strict bounds, might be made, This might not have protected him if evidence of a corrupt motive had been given: but to make it in itself evidence of corruption seems to me against candour and the proper construction of the statute. I think, therefore, that this question ought to be answered, like the second, in the negative.

April 17.

LORD CRANWORTH.—The 17 & 18 Vic. c. 102, s. 81, enacts that the candidate at an election shall appoint an election agent; and under the 15th section the returning officer is to appoint an election auditor, who is to audit all the expenses. It was proved at the trial that all this had been done in conformity with the provisions of the act. The first question now was, whether the payment of 8s. as travelling expenses to a voter—if such payment were made by the authority of the candidate—was bribery within the meaning of the Act. If that question were decided in the affirmative, it would be necessary to prove that the payment had been made by the authority of the candidate. On the first question, though it had given rise to much discussion, he had never entertained the slightest doubt that giving money to a voter that he may vote for a particular candidate was giving money within the meaning of the section, which said;—"Any person who directly or indirectly shall give any money to any voter to induce him to vote shall be guilty of bribery." Surely, therefore, if a candidate said to a voter, "If you will come to Cambridge and vote for me, I will give you whatever money you have to pay to indemnify you," that was giving the voter money to induce him to vote. Their Lordships might in their legislative capacity consider it right to alter this portion of the Act, and say that money given to pay the mere travelling expenses of an outvoter was not within the meaning of the word "bribery;" but they had now to decide the question in their judicial capacity, and no doubt could be entertained that such a payment was bribery within the meaning of the section. The only question which remained was, whether there was evidence that the money so given was given by the authority of the candidates, Lord Maidstone and Mr. Slade. It had been proved in evidence that during a discussion which had arisen whether the payment to an out voter of his travelling expenses was lawful or not, Mr. Slade had said, for the guidance of his agents, that it was lawful. Surely, when the agent wrote to the outvoter, "Your railway expenses will be paid," the irresistible inference was that the payment was promised under the authority of the candidate. These two points appeared to be perfectly clear, and the only error in the case was, that the evidence did not warrant a finding against the defendant on both counts. Though the payment of the outvoter's expenses from Huntingdon to Cambridge was corrupt—the sense in which his Lordship used the word "corrupt" was that the payment was in violation of the statute—he thought it clear that the Legislature never meant that two penalties should be recoverable, one for the promising of money, and one for the payment of it. Under these circumstances, what course ought to be persued? He had thought that there should be a *venire de novo*, but on consideration had he changed his opinion, for the objection taken was not pointed to that part of the case. It appeared that an arrangement had been made, and that the plaintiff in the Court below was willing to forego one of the penalties, and to enter a *nolle prosequi* on one count. It appeared to him that the judgment of the court below awarding a *venire de novo* was wrong, and he would recommend to their Lordships that judgment should be entered for the pliantiff, but with his consent, on one count only.

LORD WENSLEYDALE.—With respect to the first proposition, the Court of Exchequer Chamber had been unanimously of opinion that money given to a voter for travelling expenses, with the implied condition that he was to vote for a particular candidate, was a payment in violation of the Act of Parliament. Taking the letter written to the voter Carter, there could be no doubt that his railway expenses were to be paid if he did what was required of him—that was, to come to Cambridge and record his vote for Lord Maidstone and Mr. Slade. On that part of the case there had been no doubt in the minds of the learned judges who had advised their Lordships. Then came the more important question, whether this payment could be traced to Mr. Slade or his agent. It was a clear proposition of law, that if a man employed an agent for a perfectly legal purpose and the agent did an illegal act, it did not bind the principal, unless the principal had given the agent authority to do all that he could, legal or illegal, for his client, in which case the principal must be bound by the illegal acts of his agent. Two of the learned judges, Bramwell, B., and Wightman, J., who who have given their opinions, considered that there was not evidence to prove that the letter to Carter had been written by the authority of Mr Slade; but the jury, who had seen the witnesses, and were, therefore, more competent to form an opinion, had come

to a different conclusion. The jury were perfectly right in coming to that conclusion. It mattered not whether Mr. Slade supposed that he was acting perfectly right. Mr. Slade, acting on the decision of Lord Chief Justice Tindal, no doubt thought it perfectly fair to offer the outvoter the payment of his expenses to the poll. He confessed that he was not perfectly satisfied that such a pryment was corrupt within the meaning of the statute; but as this part of the case was abandoned, he concurred with the noble and learned lord (Lord Cranworth) that the judgment of the Court below should be reversed.

Lord Cranworth.—Judgment will be entered for the plaintiff on the seventh count, he entering a *nolle prosequi* on the eighth.

Judgment accordingly. * 6 *Weekly Reporter, p.* 487.

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

Belleville, 19th June, 1858.

Gentlemen,—In your last issue is a letter signed "R. W. E." to which you add a note pointing out the proper course for the party, calling on me for an explanation, and saying you reject some of the letter, thereby allowing an unfavorable impression to be raised against me.

Do you wish to set your journal up as a dictator of individual barristers' conduct, and make it an arena in which they are to fight paper wars with every scribbling debtor who may fancy himself aggrieved? If so, the sooner the Bar understand you the better.

Since you chose to print the letter, in justice to me you should have given it all.

Ignoring the right of putting barristers on their trial, I feel it necessary to state in reply to "R. W. E.," that costs were taxed in pursuance of a Judge's certificate granted for that purpose, and that I have no acquaintance with "R.W. E."

In conclusion, I beg to say, that in my opinion you would have served your own and the Profession's interest better by quietly pointing out to "R. W. E." his remedy, than by publishing his letter.

Mr. "R. W. E." never asked me for an explanation, which he might have had at any time.

I am, Sirs,
Yours, &c. &c.,
Rob. P. Jellett.

[We desire Mr. Jellett to understand that whenever he writes to this Journal he is to adopt a tone very different from that which pervades the above communication. We expect correspondents to observe some courtesy even when finding fault from interested motives with the course which we as public journalists, in the discharge of a public duty, find ourselves obliged to pursue. Under ordinary circumstances we should reject such a communication as the above. We know our duty too well, and are too well resolved to discharge it without fear, favor, or affection, to be lectured by Mr. Jellett. When we need his advice we shall ask for it; and in the meantime we beg him to keep it until it is asked.

Now that Mr. Jellett has appeared in our columns under his own signature, we give him the name of our correspondent, viz., Mr. R. W. Errett, of Millbrook, If any one has a right to complain that we omitted part of Mr. Errett's letter, it is not Mr. Jellet but Mr. Errett. The omissions were made so as not to give Mr. Jellett unnecessary pain. Had he any acquaintance with the course pursued by legal periodicals in England, he would have known that what we did was in all respects correct. A statement was addressed to us as Editors of a public journal, which, on the facts disclosed, exposed a wrong. The name of the writer was furnished to us. We commented on the facts as given; and not only was the course we took in publishing the letter correct, but our comments were correct. We said then, and we say now, that whether Mr. Jellet was or was not entitled to County Court costs, he had no right to charge Mr. Errett the costs of a certificate of judgment.

