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DIVISION COURTS.

OFFICERS AND SUITORS.

Clerks and Bailiff's—(Duties in Court, continued from page 102.)—The following forms include all of ordinary use in the business of the Courts*—they should be committed to memory by the officers. These forms are short, and officers not provided with forms already will find them convenient.

Ordinary Oath to Witness.

The evidence you shall give to this Court, touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth: So help you God.

Oath with uplifted hand.

The evidence you shall give to this Court, touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth; and this to do you swear in the presence of the ever living God, and as you shall answer to God at the great day of Judgment: So help you God.

Affirmation of Quaker or other person allowed by law to affirm.

I ——— do solemnly, sincerely, and truly declare that I am one of the Society of people called Quakers, (*or*, as the case may be)

[This the Clerk causes the Witness to repeat after him, and then administers the Affirmation as follows—the Witness by word or otherwise signifying his assent]

The evidence you shall give to this Court, touching the matter in variance, shall be the truth, the whole truth, and nothing but the truth; and this to do you solemnly, sincerely, and truly declare and affirm.

Oath of Interpreter.

You shall truly interpret between the Court [the Jury (if there be one)], the parties in this cause and the witnesses produced: So help you God.

In Jury cases, where the Jury has been required by plt. or dft., when the case is called on and the parties are at the bar, the Clerk names the Jurors on the list to the Bailiff, who calls them, one at a time, until five have answered and stand unchallenged, or are allowed. The Bailiff then causes the five Jurors to place their right hands upon the book, and the Clerk swears them after this manner:

Oath of Jurors.

You shall well and truly try the matters in difference between the parties, do justice between them according to the best of your skill and ability, and a true verdict give according to the evidence: So help you God.

The Clerk should then address the Jury thus: "Gentlemen answer to your names, and if sworn say—sworn," and call over their names, the Bailiff counting aloud—one, two, &c., as each Juror says "sworn."

"Should any of the Jury go out of the Court on leave, it must be in charge of the Bailiff, or some other person appointed for the purpose by the Court—who is sworn to take charge of them. The following form will answer:

Oath of Officer on retiring with one or more of Jury.

You shall retire with such Jurors as have leave of absence from the Court: you shall not speak to them yourself in relation to this trial, nor suffer any person to speak to them; and you shall return with them without delay: So help you God:

Again, when the Jury retire to consider their verdict, an oath to the following effect should be administered:

Oath of Officer who attends Jury when they retire to consider their verdict.

You shall keep every person sworn on this Jury in some private and convenient place, without meat, drink, fire or candle; you shall suffer none to speak to them, neither shall you speak to them yourself without leave of the Court, except to ask them whether they have agreed on their verdict: So help you God.

When the Jury return with their verdict, the Clerk calls over their names, the Bailiff counting as before, and then asks them if they "are agreed upon their verdict." After the verdict has been noted, the Clerk addresses the Jury—"Hearken to your verdict, as entered by the Court,—Verdict for the *Plaintiff Ten Pounds* (according to the finding): So say you all."

We have hitherto been speaking of a jury called on requisition of plt. or dft., taken from the Assessment Roll and summoned before the day of hearing. Under the 11th sec. of the D. C. E. Act, the Judge may cause a jury to be returned instanter—should he desire to take their opinion upon any fact or facts controverted in the suit. In such case, upon order of the Judge, a jury of five persons *present* is to be returned instantly by the Clerk, to try such facts. In carrying out this most salutary provision, the Clerk should be careful to select from amongst those assembled in the Court-Room the most respectable and intelligent persons he sees. The Clerk has generally some personal knowledge of the parties, their relatives and connections, &c., and he should endeavour in the selection to avoid naming as a juror any one related to or in any way connected with either party. The Jurors should be free from bias of any description: parties would have the right to challenge, certainly, but the choice should be such as to leave no just ground for challenge.

The form of oath for Jury called by the Judge's order will not be the same as in ordinary cases. It may be as follows:—

Oath of Jurors called under D. C. Ex. Act, sec. 11.

You shall well and truly try the facts controverted in this cause between the parties, and a true verdict give according to the evidence. So help you God.

* These Forms are chiefly taken from the paper referred to in the last number of the *Law Journal*.

In recording the judgments and orders of the Court in the Procedure Book, great care should be taken by the Clerk: in suits against executors and administrators, particularly, where the judgments are long and somewhat intricate, the Clerk should ask the Judge to be referred to the *number* of the judgment, according to the general forms, that no mistake may be made.

Should it become necessary to take a recess during the day, or to adjourn the Court to the following day, the Bailiff can proclaim the same in the following words:—

Proclamation on Adjournment.

Hear ye—Hear ye—All manner of persons that have anything further to do at this Court may depart hence and give their attendance here this day (*or*, to-morrow morning) at —— o'clock ——. God save the Queen.

On resuming business, the Court is opened again by proclamation.

Proclamation on resuming.

Hear ye—Hear ye.—All manner of persons that have anything further to do at this Court, let them give their attendance and they shall be heard. God save the Queen.

To prevent parties having business at a Court being taken by surprise on the Court rising, after all the business on the list appears to have been gone through, the following proclamation is recommended:—

Final Proclamation

Hear ye—Hear ye.—All manner of persons that have anything further to do at this Court, let them come forth and they shall be heard, otherwise they and every one else may depart hence for this term. God save the Queen.

Application for certificates, for leave to sue in the particular Court, and all other special applications are more conveniently brought up after the Judge has gone through the cause list.

Papers used at the trial of a cause should be filed with the Summons and other original papers. The Clerk should have ready for use, blank forms of all documents requiring the signature of the Judge: and the more printed forms a Clerk has the less is his labour.

ON THE DUTIES OF CORONERS.

II.—PROCEEDINGS IN RELATION TO INQUESTS.

(CONTINUED FROM PAGE 106.)

Examining Witnesses.—Before the witnesses are called forward—everything being now ready, and the body having been viewed—the Coroner directs the Constable to make proclamation to the following effect:—

"If any one can give evidence on behalf of our Sovereign Lady the Queen, when, how, where, and by what means H.H. came to his death, let them come forth and they shall be heard."