Mr. Jellett, in his communication, wholly refrains from giving us any light as to the nature of the case. He contents himself with stating that costs were taxed "in pursuance of a judge's certificate granted for that purpose." Since the receipt of Mr. Errett's letter, we have been informed that the case was one arising out of the iniquitous practice followed by Yankee Patent Medicine vendors, who, by the advice of lawyers, often as much to blame as themselves, take advantage of a defective law to bring demands in County Courts which properly belong to Division Courts. While admitting that Mr. Jellett or any other member of the profession has a right to avail himself of the law as it is, we cannot deny the right of Mr. Errett or any other sufferer to make use of our columns as a vehicle of complaint.

The defect in the law may be thus briefly stated. Comstock, and other vendors of quack medicines, though living in the United States, sell large quantities in and through Upper Canada. To prove their demands for payment, a commission to examine witnesses is in every case issued, no matter how trifling the demand. That commission cannot, as the law *now* stands, be issued from a Division Court,—*ergo*, a suit for 5s. may be brought in a County Court. These suits until lately were brought in the Superior Courts of Common Law, because the power to issue the commission was confined to those Courts. On the representation of the Judges of the Superior Courts an Act was, during last session, passed, which confers the necessary powers upon County Courts. Now we propose that the power shall likewise be conferred on Division Courts. This, and this only, so far as we can see, will effectually prevent the *iniquity* of the present practice. But even as the law stands we are not satisfied that a County Judge should in such cases grant a certificate for County Court costs. If it could be shown that the costs of bringing a witness into Upper Canada, to prove the demand, would be less than the costs of a County Court suit, a certificate might well be refused. Were this done, the patent medicine vendors would be *compelled* to prove their demands without commissions, and so Judges and lawyers would be relieved of the disgrace of making the law an engine of oppression.—[Eds. L. J.]

Our 12 Vic. cap. 27, s. 54, against bribery is in substance and almost in words the same as Eng. Stat. 17 & 18 Vic. cap. 102, s. 2, under and upon which the foregoing opinions were delivered.—[Eds. L. J.]

To the Editors of the Law Journal, Toronto.

GENTLEMEN,—If there is one thing it seems to me more strange than another in the delivery of judgments by the Courts of Queen's Bench and Common Pleas, it is to see the few barristers who attend on the days appointed for the reading of judgments, and the little interest that they take in what is transpiring when the judgments are being read. Having reflected on this apparent disrespect to the bench, I humbly suggest there is a cause for it and that the removal of the cause (which can be done by the Judges themselves) would be a remedy.

The days for the delivery of judgments in each of the Courts is I have noticed regularly made public in the "Diary" of the *Law Journal*, so that the profession are beforehand made acquainted with this useful and it ought to be considered necessary information. So far good. When the days arrive the Clerk of each Court is furnished with a list of the cases in which decisions are to be pronounced, and these generally numbered in a series. So far still good. Each member of the bar who attends has it is presumed some object in attending, and that object is generally it is presumed to hear the adjudication of some particular case or cases. He finds the cases on the list or he does not. If he finds them on the list he naturally concludes that he will hear the judgment read in its order, and if it is low down on the list and he has other engagements he will so arrange matters as to be present when the judgment is read; but here he is liable to be mistaken; for the judgments instead of being read as enumerated in the list (which they might easily be) are often taken up helter skelter, as if there were no list at all. The effect of this is almost to destroy the utility of the list. If it is necessary to read the judgment in every case on the list whether counsel are present or not, (and I respectfully submit it is not) then assuredly the order mentioned in the list ought to be observed; but what is the use of reading judgments in a case when no person interested in the case is present? Would it not be enough to name the case and ask if there is any one interested present, and if not to hand the judgment to the reporter for publication, having first shortly stated the determination of the case? Were this done the Court would not be exposed to the mockery of reading judgments to empty desks and silent walls, or if there should be professional men present, such would not be subjected to the reading of a judgment in a case in which they have no concern, and to the vexatious delay in the reading of the judgments in their own cases for which they have taken the trouble to attend.

Yours truly,

Toronto, June 23, 1858. LEX.

[The remarks of our correspondent are not devoid of interest. The evils to which he refers certainly do exist. We feel it is enough for us to insert his letter and leave the rest to the Courts, whose disposition to oblige the bar is no less than their ability so to do. We shall be at all times glad to give publicity to any communication from members of the bar on real or supposed grievances, if by so doing we shall be likely to effect good, and in this spirit we publish the letter of "Lex."
—EDS. L. J.]

MONTHLY REPERTORY.

COMMON LAW.

C. C. R. REGINA *v.* GEORGE MICHAEL JENNINGS. *Jan.* 28.

Larceny as servant—Surplusage—Conviction for simple larceny—Stealing from agent the property of the principal.

If, upon an indictment for stealing, as a servant of the prosecutor, money alleged to be his property, it appears from the evidence that the prisoner stole the money from him but that he was not his servant, the allegation in the indictment, that he was his servant, may be rejected as surplusage, and the prisoner may be convicted of simple larceny.

Q. B. REMPRY *v.* BUTLER AND ANOTHER. *Jan.* 26.

Money had and received—Abortive contract for transfer of shares in Joint Stock Company.

The plaintiff and defendant, on the 21st August, 1856, contracted through brokers on the Stock Exchange for the sale by the defendant to the plaintiff of 10 shares in the Royal British Bank, the deed of settlement of which required 7 days notice of any intended transfer, as well as consent thereto on the part of the directors. No such notice was given in the present instance, but it had never been the practice of the bank to require it in the case of sales, through the Stock Exchange, and no consent was obtained, unless that was to be inferred from the transfer clerk at the bank giving a blank form of transfer to the defendant's broker, to be filled up by him. The defendant executed the transfer on the 2nd September, and on the 3rd the bank stopped payment. On that day, the stoppage being then known to both parties, the defendant's broker tendered to the plaintiff's broker, the transfer so executed, although unstamped; but he refused to accept it or to pay the money, and on the same day, the plaintiff desired him not to pay it under any circumstances. On the following day, in consequence of a decision of the committee of the Stock Exchange, to whom the matter was referred, the plaintiff's broker paid the amount to the defendant's broker, and the plaintiff being then threatened by his broker with legal proceedings, reimbursed him.

Held, that the plaintiff was not entitled to recover from the defendant as for money received to his use.

EX. VALLANCE *v.* NASH. *Jan.* 21.

County Courts—Appeal—Interpleader issue—Value of goods seized—19 & 20 Vic., cap. 108, *sec.* 68.

An appeal lies under 19 & 20 Vic., cap. 108, sec. 68, from the decision of a County Court Judge on an interpleader issue, if the value of the goods seized exceeds £20, although the debt for which they are taken be less than £20.

EX. BOWES *v.* FOSTER. *Jan.* 29.

Action—Plaintiff's fraud—Receipt given to deceive third parties—Simulated sale—Trover.

The plaintiff, apprehending that an execution might be put in upon his goods, colluded with the defendant that in the event of their seizure, the defendant might appear to be the owner of them, and with that view made out an invoice of the goods to the defendant, gave a receipt for the purchase money, and a person was put in possession, as if for the defendant, no money passing, and the entire transaction being a sham.

Held, that the plaintiff might maintain an action against the defendant for the conversion of these goods, and that he was not precluded from shewing that the receipt was given merely to defraud execution creditors; and that the property in the goods was never transferred.

Alner v. George, 1 Camp. 392, overruled.

EX. CLARKE *v.* SMITH. *Jan.* 30.

Practice—Altering date of writ of summons.

The date of a writ of summons cannot now be altered after it is issued

---

Q. B. HEALEY *v.* JOHNS. *Jan.* 30.

*Costs—Bills of Exchange Act—*18 & 19 *Vic., cap.* 67*—City of London Small Debts Act.*

The City of London Small Debts Act, 15 & 16 Vic., cap. 77. does not deprive a plaintiff of his costs under 18 & 19 Vic., cap 67, (Bills of Exchange Act) where the bill sued upon is under £20, and the plaintiff and defendant both reside within the limits of the City of London Act.

C. P. HOLLAND *v.* JUDD. *Jan.* 27.

Common Law Procedure Act, 1854*—Reference to Judge of County Court—Several issues—Reference back in order to have a finding on all the issues.*

EX. MATTHEWS *v.* MARSLAND. *Jan.* 29.

Practice—Right of defendant to appear and defend under 18 & 19 *Vic., cap.* 67.

The defendant has a right to set up any defence which is not merely fictitious, to a bill of exchange, and cannot be deprived of this right under 18 & 19 Vic., cap. 67.

C. P. PELLATT *v.* MARKWELL. *Jan.* 27.

Common Law Procedure Act, 1858, sec. 3—Reference to Master —Matters of mere account which cannot conveniently be tried in the ordinary way.

C. C. R. REGINA *v.* ADAM JESSOP. *Jan.* 28.

False pretences—obtaining too much change for a bank note by misrepresenting the amount of the note.

Fraudulently misrepresenting the amount of a bank note, and thereby obtaining a larger sum than its value in change, is obtaining money by false pretences, although the person deceived has the means of detection at hand, and the note is a genuine bank note.

C. C. R. REGINA *v.* GODFREY. *Jan.* 23.

False pretences—obtaining check—Allegation of ownership.

An allegation in a count for obtaining a check, describing it as "for the sum of £8 14s. 6d. of the moneys of William Willis," sufficiently describes the *ownership* of the check.

C. C. R. REGINA *v.* THOMAS WRIGHT. *Jan.* 23.

Larceny as clerk, evidence of—Misappropriation by a bank clerk having entire control of an office in his own house—Determination of exclusive possession by depositing money in safe—Conviction of stealing "some money" sufficient—Embezzlement.

Upon an indictment for embezzlement, it appeared that the prisoner alone conducted an office in connection with a branch bank, and that his salary included his services and the providing of the office in his own house, where he carried on another business. The expense of fitting up the office were borne by the bank, who provided an iron safe, their property, into which it was the prisoner's duty to put any money, received during the day, at night. The manager of the branch bank kept one key, and the prisoner another. It was the prisoner's duty to receive money and put it to customers accounts with the branch, and pay checks on the branch. He furnished to the manager a weekly account; and it was his duty to pay over weekly to the manager the excess not required at the office. He also received moneys occasionally, when required, from the branch, which were entered in his weekly accounts. In September, 1855, his accounts were audited and his cash counted and found correct; but although for two years afterwards he furnished the weekly accounts, no examination was made during that time of the balances appearing from them to be in his hands. In September, 1857, the manager of the branch having appointed a time for examining the cash in hand, the prisoner said he was very sorry he was about £3000 short in his cash, and handed over all the cash he said was left, amounting to £755. 10s. which he took from a drawer in the counter, and not from the safe. He subsequently, also, admited in writing that he had taken the amount appearing in his weekly return of September 12, 1857, entered as a deficiency of £3021. 9s. 9d.

The judge advised the jury to convict of larceny, if satisfied that any part of the sum had at any time during the two years been taken from the money sent by the branch, or from the money which, having been received from customers, *had been placed in the safe,* and included in the weekly accounts; and the jury found the prisoner guilty of *larceny as a clerk in having stolen some money received from customers which had been placed in the safe and made the subject of a weekly account, but that they did not find that he had stolen any of the money sent from the branch.*

Held, that the conviction was right; that there was evidence to go to the jury of larceny, as it was to be assumed that the prisoner did his duty in putting the money received from customers during the day into the safe at night; that his exclusive possession of such money would then be determined, and the taking be larceny; and that the finding that the prisoner stole "some money" was sufficiently certain.

EX. ROBSON *v.* CRAWLEY AND COOK. *Jan* 30.

Practice—Interrogatories—Amendment by the court or judge.

If the interrogatories are drawn far too wide, it is not for the court or a judge to cut them down to the proper limits, but they will be rejected *in toto.*

C. P. AGAR AND OTHERS *v.* THE OFFICIAL MANAGER OF ATHENÆUN LIFE ASSURANCE SOCIETY. *Jan.* 26.

Public company—Debentures—unauthorised borrowing of money by directors—Construction.

It is no defence to an action on debentures under the seal of a public company, that the directors had not sufficient authority under the deed of settlement to borrow the money.

When there are claims in a deed of settlement enjoining strict formalities in the making of contracts; these provisions must, notwithstanding general words, be confined to the class of contracts mentioned in these clauses.

Quære, per *Williams J.,* whether these provisions to control the common law are legal?

EX. BROOKES *v.* COX. *Jan.* 2.

Attorney and client—Payment of costs by Attorney—Authority to compromise.

The plaintiff's attorney, in an action for breach of promise of marriage, was an assenting party to a compromise effected after the case had been called on, by which it was agreed that the verdict should be entered for the plaintiff for £40 damages, that in an action for seduction, entered for trial at the same assizes, by the plaintiff's father against the same defendant, a juror should be withdrawn, and that no bastardy order should be applied for against the defendant in respect of the birth of a child of which the plaintiff, in the first mentioned action had been delivered. The plaintiff repudiated the arrangement, denied that any authority had been given to her attorney with reference to any application in bastardy, and applied at the Quarter Sessions for an order in bastardy. The Court, in making absolute a rule for a new trial, on the appplication of the defendant, required the plaintiff's attorney to pay the costs of the rule.

EX. FIFE *v.* ROUND. *Feb.* 1.

Jurisdiction—Cause of action—Leave to sue defendant residing abroad—Promissory note—Statute 15 & 16 *Vic. c.* 76, *s.* 18.

A promissory note, by which the defendant promised four months after date to pay the plaintiff £150, was made in France, and delivered to the plaintiff there. In the margin of the note there was written "Payable at Messrs. J. L. & Co., bankers, London." The note was presented at maturity to the London Bankers, and was dishonoured. The plaintiff obtained a judge's order, giving leave to proceed in an action against the defendant, a British subject residing abroad, under 15 & 16 Vic. c. 76, s. 18, which enables the Court or a judge to give such leave "upon being satisfied by affidavit that there is a cause of action which arose with in the jurisdiction, or in respect of the breach of a contract made within the jurisdiction."