On the appearance of each witness, the Coroner is to take down his name, abode, and occupation, and then administer the oath that he shall speak the truth. It is as follows:—

Oath of Witness.

"The evidence which you shall give to this Inquest, on the behalf of our Sovereign Lady the Queen, touching the death of H.H., shall be the truth, the whole truth, and nothing but the truth: So help you God."

If it shall happen that any of the witnesses are foreigners, the Coroner shall appoint an interpreter to translate the evidence to the Court and Jury, and interpret the oath to each witness before same is administered.

"You shall well and truly interpret unto the several witnesses here produced on behalf of our Sovereign Lady the Queen, touching the death of H.H., the oath that shall be administered to them, and also the questions and demands which shall be made to the witnesses by the Court or Jury, concerning the matters of this inquiry, and you shall well and truly interpret the answers which the witnesses shall thereunto give: So help you God."

Evidence of Medical Practitioner.—In order that the Jury may have the most perfect evidence of all matters calculated to throw light upon the cause and nature of the death, the Stat. of 13 & 14 Vic. ch. 56, sec. 5 authorises the Coroner to summon the medical attendant of the deceased—being "a legally qualified medical practitioner"—or if deceased had no medical attendant immediately at or before his death, then to summon "any legally qualified medical practitioner, being at the time in actual practice in or near the place where the death has happened." The Coroner also has power to direct a *post-mortem* examination of the deceased. But if the Coroner has good reason to believe that the deceased came to his death by improper or negligent treatment, he must not allow such medical practitioner to assist at the *post-mortem* examination.

V. And be it enacted, that whenever upon the summoning or holding of any Coroner's inquest, it shall appear to the Coroner that the deceased person was attended at his or her death, or during his or her last illness, by any legally qualified medical practitioner, it shall be lawful for the Coroner to issue his order in the form in the schedule hereunto annexed, for the attendance of such practitioner as a witness at such inquest; and if it shall appear to the Coroner that the deceased person was not attended immediately at or before his or her death by any legally qualified medical practitioner, it shall be lawful for the Coroner to issue such order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death has happened; and it shall be lawful for the Coroner, either in his order for the attendance of the medical witness, or at any time between the issuing of such notice and the termination of the inquest, to direct the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness or witnesses who may be summoned to attend at any inquest: *provided*

that if any person shall state upon oath before the Coroner that in his or her belief the death of the deceased individual was caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person, such medical practitioner or other person shall not be allowed to assist at the *post-mortem* examination of the deceased.

If Jury require further Medical Evidence.—By the sixth section of the same Act provision is made for securing the attendance of another medical practitioner, when the majority of the jury think that the death has not been satisfactorily explained by the medical practitioner already examined. The jury may name in writing to the Coroner such other "legally qualified medical practitioner" as they may see fit, and he must issue his order for the practitioner's attendance. Should the Coroner refuse to do so, he becomes liable to both fine and imprisonment.

VI. And be it enacted, that whenever it shall appear to the majority of the jurymen sitting at any Coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witness or witnesses who may be examined in the first instance, such majority of the jurymen are hereby authorized and empowered to name to the Coroner, in writing, any other legally qualified medical practitioner or practitioners, and to require the Coroner to issue his order in the form hereinbefore mentioned, for the attendance of such last mentioned medical practitioner or practitioners, as a witness or witnesses, and for the performance of such *post-mortem* examination, as in the fifth section of this Act mentioned, whether such examination has been before performed or not; and if the Coroner, having been so required, shall refuse to issue such order, he shall be deemed guilty of a misdemeanor, and shall be punishable by a fine not exceeding Ten Pounds, or by imprisonment not exceeding one month, in the discretion of the Court trying such offence, or by both, as to the said Court shall seem fit.

How Summoned.—The Statute furnishes a form of Order (which we subjoin) for service on medical practitioners, but does not make a particular mode of service necessary. The eighth section speaks of the order being "personally served" "or left at his residence," but we would suggest "personal service" as the safer course, if ulterior proceedings are contemplated.

Order for Attendance.

Coroner's Inquest at ———, *upon the body of* ———.

By virtue of this my order, as Coroner for ———, you are required to appear before me and the jury, at ———, on the ——— day of ———, at ——— o'clock, to give evidence touching the cause of the death of ——— (*and then add when the witness is required to make or assist in making a post-mortem examination*) and make or assist in making a *post-mortem* examination of the body, with (*or* without) an analysis, (*as the case may be*) and report thereon at the said inquest.

(Signed) ——— ———,
Coroner.

Remuneration to Medical Witnesses.—The medical practitioner is remunerated for his loss of time, services and attendance, according to the scale laid down in the seventh section of the 13 & 14 Vic. ch. 56, viz.: for attendance, 25s.; for attendance and *post-mortem* examination, 50s.; and for attendance, *post-mortem* examination, and analysis, 100s.; together with mileage, going and returning, at 1s. per mile.

VII. And be it enacted, that where any legally qualified medical practitioner has attended upon a Coroner's inquest, in obedience to any such order as aforesaid of the Coroner, the said practitioner shall receive for such attendance, if without a *post-mortem* examination, one pound five shillings; if with a *post-mortem* examination, without an analysis of the contents of the stomach or intestines, two pounds ten shillings; if with such analysis, five pounds; together with the sum of one shilling per mile for each mile he shall have to travel in going to and returning from such inquest, such travel to be proved by his own oath to the said Coroner, who is hereby authorized and empowered to administer the same; and the Coroner is hereby required and commanded to make his order on the Treasurer of the County in which the inquest shall be holden, in favor of such medical practitioner or practitioners, for the payment of such fees or remuneration, and such Treasurer is hereby required and commanded to pay the sum of money mentioned in such order of the Coroner, to the medical witness therein mentioned, out of any funds he may then have in the County Treasury.

Penalty of Non-Attendance.—Having been served with the Coroner's order, the medical witness must attend at the time and place specified therein; if not, he subjects himself to a forfeiture of Ten Pounds. The eighth section of the statute last referred to points out the course of proceeding to recover same:—

VIII. And be it enacted, that where any order for the attendance of any medical practitioner as aforesaid, shall have been personally served upon such practitioner, or where any such order not personally served shall have been received by any medical practitioner as aforesaid, or left at his residence, in sufficient time for him to have obeyed such order, and in every case where such medical practitioner has not obeyed such order, he shall for such neglect or disobedience forfeit the sum of Ten Pounds upon complaint made thereof by the Coroner or any two of the jury holding such inquest, before any two Justices of the Peace of the County where the inquest was held, or the County where such medical practitioner resides; and such two Justices are hereby required, upon such complaint, to proceed to the hearing and adjudication of the same; and if such medical practitioner shall not shew to the said Justices a good and sufficient reason for not having obeyed such order, to enforce the said penalty by distress and sale of the offender's goods as they are empowered to proceed by any statute for the summary enforcement of any penalty or forfeiture.

(TO BE CONTINUED.)

U. C. REPORTS.

GENERAL LAW.

DICKENSON FLETCHER *v.* MUNICIPALITY OF TOWNSHIP OF EUPHRASIA.

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

Intendment in favor of Council following the directions of the Statutes.

A township By-Law was quashed as to so much of it as related to the raising a sum of money to defray the demands of the County Council on the Municipality of the Township, and as an equivalent to the Government school grant, it not appearing on the face of it that it was directed to the purpose of meeting a deficiency, nor even that there was any.

And *semble*, that a Township Council has not power to pass a by-law imposing a rate in aid of any County rate.

It does not appear necessary that a township by-law should set forth the estimates on which their by-law is founded; and the Court will intend that proper estimates have been made, in the absence of evidence that they are wanting.

Nor that the by-law should state that the rates are calculated at so much in the pound on the *actual* value; and in the absence of anything to the contrary the Court will intend that the Council has followed the directions of the Statute.

Cosens obtained a *Rule in Hilary Term* calling on this municipality to shew cause why the by-law of 7th November, 1854, for raising £440 13s. 7d. should not be quashed on the following grounds:

1st. That it purports to raise a tax for county purposes, which is within the province of the County Council, and is carried into effect by a by-law passed by that body; the Township Council having no power to pass such a by-law. He referred to 12 Vic. ch. 81, sec. 41, sub-sec. 22; and to 16 Vic. ch. 82, secs. 32, 33, 34, and 39.

If the township had such a power, the same sum would be levied twice over—1st under county rate, 16 Vic. ch. 182, secs 34, 39; 2ndly under township rate, sec. 39.

The township by-law could not be founded on an *estimate*, for they could form no estimate of what the county would require. 16 Vic. ch. 182, sec. 31.

The Township Council have no power to interfere with a county rate, either to enforce or alter it. 12 Vic. ch. 81, secs. 29, 40; and 16 Vic. ch. 182, secs. 34, 42, 45, 54, 55, 69, 70, 85; 14 & 15 Vic. ch. 109, sec. 36; & 12 Vic. ch. 81, sec. 177, 179.

2ndly. They have no power to pass a by-law levying *double* the amount required by county by-law for county purposes, as it appears they did by the township and county by-laws filed.

3rdly. They had no power to levy money by a tax, as an equivalent to the Government school grant.

It is not within their power. 13 & 14 Vic. ch. 48, secs. 18, 20, 27, as amended by 16 Vic. ch. 185.

This rate, also, if good, should be levied twice, for the same reasons as in preceding objection.

The township are not supposed to have the amount of the school grant officially before them, for such amount is to be certified by Chief Superintendent of Schools to County Council through County Clerk.

4thly. That the by-law so far as it relates to rates for township purposes, should set forth the *estimate* of the sums required for the township purposes.

5thly. That the by-law should state the assessed value of the property of the township, and whether the rates for raising the sum required by the estimates were made on the actual or yearly value of the property. 16 Vic. ch. 182, sec. 31.

In re. Hawkins v. Municipal Council of Huron, Perth and Bruce; 2 C. P. Rep. 113, per Sullivan, J.—12 Vic. ch. 81, sec. 31; 14 & 15 Vic. ch. 109, sec. 55; 16 Vic. ch. 182, sec. 31.

He filed the affidavit of complaint verifying the copy of the by-law, together with a copy (properly verified) of by-law No. 8 of the County Council of Grey, passed 3rd June, 1851; also a copy (properly verified) of another by-law of the County Council, of 22nd June, 1854.

The by-law moved against recited the necessity of raising £313 13s. 1d. to defray the demands of the County Council on the township, at the rate of 2d. 5-6 in the pound on all rateable property in the township, and of raising as an equivalent for the Government school grant the sum of £17, at the rate of 1-6th of a penny in the pound; and of raising £110 10s. 6d., to defray the expenses of the township at the rate of one penny in the pound, and enacts that there be levied £440 13s. 7d. for the aforesaid purposes, stating each of them, with the sum required for each, the last being stated thus: "to meet and defray the expenses of the different township officers and other miscellaneous charges connected with this municipality."

The enacting clause did not say on what property the rate is to be imposed, nor does the by-law refer to or state an estimate of the expenses, shewing the appropriation of the £110 10s. 6d.

The by-law of the County Council, No. 8, directed the raising of £2356 16s. 4½d. by a uniform rate of 1½d. in the pound on the whole rateable property in the county, as shewn by the revised assessment of the townships forming the County of Grey, and states each township, the value of rateable property therein, and the amount of the rate imposed, stating Euphrasia £25,000—£156 7s. 7d.

The other by-law of the County Council, No. 7, enacted that the following sums be assessed as an equivalent to the Government grant in aid of common schools in the respective townships, naming them all, and among them, Euphrasia £17.

In Easter Term, *Hagarty, Q.C.*, shewed cause.

He urged that this municipality had no general fund, out of which to pay deficiencies—that the County Council by-laws would not produce the sums named, because much land in Euphrasia belonged to non-residents, and the rates on their lands could not be immediately collected, and consequently, that there must be a deficiency, which the township had to pay; and having no general purpose fund, being comparatively a new and poor township, thinly settled as yet, the money, if not raised by them by some by-law to meet the deficiency, might be, under the stringent provisions of the Statute, raised, almost at once, by a sale of township property. He urged the Court to point out what course the Statute permitted or directed under such circumstances, if this by-law was in that respect illegal. He defended it against the 4th and 5th objections.