Held, that a sufficient cause of action arose in England to satisfy the statute, and that the order was properly made.

EX. C. LEE *v.* COOKE. *Feb.* 5.

Distress—Second distress rendered lawful by reason of the distrainee having frustrated the first by wrongfully removing the goods—Sale by auction of a stack standing upon the land of the distrainee—Delivery and Receipt—Lien.

If there is a fair opportunity and no legal cause why a distrainor should not work out payment by means of a single distress, it is his duty to work it out by one distress, and he cannot lawfully distrain again; but, if the purchaser of the goods distrained is prevented from getting them by the wrongful act of the distrainee in converting them to his own use, and has never had an opportunity of getting them a second distress is lawful.

The defendant in distraining upon the plaintiff distrained a stack standing upon his land; and whilst still standing there it was knocked down to L., at an auction where the distress was sold It was a condition of the sale that purchasers should remove lots at their own expense, take possession and pay at the fall of the hammer (or with the Auctioneer's permission at the close of the sale) the sale being for ready money. After the sale the auctioneer left the stack for the purchaser to take away; he did not then attempt to take it away, but upon his going to the premises four days afterwards with his cart for that purpose, the plaintiff, who at the sale had said, "it would be one thing to buy the stack and another to take it away," assaulted him and prevented him from removing it, kept the stack and converted it. L. never paid the price, but the jury found that he had never at any time after the sale had an opportunity of taking the stack away.

Held, that upon these facts, this distress having been rendered abortive by the wrongful acts of the plaintiff, a second was lawful.

C.C.R. REGINA *v.* TREBILCOCK. *Feb.* 1.

Larceny by bailee—Recommendation to mercy no part of verdict—Intention permanently to deprive owner.

The prisoner having broken open a plate chest, of which he was bailee for safe custody, and pawned the contents was tried for the simple larceny. The jury found him guilty. but recommended him to mercy, "believing that he intended ultimately to return the property."

Held, that the conviction must be sustained; for upon the facts there was evidence of larceny, and it does not appear from the recomendation to mercy, which is no part of the verdict, that the jury believed that the prisoner at the precise time when he took the property intended to return it.

C. P. BRYANT *v.* WILSON. *Feb.* 1.

Practice—Rules 166, 167 *of Hilary Term*, 1853 *—Notice of employing attorney.*

The plaintiff was an infant, and sued out a writ in person. The declaration was indorsed "E. B., next friend at C's., 8 Symond's Inn, Chancery Lane." C. was in fact an attorney. The plaintiff having recovered in the action,

Held, that he was entitled not merely to his costs out of pocket as if the action had been conducted in person, but to his costs as appearing by attorney.

C. P. CATLIN *v.* KERNOTT. *Jan.* 30.

Entering satisfaction on record—Ca. sa.—Discharge out of custody with plaintiff's consent.

If a defendant in custody on a *capias ad satisfaciendum* issued on a judgment be discharged out of custody with the plaintiff's consent, upon agreeing to do or to omit to do something, and after his discharge, in breach of his agreement, does not do or does not omit to do, as the case may be, the act in question, still the court will, on the application of such defendant, order satisfaction of the judgment to be entered up.

C. P. HUMPHREYS *v.* FRANKS. *Feb.* 1

Discharging out of custody under 48 *Geo., III, cap.* 123—*Ejectment—Common Law Procedure Act*, 1852, *sec.* 207.

By 48 Geo. III., cap. 123, persons in execution upon any judgment for any debt or damages not exceding the sum of £20, exclusive of the costs recovered by such judgment, who have lain in prison thereupon for the space of 12 calendar months, are upon application to be discharged. This statute was formerly held to apply to the action of ejectment, there being formerly nominal damages in that action. Since the Common Law Procedure Act came into operation there are no damages in the action of ejectment; but by sec. 207 of the last mentioned Act, it is enacted that "the effect of a judgment in an action of ejectment under this Act shall be the same as that of a judgment in the action of ejectment heretofore used."

Held, that 48 Geo. III., cap. 123, applies to the present action of ejectment, where the defendant is in execution for the costs.

EX. *Feb.* 12.

COOMES *v.* THE BRISTOL AND EXETER RAILWAY COMPANY.

Carriers—Loss of goods—Action—Payment of compensation to consignor.

It is no answer to an action against carriers by the owner of goods lost (who was the consignee), that the consignor, after the loss of the goods, claimed compensation, and that the carriers, without notice, and believing him to be the owner, paid compensation to him.

C. P. HALE *v.* RAWSON. *Feb.* 9, 25.

Contract—sale of goods on board—Arrival of the ship without the goods.

Where goods were sold "to be paid for 14 days after finishing the landing, to be delivered on safe arrival of *the Countess of Elgin.*"

Held, that this was a contract conditional upon the arrival of the ship only, and that the defendants were bound to perform the contract whether the ship brought the specified goods or not.

EX. HOBSON *v.* COWLEY AND MADELEY. *Feb.* 11.

Contract of service—Dissolution of partnership—Nominal damages—New trial.

Where a clerk has entered into the service of a partnership for a term of years, and upon a change of partners, consents to cancel the old agreement upon a new agreement with the new firm being entered into, and thereupon he enters into the service of the *latter firm, the question for the jury is, simply, whether or no* a new agreement has been entered into?

The court will not grant a new trial on the ground that the plaintiff is entitled to nominal damages, if nominal damages have not been claimed at the trial.

Quære—whether a mere change of partners is a breach of contract to employ for a term of years?

REVIEW OF BOOKS.

A Handy Book on Property Law; in a Series of Letters by Lord St. Leonards. New York: Appleton & Co. Toronto: Maclear & Co. Price 75 cents.

A very extraordinary book; as useful as it is extraordinary. The noble and learned author of it tells us that, in his youth and in his manhood, he has written much for the learned in the law, and asks the question, "why should I not, at the close of my career, write somewhat for the unlearned?" There was no reason why he should not, and many reasons why he should do so. His letters to "a man of property," published nearly a half century since, was the most successful attempt ever made to popularize law. They were written by him when known as plain "Edward Burtenshaw Sugden," and now it is proved that, in this description of literature, his only equal is himself. His "Handy Book on Property Law," though containing much that is in his "Letters to a Man of Property," takes a more extensive range, and the character of simplicity is wonderfully sustained throughout the entire volume. It would be absurd for us more at length to review any production on a legal subject from a legal mind such as that of Lord St. Leonards'. The immense sale of the work is the best proof of the wisdom that originated and the learning that executed it. The thanks of every landed proprietor in Canada and the United States of America are due to Appleton & Company, for having reprinted "The Handy Book," so as to place it within the reach of all, at a price so small that none need be without it.