Cited 13 & 14 Vic. ch. 64, sched. A. sec. 172; 16 Vic. ch. 182, secs. 31, 33, 69, 85; 13 & 14 Vic. ch. 48, sec. 27; 16 Vic. ch. 185, sec. 22; 2 Com. Pleas, U. C. Rep. 89, 322; 10, U. C. Q. B. 93.

DRAPER, J. delivered the judgment of the Court.

We are of opinion that so much of this by-law as relates to the raising £313 13s. 1d. to defray the demands of the County Council, and to the raising of £17 as an equivalent for the Government school grant, must be quashed. The 31st sec. of 16 Vic. ch. 182, authorises the County Council to pass by-laws to raise monies for county purposes, and the Township Council for township purposes; and as to the equivalent for the school grant, the 13 & 14 Vic. ch. 48, sec. 27, expressly makes it the duty of the County Council to cause to be levied, each year, upon the several townships of each county, such sums of money as shall at least be equal, clear of all charges of collection, to the amount of school money apportioned to the several townships out of the Government grant.

To raise monies for these same purposes to the full amount in one case, and to double the amount in the other, is, on the face of it, beyond the power of the Township Council, for it is exercising a power not only not conferred upon them, but expressly conferred on another municipal corporation.

The only argument offered to justify this course was, that the Township Council had ascertained, that owing to the large proportion of lands held by non-residents, a sum very far short of that imposed by the county by-law, would be collected by the collector upon the roll: that a considerable deficiency would remain to be made up, which the township treasurer would have no funds to meet; and therefore such a by-law was necessary to supply those funds, and to prevent a warrant being issued by the treasurer of the county, under 16 Vic. ch. 182, sec. 85.

For the purposes of this argument, we will assume the

object and intentions of the Township Council to be what are stated, and that the facts on which they rely as requiring them to take this course, exist, though, if our decision had to rest upon any such ground, it would have been indispensable that all those facts should be established before us. But *we think assuming* every thing suggested, that will not sustain the by-law which is not on the face of it, directed to the purpose of meeting a deficiency, does not even suggest any, if that would enable the Township Council to raise money by by-law expressly to meet it; and even then, it would seem premature, for all that is shewn.

For myself, I may add, that on examining the Statute, I think its provisions have been very carefully framed to obviate the difficulties suggested by Mr. Hagarty.

The thirty-first section, in directing estimates to be made of all sums required, directs the municipality to make "due allowances in such estimate for the cost of collection, and the abatements and losses which may occur in the collection of the tax, *and for taxes on non-residents' lands which may not be collected.*"

Under the 33rd sec. the County Council are required, in apportioning the county rates on the different townships, &c., to make the rateable property returned in the assessment rolls of such township, &c., for the next preceding financial year, the basis of such apportionment, so that they have before them the same information that the Township Council have, through the assessment rolls, to enable them to make the allowances stated in the 31st sec. in framing their estimates, and we must, I think, presume they have done so.

Then, further to prevent difficulties, the County Council are by sec. 70 enabled to issue debentures payable within eight years, on the credit of the non-resident land fund, so as, in effect, to have the money in hand before payment of the taxes due on such lands can be enforced under the 55th sec. of the Act, while the 72nd sec. makes provision for each separate township, &c., getting its rateable proportion of the non-resident land fund, when it is paid into the hands of the County Treasurer.

Looking at these various provisions, I am not yet prepared to assert the power of the Township Councils to pass a by-law of their own, imposing a rate in aid of any county rate, though as it is not necessary for the purposes of the case, I do not now pronounce any positive opinion.

I do not see any force in the other objection urged to the by-law. We are not to assume that the Township Council have not proper estimates on which their by-law is founded; and in a by-law like the present, the Statute does not make it indispensable that they should be recited.

This is not a by-law for creating a debt or contracting a loan, and therefore not within the provision of 14 & 15 Vic. ch. 109, sec. 4; and we might, I think, hold that the mentioning a specific sum as to be raised for specific purposes, might be treated as the setting forth an estimate that such sum was required for those purposes.

Nor do I see any force in the 5th objection. The 31st sec. declares that in counties and townships the several rates shall be calculated at so much in the pound upon the *actual* value, and in cities, towns, and villages, upon the yearly value.

We ought to intend that the Township Council has obeyed this direction, nothing to the contrary being in any way shewn.

Thomas B. White *v.* Municipality of Collingwood.

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

This was a similar application by Cosens to quash a by-law passed in the 6th September, 1854.

The objections taken were:—

1st. That the Council had no authority to pass a by-law raising a tax for county purposes.

2nd. That the rate fixed is for county and township purposes *in the aggregate*, the one not being distinguished from the other.

3rd. That there are no estimates of the *necessary township expenses* set forth in the by-law; no sum fixed in the pound as a necessary rate, the actual assessed value of property in the township not mentioned; no purposes mentioned sufficiently specific to shew for what purposes the rate of 3d. in the pound is needed.

4th. That the rate is enormous.

The Rule *nisi* was served on the Reeve and Township Clerk early in March last.

The duly certified copy of the by-law was put in as follows: "By-law, &c., (the title) Be it enacted by the municipal council in council assembled, That the sum of three pence to the pound be levied and raised on all rateable property to raise the sum of £375, to defray all expenses on the township for the current year, *county and township included*, and a portion of said sum to be laid out on the repairs of roads and bridges as the council thinks most wanted, and if any balance remain to be handed over to the credit of the township for the ensuing year."

A duly certified copy of a by-law, numbered 8, of the county council, passed 23rd June, 1854, in which the township of Collingwood is rated at the sum of £153 2s. 6d. for county purposes, for the year 1854, was also put in.

No one appeared to oppose this Rule.

Draper, J.—In my opinion this by-law must be quashed altogether. As to the part imposing rates for county purposes, it is bad for the reason given in the preceding case. And then, this by-law affords no means for telling how much the rate of 3d. in the pound must be reduced in order to raise that portion of the £375 which the township council had authority to impose. There are also other apparent objections to this by-law, which it is not necessary to advert to for the purpose of sustaining our judgment.

By-law quashed.

The Chief Superintendent of Schools, Appellant, in re John A. Kelly *v.* Charles Hedges et al.

Under 13 & 14 Vic. ch. 48, school trustees are authorized to levy a rate for the erection of a school-house in their section.

Appeal from the Division Court of the County of Brant.

This was an action of trespass brought for seizing and selling the plaintiff's cow. It was admitted that the cow in question was seized and sold under a warrant of the defendant's, as school trustees of Union Section No. 20 in Burford and No. 13 in Windham, to levy a rate imposed by the trustees for the purpose of building a school-house in said section.

The only question to be decided was, whether the Common School Act of 1850, 13 & 14 Vic. ch. 48, authorizes school trustees to levy a rate to build the section school-house.

The following is the judgment delivered in the court below:

Jones, J.—The only clause of the Act which shews for what purposes the trustees may levy a rate is the 7th clause of the 12th section. It is there enacted that it shall be the duty of the trustees "to provide for the salaries of the teachers, *and all other expenses of the school*, in such manner as may be desired by a majority of the freeholders or householders at the annual school meeting, and to employ all lawful means, as provided for by this Act, to collect the sum or sums required for such salaries and *other expenses*."

The 9th clause of the same section then goes on to shew how the trustees are to collect the "sums required for such salaries and other expenses," as follows: "To apply to the Municipality of the township, or employ their own lawful

authority, as they may judge expedient, for the raising and collecting *all sums* authorized *in the manner hereinbefore provided* to be collected from the freeholders of such section by rate," &c.

By these clauses it will be observed that the purposes for which the trustees are authorized *to levy a rate* "are to provide for the *teacher's salary and the other expenses* of the school." I take it that the word "expenses" here, in connection with the "salary," means the necessary yearly outlay incidental to carrying on the school, and that it does not apply to the original cost of purchasing the site and erecting the school-house. It will be seen by reference to the *1st clause of the 18th section*, where Township Councils are empowered to levy money for school purposes, that the power conferred is much fuller than that given to trustees by the *7th clause of the 12th section*. It enacts that they (the township councils) shall have power to levy the required sum by assessment upon the taxable property in any school section "for the purchase of a school site, the *erection*, &c., of a school-house," and, in addition, gives them power to levy money for all the purposes that the trustees could under the 12th section. There seems to be that distinction between the power conferred on Township Councils and that given to trustees, that the latter are not authorized to levy a rate to purchase a school site, nor, as I think, for the reasons stated, to erect a school-house.

It will be observed that by the Supplementary School Act of 1853, 16 Vic. ch. 185, sec. 6, the power here contended for is expressly given to school trustees. It enacts "That the trustees of each school section shall have the same authority to assess and collect school rates, for the purpose of *purchasing school sites* and the *erection of school-houses*, as they are now invested with by law to collect rates *for other school purposes.*"

The Legislature, who should be the best interpreter of their own acts, clearly did not consider that the statute of 1850 gave trustees this power, else why the necessity for this enactment?

It is agreed that the word "building," which occurs in the 4th clause of the 12th section, implies an authority to the trustees to levy a rate to erect a school-house. I think this expression has reference merely to the trustees superintending the building of the school-house and expending the money therefor, which they would require to do, though the rate were levied by the Township Council. I am therefore of opinion that, under the Act of 1850, school trustees had no power to levy a rate for the erection of a school-house, but that they should have applied to the Township Councils, as provided by the 18th section of that Act.

The Chief Superintendent appealed from this judgment under the 16 Vic. ch. 185, sec. 24.

George Duggan for the appeal; *Van Norman* contra.

The Statutes and sections referred to are cited in the judgment.

ROBINSON, C. J.—I cannot say that I am quite satisfied whether the Legislature did not mean by the Statute 13 & 14 Vic. ch. 48 to give to school trustees the power to raise and collect the rates that might be required for building a new school-house in their division.

If I confined myself to the consideration of what is to be found in that Act without looking to any provision made before or afterwards upon that point, I should have a strong impression that Mr. Jones's view of the question, which is clearly stated and precisely expressed, is the sound one; but in tracing this subject through the three Acts (12 Vic. ch. 83, 13 & 14 Vic. ch. 48, and 16 Vic. ch. 185), I find it no easy matter to form an opinion. Upon the first of these statutes, now no longer in force, there could be no room for doubt; for by the 30th clause of that Act it was provided in express terms, that no rate should be levied for the building of a school-house otherwise than by a by-law of the Municipal Council of the township, &c., in which the section might be; and it required that any such rate should be sanctioned by a majority of the landholders and householders; and this restriction was inserted as a qualification of the former part of the same clause, by which the trustees were empowered to do whatever *might be expedient with regard to building*, repairing, &c., the school-house of their section.

The inserting such a proviso affords strong ground for argument that the Legislature assumed that without the proviso the power they had given in the beginning of the clause would have extended to the raising and collecting monies to defray the expense of building the school-house.

Then, in 1850, the Legislature, after some experience of the measure, repeal this statute of 1849, and pass a new Act providing for the whole subject of common schools. And when we find them in this case empowering the trustees, almost in the very words of the former Act, to do whatever they might judge expedient for building school-houses, and at the same time dropping the proviso which had before restrained them from raising monies for the purpose, one can hardly resist the conclusion that they did mean by the new Act to allow the trustees to impose and collect the necessary rate.

Yet, as I have already said, if I were to place a construction upon the Act of 1850, looking at its provisions alone, I think I should draw from the 4th, 7th, 8th & 9th sub-sections of the 12th section the same conclusions that the learned judge of the Division Court has formed upon them. Looking at the 13 & 14 Vic. in connection with the former Statute which they were repealing, I should be inclined to think that the Legislature did intend by it to give the trustees the power in question, though they left their meaning obscure.

But the last Act of the three increases the difficulty; for by the 6th section of that Act (16 Vic. ch. 185) the Legislature, by express words, gave to the school trustees power to assess and collect rates for the erection of school-houses, and they give it in such terms as they would naturally use if they were conferring a new power; for they provide "that they shall have the same authority to collect those rates *as they are now*, or *may be* invested with by law to assess and collect rates for other school purposes." Any one must understand that the Legislature, when they used these words, were under the impression that they were giving power to trustees which they had not before.

The clause is not in the language of a declaratory law; it rather implies a consciousness that there was a restriction which it was expedient to remove.