The following are the contents:—

Difference between Law and Equity—Sales and Purchases—Rights of Husband and Wife in their several properties—Judicial Separation and Divorce—Father and Mother's power over Children — Mortgages — Leases — Settlements—Wills—Trustees — Title acquired by Possession—Time of Barring Charges—Church patronage.

The Monthly Law Reporter. Edited by John Lowell and Samuel M. Quincy. Boston: Crossby, Nichols & Co. New York: John S. Voorhies.

No. 1, Vol. II. commences a new series of this Work, with 50 extra pages, without additional charge. This number contains an article on "Flats and Alluvion;" and Reports and Digest of Cases from the Circuit, District and Supreme Judicial Courts of Massachusetts. It appears to be an ably conducted and valuable publication. The terms are $3 per annum. There are thirty-one cases in the number before us.

Opinions of Eminent Lawyers on various points of English Jurisprudence, chiefly concerning the Colonies, Fisheries and Commerce of Great Britain; collected and digested from the originals, in the Board of Trade and other Depositaries. By George Chalmers, Esq., F.R.S., S.A. Burlington, Va.: C. Gooderich and Company, 1858. Toronto: A. H. Armour & Co.; and J. C. Geikie. Price $5.

This is the cheapest and best reprint of an English work that we have seen for "many a long day." The original is not only very scarce, but sold at the modest sum of five *guineas*. The reprint, which contains all that the original does and in appearance is superior to it, can now, owing to the enterprize of C. Gooderich and Company, be had for five *dollars*. The book is of great value to us and to all countries, either at present or which have been colonies of Great Britain. The American editor, after pointing out the value of the book to the people of his country, says, "The adjoining British Colonies, the growth of which it is so pleasant to us to witness, and who so largely avail themselves of our publications, will feel an interest in this production of our press. It is quite as much dedicated to them as to ourselves." Indeed we are furnished with the best opinion which an Upper Canadian can ask on the merits of such a work—that of the Chief Justice of Upper Canada. In writing to the publishers, when they announced the work, he says, "It is a work difficult to be procured in England, and it will be a valuable service rendered to the profession to afford them more general access to a work which contains many able discussions of lawyers of great eminence, on both sides of the Atlantic, of questions highly interesting both in a historical and legal point of view."

The author was induced, in the first instance, to publish the Opinions "with the well meaning hope of contributing somewhat to the useful stock of periodical knowledge which the profession and the people enjoy, as the safest shield of private rights, as the noblest palladium of the public good, in such an empire as ours; whose interest and whose pride it is to be governed by law." It may not be out of place, for the information of our readers, to state something as to the Biography of the author. He was born in Fochhabers, in Scotland, in 1742, and educated at King's College, Aberdeen. He studied law in Edinburgh; and, in 1763, proceeded to Baltimore, in the State of Maryland, where he acquired a responsible and lucrative business. During the revolution, he espoused the Royalist cause, and shortly afterwards returned to Great Britain. In 1775, having arrived in Great Britain, he applied himself to the study of the history of the British Colonies in North America. In 1786, he was appointed Chief Clerk to the Committee of the Privy Council, charged with "the consideration of all matters relating to trade and foreign plantations." Owing to this appointment, he had free access to all the archives connected with the Colonial interests of Great Britain. From these archives he gathered and published the Opinions, the subject of the volume now before us. He died in London, on 31st May, 1825. The work has never been reprinted, until now, since 1814, when it made its first appearance in London.

The following are the contents:

First. *The King's prerogative abroad.*
- I. Of his ecclesiastical authority.
- II. Of his civil authority.

The King's rights—his power of taxation over conquests—his grants.

Secondly. *Of the King's general jurisdiction abroad.*

Thirdly. *How far the King's subjects, who emigrate, carry with them the English law.*
- I. The Common Law.
- II. The Statute Law.

Fourthly. *Of the Colonial Institutions.*
- I. Of the Governor.
- II. Of the King's Council.
- III. Of the Representative Assembly.
- IV. Of the want of Sovereignty in Colonial Legislatures.
- V. Of the various modifications which the constituted Assembly admits.
- VI. Of the Colonial Judicatures.

Fifthly. *Of the Admiralty Jurisdictions.*

Sixthly. *Of the National Fisheries.*

Seventhly. *Of Commerce.*
- I. Manufactories set up abroad.
- II. The Acts of Navigation.
- III. Miscellaneous matters of Trade.
- IV. Of Coins.

Eighthly. *Of the Law of Nations.*
- I. Treaties.
- II. The legal effects arising from the direct independence of the United States.

COMMON PLEAS REPORTS, by Edward C. Jones, Esq., Barrister at Law, Reporter to the Court. Toronto: Henry Rowsell.

We have received from the Publishers, No. 9, Vol. VII of these Reports which like those of the Queen's Bench, reflect the greatest credit on Mr. Rowsell. The subscription is $9 per volume of twelve numbers—payable in advance.

FIRST REPORT OF THE COMMISSIONERS ON THE CODE—STATE OF NEW YORK.

This Report ushers in a general analysis of the Codes projected by the Commissioners, David Dudley Field, William Curtes Noyes, and Alexander W. Bradford. They are required, before reporting any portion of the Codes to the Legislature, to distribute the work among the Judges and others for examination, and afterwards to examine it, and, upon revision, to distribute it anew, and then leave it six months for further examination.

We have no confidence in codification; but, so far as we can judge from the analysis, the Commissioners we think have gone thoroughly into the vast and complicated subject, and exhibit great discrimination, judgment and learning, in the divisions they have made. We shall anxiously look for the portions of the work as they may be issued.

THE LAW MAGAZINE AND REVIEW, OR QUARTERLY JOURNAL OF JURISPRUDENCE. London: Butterworths, 7 Fleet Street, Law Publishers to the Queen's Most Excellent Majesty.

We are glad to acknowledge among our English exchanges the receipt of this standard publication. It is as may be perceived from the title, The Law Magazine *and* Law Review united.

The Law Magazine was commenced in June 1828 and continued until May 1844 in an unbroken series of 31 volumes. Then a new series was commenced and continued until May 1856, in an unbroken series of 24 volumes. Not only has each volume an Index of subject matter, but there are three general indexes. Volume 13, O. S., contains a general index to the twelve preceding volumes, and volume 31, O. S., contains a general index to the volumes, from 13 to 31, O. S., inclusive. So volume 12, N. S., contains a general index to the preceding eleven volumes of that series, but no index of the volumes from 12 to 24, N. S., though really needed, has yet appeared.

The Law Review commenced in November, 1844, and continued until May 1856, in an unbroken series of 23 volumes each having an index, but without, so far as we can learn, any general index.

In May 1856, the two publications each covering the same ground, became united. The number before us, that for May 1858, is No. 9, of the united series, No. 119 of the Law Magazine, and No. 55 of the Law Review. It as usual contains several articles of great professional interest,—not the least interesting of which is a biographical sketch of the late Sir William Henry Maule. The price of each number is five shillings sterling, or twenty shillings sterling, per annum—a price so moderate that no one at all interested in Jurisprudence, whether law student, lawyer or legislator, should be without this really excellent publication.