Still, looking at all that has been done, and the footing on which the matter is now put, we think the authority of the trustees to impose the rate under the school law of 1850 may be vindicated. The words in the 4th sub-section of the 12th clause of the 13 & 14 Vic. ch. 48—"to do whatever they may judge expedient with regard to the building, repairing, &c., the section school-house"—are very comprehensive certainly, and, when coupled with the other powers given to them, might not unreasonably be held to convey power to impose a rate for *building*, as well as for the other school purposes mentioned in the 7th sub-section; though it might be objected that the enumeration of inferior objects, without giving specifically a power to raise a rate for this, creates a difficulty; and further, that a power to any public body to raise money should be given in express terms, rather than be held to be included under a general authority to do whatever may be thought expedient. But the fact that the Legislature, by the statute of 1849, seems to have looked upon these words as conveying the right to impose a rate, unless they had restrained their meaning, as they did in that statute, coupled with the fact that in 1850 they used the comprehensive words and dropped the restrictive, and in 1853 gave the power to raise the rate in express words, which we may regard as done

by way of removing all doubts merely—there considerations, I repeat, incline us to confirm the construction which we find has been hitherto put upon the Act, and so avoid difficulty and confusion.

BURNS, J.—The question seems to me to turn upon the meaning and effect to be given to the 4th and 7th sub-sections of section 12 of 13 & 14 Vic. ch. 48. The 4th sub-section gives the trustees power in direct words to do whatever they may deem expedient with regard to the building the section school-house. Of course they cannot build it without the means. Who, or what power, then, is authorized to raise the means? It is said that because 16 Vic. ch. 185, sec. 6, gave the trustees the express power to assess and collect school rates for the purpose of building school-houses, therefore it must be inferred that they had no such power before. The argument is entitled to great weight, if there were no other acts or language of the Legislature to guide us in determining the matter. When we turn to the 3rd sub-section of section 30 of 12 Vic. ch. 83, which Act was repealed by 13 & 14 Vic. ch. 48, we find the same language used as to building school-houses; but there is a proviso that no rate for the building of a school-house, or purchasing a site for the school-house, shall be levied otherwise than under a by-law of the Municipal Council. This 3rd sub-section is divided in the Act 13 & 14 Vic. ch. 48 between sub-section 4 of the 12th section and the 1st sub-section of section 18. In the Statute of 1849 the power of the trustees is limited by the proviso; but in the Statute of 1850 no limitation is attached to the power of the trustees, but what was formerly a limitation upon them is given to the Municipal Council, to be exercised upon the desire of the trustees. The removal of the limitation argues very forcibly that the trustees may build without asking the Municipal Council for the funds, provided the other parts of the Act will enable them, from their own power and authority, to levy the means. Now when we look at the 5th sub-section of the 30th section of 12 Vic. ch. 83 we see that all the trustees could levy on their own authority was the rate-bill, which was to be the amonnt the respective parties were liable for for instruction, for firewood, or for any charge necessarily incurred by such attendance. The 7th sub-section of section 12 of 13 & 14 Vic. ch. 48 enabled trustees to provide for the salaries of teachers and all other expenses of the school. It will not be pretended but that this authority would enable the trustees to levy for the rent of a school-house if they were obliged to rent, and which they have authority to do under the same 4th sub-section. If they may do so to pay the rent of a school-house, if there be no suitable one, or to pay the rent of a second school-house, if it be required, I cannot understand why they may not also do so to build one. The one seems to me to come under the denomination of expenses of the school as much as the other. This, I think, would be the construction of 13 & 14 Vic. ch. 48, if it stood by itself upon the repealed law.

Then it only remains to say what effect the provision contained in 16 Vic. ch. 185 has. Now we see by the sixth section that the Legislature were conferring upon the trustees the same powers which formerly were vested in the Municipal Council, and the trustees were acquiring a power in respect of school sites which was altogether new to them, and in that power is also contained the other. I think it more reasonable to hold that the Legislature, in the last Act, included the power to the trustees to levy rates to build school-houses *ex abundanti* than to reject the power to levy those rates from the former Act, and yet say, as we must, that an express power was given to them by the former Act to build school-houses.

For these reasons I think the judgment of the judge of the Division Court should be reversed.

DRAPER, J. concurred.

Judgment for the appellant.

IN RE THE MUNICIPALITY OF THE TOWNSHIP OF AUGUSTA AND THE MUNICIPAL COUNCIL OF THE UNITED COUNTIES OF LEEDS AND GRENVILLE.

12 Vic. ch. 81—*Mandamus to M. C. to make road.*

Semble, that under the facts of this case the rc was clearly a duty incumbent on the Municipal Council, under 12 Vic. ch. 81, sec. 37, to make the road which they were desired to make.

The Court, however, granted only a mandamus nisi, in order that any question raised upon the return might be disposed of formally.

Connor, Q.C., obtained a rule on defendants to shew cause why a mandamus should not be issued to them, commanding them forthwith to plank, gravel, or macadamize the road assumed by them between the village of Maitland and North Augusta in the said township of Augusta, being part of the road known as the County Toll Road from Merrickville to Maitland, in the said united counties.

This rule was obtained upon an affidavit of the Reeve of the township of Augusta, in which he stated that by a by-law of the united counties of Leeds and Grenville, made on the 31st of January, 1850, it was enacted that debentures for £16,000 should be divided equally into four parts, and one-fourth applied in making a macadamized, plank, or gravel road from Merrickville to Maitland, in the county of Grenville; and commissioners were appointed for making the road, of whom he was one: that the commissioners under the by-law expended the money so appropriated in making that part of the road which lies between Merrickville and Bellamy's Mills, in North Augusta, which for some time had been macadamized and gravelled, and used as a county toll road, and tolls taken thereon: that all the means at the disposal of the commissioners were expended in making that portion of the road: that in another by-law of the County Council, made on the 7th of December, 1853, it was recited that the commissioners of the county toll road from Merrickville to Maitland had caused the part of the road between North Augusta and Maitland to be surveyed and reported to the Council, which survey and report were set out, and the by-law enacted that the part of the said road so laid out shall be assumed, established, and opened as a county road for public use, subject to the payment of such tolls and the observance of such rules and regulations as are therein mentioned: and the reeve further swore that the portion of the road described and reported upon as aforesaid, and so assumed as a county road, was wholly within the township of Augusta: that neither before nor since this by-law was passed had any portion of the road between Bellamy's Mills in North Augusta and Maitland been macadamised, planked, or gravelled, but the Municipal Council of Leeds and Grenville had neglected and refused to make the same, or to expend any money thereon.

It was shewn by by-laws produced, that the statements of the reeve in regard to the acts of the County Council were correct, and that on the 14th of October, 1853, a draft of a by-law providing for the completion of the road in question was proposed in the Council and passed through committee, and further proceedings on it deferred till the 24th of January following, being directed to be published in the meantime, for the information of the ratepayers; and notice was also published of the day appointed for further considering this proposed by-law, according to the statute 14 & 15 Vic. ch. 109, sec. 16: that upon the day appointed for proceeding further upon the said proposed by-law it was taken up in the County Council, and rejected by a vote of the majority of the Council.

It was sworn by the reeve that he had, at the several sessions of the Council, called upon them on behalf of the township of Augusta to make provision for completing this road, but that they had refused to do so, and had not done it.

On the 29th of January, 1853, the County Council passed a by-law appropriating all tolls levied and collected on each of the four county toll roads authorised to be constructed under

the by-laws referred to, to be applied by the commissioners of each of the said roads to the purpose of completing them respectively, and enacting that any by-law making any other disposition of the tolls should be repealed.

Hagarty, Q.C., supported the rule; *Vankoughnet, Q.C.*, contra.

ROBINSON, C. J., delivered the *judgment of the Court.*

We do not at present see that there is not a duty plainly incumbent upon the united counties of Leeds and Grenville, under the statute 12 Vic. ch. 81, sec. 37, to make the road which they are desired to make. It may be that by reason of there having been a railway lately constructed in that section of the county the prospect of a remunerating revenue from such a road may have become impaired; but that has not been set up as a reason, nor could, as we suppose, be accepted as a valid one. Neither is it shewn that for want of funds, or the legal authority to raise them, a compliance with the statute is impossible.

If the defendants should appear to be without any legal excuse for not proceeding with the road, then the case would be one of a duty imposed by Act of Parliament remaining unperformed. And if there should appear to be nothing unreasonable in insisting upon performance, why should it not be enforced?

It could only be on account of some difficulty in extending the remedy by mandamus to a municipal body, and in rendering it effectual. At present we do not see that there is such difficulty when there appears to be no other remedy. But we think it clearly proper that we should award only a mandamus nisi at present, in order that any question of law or fact that may be raised upon the return may be disposed of formally and subject to revision.

IN RE TOWNSHIP CLERK OF EUPHRASIA.

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

A mandamus to a clerk of a municipality to furnish a copy of a by-law was refused, where it did not appear that the demand was accompanied by an offer of his fees.

Cosens moved for a mandamus absolute in the first instance, commanding the town-clerk to give to Dickenson Fletchers a properly authenticated copy of a certain by-law.

DRAPER, J.—The proof of the existence of such a by-law is not very distinct; and though there is an affidavit of a demand of a certified copy of a by-law passed on or about the 7th of November last, for raising the taxes of said municipality for the year 1851, and of the clerk's refusal, it is not shewn that there was any tender or offer to pay the clerk his fees. The 12 Vic. ch. 81, sec. 155, makes it the duty of the clerk, upon such application as is stated, "and upon payment of his fee therefor," within a reasonable time, to furnish a copy. Without this is done, we think we ought not to order the clerk to deliver a copy.

CUMMINGS ET AL. v. MORGAN.

Chattel mortgage—Effect of, on timber made after execution.

The plaintiff's held a chattel mortgage from one C. of 700 pieces of timber, "together with whatever quantity of squared timber the said party of the first part may manufacture during the remainder of the season." The timber made after the execution of this mortgage was marked as it was got out with the plaintiff's mark, but remained in C.'s possession, and was seized there by the defendant, an execution creditor.

Held, that the plaintiffs could not recover for it under their mortgage.

INTERPLEADER ISSUE.—It was admitted that the plaintiffs were entitled to 700 pieces of timber under a bill of sale by way of mortgage from one Jacob Jea Cook to them, dated the 18th of February, 1853, in consideration of £400 advanced and to be advanced to him. The contest between the parties was in respect of a quantity of timber got out by the said Cook, and said to be delivered to the said plaintiffs beyond the quantity mentioned. The mortgage was of these 700 pieces, "together with whatever further quantity of squared timber the said party of the first part may manufacture during the remainder of the season."

The defendant was an execution creditor of Cook, *the Fi. Fa.* having been delivered to the Sheriff on the 20th of June, 1853.

At the trial, before *McLean, J.*, at the last spring assizes held at Belleville, it appeared that Cook got out upwards 870 pieces of timber, 700 pieces of which were delivered in February, 1853, the residue in the spring. The timber was marked with the plaintiffs' mark as it was got out, and Cook considered it as delivered. The arrangement between the plaintiffs and Cook was, that Cook should take the timber to Quebec, where the plaintiffs were to sell it and account for the proceeds. The plaintiffs might take the timber out of the possession of Cook at any time, and sell when and where they pleased. The timber, though marked with the plaintiffs' mark, remained in the possession of Cook afterwards just as it did previously, and the plaintiffs were no otherwise in possession than by the marking it with their mark. The timber was seized in the possession of Cook, but the defendant did not deny the plaintiff's right to 700 pieces which were mentioned in the mortgage.

A verdict was taken for the plaintiffs, subject to the opinion of the court whether the plaintiffs could recover for the timber not included in the mortgage.

DRAPER, J.—Looking at all the circumstances of the case, it appears to me clear that the plaintiffs had no right to any part of the timber made by Cook, whether made upon the 18th of February, 1853, the date of the assignment, or subsequently, except as mortgagees. There is no evidence to shew that any part of it was theirs absolutely, or that it was made for them as their sole property.

Their right to the 700 pieces which were made at the date of the assignment is not questioned by the defendant. The questions that arise seem therefore to be, whether the subsequently-made timber became subject as it was made and marked to the provisions of the deed of assignment, which was by way of mortgage, so as to protect it for the plaintiffs' benefit against execution creditors; or if not (assuming the evidence and the facts to establish a parole assignment by way of mortgage), whether a parol mortgage of this subsequently-made timber could be valid against such creditors.