We would suggest to the publishers the expediency of publishing a general index to the Law Review, 23 vols., and a second index to vols. 13 to 24 inclusive, of the Law Magazine, or still better, *a general index to all volumes of the Law Magazine and Law Review to the time of the union in May*, 1856. This would be worth to the publishers much more than its cost, and would be to all who possess or desire to possess the Law Magazine and Review of *inestimable value*. The work at present, though containing much that is able—much that is interesting—much that is valuable, too much resembles a sealed casket without a key.

ENGLISH REPORTS IN LAW AND EQUITY, containing reports of Cases in the House of Lords, Privy Council, Courts of Equity and Common Law, and in the Admiralty and Ecclesiastical Courts; including also, Cases in Bankruptcy and Crown Cases reserved. Edited by Chauncey Smith, Counsellor at Law. Vol. XL., containing Cases in the House of Lords, the Privy Council, the Court of Queen's Bench, Common Pleas and Exchequer, and also Crown Cases reserved during the year. Boston: Little, Brown & Co. 1858.

This volume contains no less than 125 cases. The book is got up in the publishers' usual good style.

We can add nothing to what we have on previous occasions said of the value and reliable character of this work. We would remind our readers that the publishers have all the previous volumes on hand, and that they may be had of Mr. Rowsell, Law and General Bookseller, Toronto.

We strongly recommend those who have not yet taken the work to procure the present volume, (it costs but $2,) and judge for themselves. To those who have taken the work for years, we require to say nothing in its favor. It is full, cheap and reliable.

MARRIAGES AND DEATHS.

MARRIAGES.

On 28th April last, at the church of St. Mary Magdalene, Picton, by the Rev. Mr. Macaulay, John B. Read, Esq., Barrister at Law, to Roxanna third daughter of Norman Ballard, Esq., Picton.

On 25th May last, at St. James's Church Toronto, by the Rev. H. J. Grassett, J. Forster Boulton, Esq., of Hope, County of Durham, Barrister at Law, to Jane, second daughter of Captain Graham, late of Her Majesty's 70th Regiment.

On 16th June ultimo., at St Thomas Church, Shanty Bay, W. D. Ardagh, Esq, Barrister at Law, Deputy Judge of the County of Simcoe, and Senior Editor of the *Law Journal*, to Martha Letitia, third daughter of Rev. S. B. Ardagh, Rector of Barrie.

DEATHS.

On 25th May last, Britannia, the wife of the Honorable Robert Easton Burns, one of the Justices of Her Majesty's Court of Queen's Bench for Upper Canada.

APPOINTMENTS TO OFFICE, &C.

NOTARIES PUBLIC.

WILLIAM WARREN DEAN, Esquire, of Belleville, Attorney at Law, to be a Notary Public in Upper Canada.

MILTON KINGSLEY LOCKWOOD, Gentleman, of Colborne, to be a Notary Public in Upper Canada.—(Gazetted, June 5, 1858.)

ALEXANDER McDOUGALL, of London, Esquire, Attorney at Law, to be a Notary Public in Upper Canada.

JOHN COATES, of Ottawa, Gentleman, to be a Notary Public in Upper Canada.—(Gazetted, June 12, 1858.)

ANTHONY LEVROY, of Goderich, Esquire, Barrister at Law, to be a Notary Public in Upper Canada.

WARD HAMILTON BOWLBY, of Toronto, Esquire, Barrister at Law, to be a Notary Public in Upper Canada.

THOMAS L. HELLIWELL, of St. Catherines, Esquire, to be a Notary Public in Upper Canada.

JOHN A. GEMMILL, of Pakenham, Esquire, to be a Notary Public in Upper Canada.—(Gazetted, June 19, 1858.)

THOMAS PARLEE, the Younger, of Kingston, Esquire, Barrister at Law, to be a Notary Public in Upper Canada.—(Gazetted, June 26, 1858.)

COUNTY CROWN ATTORNEYS.

ALEXANDER WOOD STRACHAN, Esquire, Barrister at Law, to be a County Attorney for the United Counties of Huron and Bruce.—(Gazetted, June 26, 1858.)

CORONERS.

ROBERT CHECKLEY, Esquire, M.D. to be Associate Coroner for the County of Ontario.

DAVID THORP FORWARD, Esquire, to be Associate Coroner for the United Counties of Frontenac, Lennox and Addington.—(Gazetted, June 5, 1858.)

JOHN REEVE, Esquire, M.D., to be Associate Coroner for the United Counties of Huron and Bruce.—(Gazetted, June 12, 1858.)

CHARLES G. MOORE, Esquire, M.D, to be Associate Coroner for the city of London.

EDWY JOSEPH AGDEN, Esquire, M.D, to be Associate Coroner for the County of Halton.—(—Gazetted, June 19, 1858.)

TO CORRESPONDENTS.

D.—William Smith—under "Division Courts."

R. P. Jellett—Lex—under "General Correspondence."

A., Wentworth Co.—too late for July number.

TO SOLICITORS.

A Member of the Bar about to visit Europe for a short period, would be happy to execute any commissions he may be favoured with. Apply to

Messrs. O'REILLY & JARVIS,
Masonic Chambers, Toronto and Hamilton.

Toronto, April 29th, 1858. 1-in.—pd.

J. RORDANS, LAW STATIONER,

ONTARIO HALL, CHURCH STREET, TORONTO, C. W.

DEEDS Engrossed and Writings copied; Petitions, Memorials, Addresses, Specifications, &c., prepared; Law Blanks of every description always on hand, and printed to order; Vellum Parchment, Hand made Medium, and Demy ruled for Deeds, with Engraved Headings. Brief and other Papers, Office Stationery, &c. Parchment Deeds red lined and ruled ready for use. Orders from the Country promptly attended to. Parcels over $10 sent free, and Engrossments, &c., returned by first Mail.

CROWN LAND DEPARTMENT.

TORONTO, 21st Oct. 1857.

NOTICE is hereby given that the Lands in the Township of Barrie in the County of Frontenac, U.C., will be open for Sale on and after the 17th of next month, on application to the Resident Agent, Allan McPherson, Esq., at Kingston.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. McPherson.

ANDREW RUSSELL,
11—6 in. Asst. Commissioner.

CROWN LAND DEPARTMENT.

TORONTO, Oct. 13th, 1857.

NOTICE is hereby given that the Lands in the Township of Rolph in the County of Renfrew, U. C., will be open for sale on and after the 11th next month, on application to the Resident Agent, William Harris, Esq., at Admaston near Renfrew.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. Harris.

ANDREW RUSSELL,
11—6 in. Asst. Commissioner.

INSPECTOR GENERAL'S OFFICE.

CUSTOMS DEPARTMENT,
Toronto, 11th June 1858.

HIS Excellency the Governor General in Council, having had under consideration on the 22nd ultimo, the Departmental Circular of the Customs Department, dated 29th April 1853, by which importers of goods, in every case, are allowed to deduct the discount actually made for cash, or that which, according to the custom of Trade, is allowed for cash, has been pleased to rescind the same, and to direct that no such deductions be allowed hereafter, and that the duties be collected upon the amount of the invoice without regard to such discount; And notice is hereby given that such Order applies to goods then in bond, as well as goods imported since the passing of the Order in question.

By Command, R. S. M. BOUCHETTE,
Commissioner of Customs.

INSPECTOR GENERAL'S OFFICE.

CUSTOMS DEPARTMENT,
Toronto, October 30, 1857.

NOTICE IS HEREBY GIVEN, That His Excellency the Administrator of the Government in Council has been pleased, under the authority vested in him, to direct an order that, in lieu of the Tolls now charged on the passage of the following articles through the Ottawa Canals, the Tolls hereinafter stated shall be hereafter collected, viz:

IRON ORE, passing through all or any portion of the Ottawa Canals, to be charged with a toll of *Three Pence* per ton, which being paid shall pass the same free through the Welland Canal.

RAIL-ROAD IRON, to be charged *One Shilling* per ton, including Lachine Section, St. Ann's Lock and Ordinance Canals, and having paid such toll, to be entitled to pass free through the Welland Canal, and it having previously paid tolls through the Chambly Canal, such last mentioned tolls to be refunded at the Canal Office at Montreal.

The toll on BARREL STAVES to be *Eight Pence* on the Ordnance Canals, and *Four Pence* on the St. Ann's Lock and Lachine Section, making the total toll per thousand, to and from Kingston and Montreal. the same as by the St. Lawrence route, viz: *One Shilling* per thousand.

By command,
R. S. M. BOUCHETTE
Commissioner of Customs.

NOTICE.

WHEREAS Twenty-five Persons, and more have organized and formed themselves into a Horticultural Society for the Village of Fergus, in the County of Wellington in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic., cap. 32, and have subscribe a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration, written and signed as by law required, to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of the said Society, as "The Fergus Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

CANADA
WESTERN ASSURANCE COMPANY.

CHARTERED BY ACT OF PARLIAMENT.

CAPITAL—£100,000, *in Shares of* £10 *each.—Home Office, Toronto.*

President—Isaac C. Gilmor, Esq.; *Vice-President*—Thos. Haworth, Esq; *Directors*—George Michie, Walter Macfarlane, T. P. Robarts, M. P. Hayes, Wm. Henderson, R. Lewis, and E. F. Whittemore, Esquires; *Secretary & Treasurer*—Robert Stanton, Esq.; *Solicitor*—Angus Morrison, Esquire; *Bankers*—Bank of Upper Canada.

Applications for Fire Risks received at the Home Office, Toronto, Corner of Church and Colborne Streets, opposite Russell's Hotel. Office hours from 1 o'clock A. M. until 3 o'clock P. M.

ISAAC C. GILMOR, *President.*
ROBERT STANTON, *Sec. & Treas.*

With Agencies in all the Principal Towns in Canada.

☞Toronto, January, 1858. 11

NOTICE.

PROVINCIAL SECRETARY'S OFFICE,
14th January, 1858.

TO MASTERS OR OWNERS OF STEAM VESSELS.

NOTICE IS HEREBY GIVEN, That on and after the opening of Navigation in the Spring of the present year, a strict compliance with the requirements of the several Acts relating to the inspection of Steam Vessels will be insisted on, and all penalties for any infraction thereof rigidly enforced.

By Command,
E. A. MEREDITH,
Asst. Secretary.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Town and Township of Niagara, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds, to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the said Society as "The Niagara Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Hamilton, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of of the said Society as "The Hamilton Horticultural Society," in accordance with the provisions o. the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Kingston, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture:

Therefore, I, the Minister of Agriculture, hereby give notice of the said Society as "The City of Kingston Agricultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics.
27th January: 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Village of Elora, in the County of Wellington, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. cap, 32, and have subscribed a sum exceeding Ten pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as the "Elora Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 10th March, 1858.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Parishes of St. Joachim, Ste. Anne and St Foreol, in the County of Montmorency, in Lower Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. Cap. 32, and have subscribed a sum of not less than Ten pounds to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as "The St. Joachim Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 9th March, 1858.

OPINIONS OF THE PRESS.

Upper Canada Law Journal.—This highly interesting and useful journal for June has been received. It contains a vast amount of information. The articles on "The work of Legislation," "Law Reforms of the Session," "Historical Sketch of the Constitution Laws and Legal Tribunals of Canada," are well worthy of a careful persual. This work should be found in the office of every merchant and trader in the Province, being in our opinion, of quite as much use to the merchant as the lawyer.—*Hamilton Spectator.—June* 8, 1858,

The Upper Canada Law Journal and Local Courts Gazette, for June. Toronto.—Maclear & Co., Publishers, Messrs. ARDAGH and HARRISON, Editors.

This is a most excellent publication. The present number contains very able original articles on the following topics—'The work of Legislation,' 'Consolidtaion of the Laws of Upper Canada,' and 'Law Reforms of the Session—General Review (continued) The reports of important cases tried in the Local Courts, are full and very interesting. Altogether this magazine is conducted with much ability, and it richly deserves to be widely patronized —*Thorold Gazette —June* 9, 1858.

THE UPPER CANADA LAW JOURNAL for May is full of is interesting articles —instructive alike to the profession and the general public. The editorials, as usual evince the sound knowledge and legal experience of the writers under whose management the journal is now published,—and the opening one, on the "Power of a Colonial Parliament to Imprison for Contempt," embraces an amount of interesting record from opinions of high authorities upon which the author is led to conclude that the power to commit for contempt cannot justly be exercised by the Provincial Parliament The other principal articles are—"Remuneration to Witnesses in Criminal Cases," "Law Reforms of the Session—General Review," "University of Toronto—Law Faculty," "Historical Sketch of the Constitution, Laws and Legal Tribunals of Canada." &c. An original essay on the latter subject is to be commenced in the next issue, and continued monthly till completed and it is promised that the aim of the writer will be to narrate—not to discuss. His materials are, we are informed, the best that can be had consisting of several French and English, manuscripts now out of print. To this may be added, all the information that can be from *Edits, Arrets*, and *Ordonnances* of the French Government and of the Province of Quebec together with the *Ordonnances* and acts of Parliament of the Provinces of Upper and Lower Canada. No pains are to be spared, either in research or compilation, that can be made tributary to th object of the writer. The period embraced will be nearly three centuries—that is, from the settlement of Canada by the French to the present day. This is a subject so fruitful in details of a most interesting character, that if the promises referred to are carried out—(as we have every reason to expect they will, from the deservedly high reputation of the editors)—the *Law Journal* will considerably increase its popularity as a reliable record. —*Colonist May.* 14*th.* 1858

The Upper Canada Law Journal for January, has been received. As usual, its contents are exceedingly valuable—*Kingston Whig.*

This is a very useful monthly, containing reports of important law causes, and general information connected with the administration of justice in Upper Canada Although more particularly intended for the profession, yet every man of business may learn much from it that may be of real advantage to him It has hitherto been published in Barrie, but will henceforth be in Toronto. We rejoice to see that Robert A. Harrison, Esq., B C L, is to be connected with the journal. He is a young gentleman that has already highly distinguished himself in his profession, and with literary talents of no ordinary kind, he will prove to be of great advantage to the Law Journal.—*Brampton Times.*

We are pleased to notice that this able monthly is, for the future, to be edited and published in Toronto, and that Robert A. Harrison, Esq., B.C.L., is become a joint Editor. His accession to the editorial staff must prove to the profession to whom he is now so well known as the author of so many works in general use, no small gain. With Mr. Harrison is associated W. D. Ardagh, Esq., who has for some time been favorably known as an Editor of the *Journal*. Notwithstanding the public caution of the *Journal* in Barrie, it has under the management of the Hon. James Patton acquired a very wide and extended circulation. Now that it is to be published in Toronto, it is reasonable to expect that its circulation will be increased. It is a paper which should be in the hands of every Judge, Lawyer, Coroner, Magistrate, Clerk, and Bailiff in Upper Canada. We hope, however, that the conductors will see fit to widen the list of their exchanges and so increase the circle of their usefulness.

It is a great mistake to suppose that Judges, Lawyers, Division Court Clerks, or Bailiffs are the sole persons interested in the administration of justice. The public at large have a deep interest in, and feel a lively sympathy with the sentiments of a writer who propounds measures of law reform calculated to advance the public good. No discussion however well attended upon subjects of legal interest, can be satisfactorily carried on by the lay press.

The public require to be informed not only as to the existence of an abuse which needs a remedy, but as to the nature of the remedy required. For such information the more proper and more prudent course is to turn to the columns of a newspaper conducted by men whose whole lives and training peculiarly befit them for the expression of sound views. The number of the *Journal* before us which is that for August is replete with legal lore. The Editorial Department bears marked evidence of knowledge and ability.—*Toronto Times.*

Somewhere it has been said that to know a people thoroughly, it is necessary to study their laws—to ascertain how life and property are protected. This ably conducted Journal tells us how the laws enacted by government are administered in Upper Canada. It tells us—what every body knows—that law is expensive, and it adds that cheap justice is a curse, the expense of the law being the price of liberty. Both assertions are certainly truisms, yet a litigious and quarrelsome spirit is not invariably the result of that combativeness which belongs to such men as those who, under any circumstances and at whatever cost, will assert their rights. It is not our purpose to review the *Journal*, but to praise it, seeing that praise is deserved. The articles are well written, the reports of cases are interesting, and the general information is such, that the *Journal* ought not only to be read, but tudied by the members of the bar, the magistracy, the learned professions generally, and by the merchant.

The *Law Journal* is beautifully printed on excellent paper, and, indeed, equals in its typographical appearance, the legal record published in the metropolis of the United Kingdom. $4 a year is a very inconsiderable sum for so much valuable information as the *Law Journal* contains.—*Port Hope Atlas.*

We have to return our thanks to the conductors (or publishers, we do not know which,) of this valuable publication for the present January number, together with an ample index for, and list of cases reported and cited in the second volume of these reports for the year 1856.

The ability with which this highly important and useful periodical is conducted by W. D. Ardagh and Robert A Harrison, B. C. L., Esquires, Barristers at Law, reflects the greatest credit upon these gentlemen, and shews that the esteem in which they are held by their professional comreres and the public, is deservedly merited and nothing more than they are entitled to. We have much pleasure in earnestly recommending the members of the bar for this section of the Province to support the Upper Canada Law Journal, by their subscriptions.—taking leave to assure them that it is well worthy of it, and that they will find it a valuable acquisition to their libraries as a legal work of reference and high authority. It is printed and published by Messrs. Maclear, Thomas & Co., of 16 King Street East, Toronto, and the typographical portion is very creditable to that firm.—*Quebec Mercury.*

The Upper Canada Law Journal, and Local Courts Gazette, is a publication of which the legal profession of the Province need not be ashamed The *Journal* has greatly improved since the removal of the office of publication to Toronto. It is edited with ability by W D. Ardagh, and R A. Harrison, B. C L., Barristers-at Law. The January number, which is the first of the fourth volume, appear in a considerably enlarged form. The fourth volume will contain at least one-third more reading matter than its predecessor A very important question, "Shall we have a Bankruptcy Law?" is discussed at length in a well written editorial in the January issue, to which we shall refer on a future occasion. "License of Counsel," is an original article which probes barristers in many tender spots. The *Law Journal's* circulation should not be confined entirely to the legal professsion.—the Merchant, and general business man would find it a very useful work The price is $4 a year in advance, or $5 otherwise. Now is the time to send in orders —*Port Hope Guide.*

In its first number of the fourth volume this interesting and valuable publication comes to us highly improved in appearance, with a much wider range of editorial matter than formerly The *Journal* has entered upon a broader career of utility, grappling with the higher branches of law, and lending the strength of a full, fresh intelligence, to the consideration of some very grave wants in our civil code. The necessity of an equable and efficient "Bankruptcy Law" is discussed in an able article, instinct with astute and profound thought, coupled with much clear, subtle, legal discrimination.

It is the intention of the Proprietors to institute in the pages of the *Journal* a "Magistrate's Manual:"—provided that that body meet the project in the proper spirit, and contribute an adequate subscription list to warrant the undertaking. To prosecute this contemplation, could not fail to be productive of incalcuable advantage, as well to the community as to the Magistracy. We sincerely hope that this latter body will bestow a generous patronage, where so laudable an effort is made for their advantage.

The *Law Journal* is presided over by W D Ardagh, and R. A. Harrison, B C. L., Barristers-at-Law It is a periodical that can proudly compare with any legal publication on this Continent. We wish it every success. —*Catholic Citizen.*

This Journal which is published monthly, appears this week much improved in size, appearance and matter. It was formerly published in Barrie, but has for some numbers back been published in Toronto, and has acquired aid in the editorial staff by the addition of Mr. Harrison, who is well known in the profession from his numerous publications on legal subjects Under the management of Mr. Ardagh and Mr Harrison this Journal promises fair to become an important publication, not merely to the legal profession, but to other important classes of the community, as particular attention is given to Municipal affairs, County Courts and Division Courts, Magistrates' duties also receive a considerable share of consideration. It will contain original treatises and essays on law subjects, written expressly for the *Journal*, besides reports from the Superior Courts of Common Law and the Court of Chancery. Proper selections will also be made from English periodicals. To the profession the reports from Chambers of decisions under the Common Law Procedure Acts and the general practice, are of particular interest. These the *Journal* supplies, being formerly reported by Mr. F. Moore Benson, and latterly by Mr. C. E. English, M. A. We would advise all municipal officers, Division Courts officers, Magistrates, and particularly the profession, to patronize this publication, as it cannot be sustained without their aid. The subscription is only $4 a year in advance.—*Leader.*

The January number of this valuable Journal has come to hand, and is as usual replete with legal decisions, articles on commercial law, &c., &c. We republish from this number, an able article on the subject of a Bankrupt Law for Canada.—*Canadian Merchants' Magazine.*