We must look at our statutes 12 Vic. ch. 74, and 13 Vic. ch. 62, by the first of which every mortgage or conveyance intended to operate as a mortgage of goods and chattels, made after the passing thereof, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage or conveyance, or a true copy thereof, together with an affidavit of the witness thereto of the due execution of the mortgage or conveyance, shall be filed as thereinafter directed. And the second statute amends the first section above quoted by adding to the end thereof—And that every sale of goods and chattels which shall not be accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, *shall be in writing*, and such writing shall be a conveyance under the provisions of the for act.

Notwithstanding the expression in the last Act as to conveyances, that they "shall be in writing," and the omission thereof in the first Act as to mortgages and conveyances intended to operate as mortgages of goods and chattels, it appears to me impossible to hold that a mortgage of chattels

made by parol only, unaccompanied by change of possession, can be effectual as against creditors; for being by parol only, neither the original mortgage nor yet a copy of it could be registered, and to hold that because registration was in fact *impossible*, therefore it became unnecessary, and that such a mortgage would be valid without it, would be contrary to the plain meaning of the legislature, and would afford a method of evading the provisions of a most salutary act, intended to prevent frauds. I should be more inclined to construe the word "copy" as including a statement in writing of a mortgage made by parol, which might be verified by the affidavit of a witness, as the term "*subscribing*" witness is not used, than to conclude that a parol mortgage unaccompanied by change of possession could be effectual against creditors notwithstanding the act.—See Ausman *v.* Armstrong (11 U. C. R. 498.)

That a grant of goods which are not in existence, or which do not belong to the grantor at the time of executing the deed, is void unless the grantor ratify the grant by some act done by him with that view after he had acquired the property therein, is established by the case of Lunn *v.* Thornton (1 C. B. 379) and in Short *v.* Ruttan (12 U. C. Q. B. 79-84) the Chief Justice used the following language: "As a general principle we take it to be clear that an assignment of personal property, whether absolute or by way of mortgage, can only operate upon such property as was in existence, and as the assignee had an interest in, at the time of executing the assignment."

The whole tenor of the deed in the present case shews that the only interest the plaintiffs were intended to take was as mortgagees. It was only on default that they were entitled to possession, and it is consistent with its express language that if there should be no default the mortgagor should not be put out of possession. As to the 700 pieces of timber in existence when the deed was executed no question arises; all turns, so far as the plaintiffs' claim is concerned, on the words "together with whatever further quantity of squared timber the said party of the first part" (the mortgagor) "may manufacture during the remainder of the season," and on the additional facts that the subsequently-manufactured timber was marked with the plaintiffs' mark as it was made, which the mortgagor treated as a delivery to the plaintiffs, and which, as between him and the plaintiffs, probably would be sufficient to give the latter a lien upon it till their debt was satisfied, or a right to take it into their own actual possession on default by the mortgagor.

But here the question arises between the mortgagee and a judgment creditor of the mortgagor, as regards property which cannot pass by the deed, because not in existence at its date; and because, though there was an act done (viz. the marking) by the grantor with intent to ratify the grant, and although the act coupled with the preceding agreement might constitute a mortgage by parol, yet there has been no actual and continued change of possession, nor any registration of any mortgage, written or parol, which could affect the subsequently-made timber.

In our opinion, the postea must be delivered to the defendant.

As to the case of Dunning *v.* Gordon (4 U.C.R. 450) cited in the argument, it is enough to observe that the statutes above referred to were not otherwise distinguishable.

Judgment for defendant. (*a*)

REG. EX. REL. BLAISDELL *v.* ROCHESTER.

Contested election—Summons issued by Judge of the C. C.—Necessity of filing papers with D. C. C.—Affidavit and recognizance.

A County Judge issued his fiat for a *quo warranto*, and the papers remained with him, but were handed to the defendant's solicitor, before the return day, for perusal. *Held* sufficient, and that it was not necessary that they should have been filed with the Deputy Clerk of the Crown before the summons issued.

Semble, that the relator's attorney may act as commissioner to take the recognizance and affidavit.

The Judge of the county court for the county of Carleton granted his fiat for a writ of summons in this case, under the 16 Vic. ch. 181, sec. 27, and he made the writ returnable at his own chambers on a specified day. The statement of the relator with his affidavit, and the recognizance with the affidavit of justification, were all left with the learned judge, and his fiat was taken to the office of the Deputy Clerk of the Crown and left there, and that officer issued the writ. Before the return of it the defendant's solicitor obtained a perusal of all the papers from the judge, and before or perhaps on the return day the relator's solicitor and the defendant and his solicitor appeared before the judge, and on the defendant's part the following objections were taken as a ground for setting aside the proceedings.

1st. That the recognizance does not appear to have been taken at a place within the authority of the commissioner.

2nd. That the papers were not filed in the court of Queen's Bench according to the notice, which stated that they were filed "in this court," according to the form given by the rules.

3rd. That the name of the relator to the affidavit verifying his statement is obliterated, and no certificate explaining the fact.

4th. That some of the papers are not according to the form prescribed by the rules.

5th. That the recognizance and affidavit are irregular, being taken by the commissioner, who was also attorney for the relator.

The learned judge declined to give way to any of these objections.

On a subsequent day the parties again appeared, and the papers *then* were all duly filed with the Deputy Clerk of the Crown. The defendant declined to answer, admitting that his name was not on any of the collector's rolls for the proper amount, whereupon the learned judge gave judgment against him.

The papers having all been returned here, *Eccles* moved for a rule *nisi* to set aside the judgment and proceedings, relying on the second and fifth objections above noted.

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

As to the second objection, there was no rule infringed by the absence of a formal filing of the papers in the deputy clerk's office before the writ of summons issued. The papers remained with the judge who granted the summons, and the defendant sustained no prejudice by this, for it appears his solicitor saw them and had full opporunity to examine them before the writ was returnable.

And as to the fifth objection, the proceeding is analogous to the suing out of a writ of *capias* on an affidavit taken before the commissioner, who afterwards acts as the plaintiff's attorney in suing out the writ. These objections were in the discretion of the learned judge, who had the best opportunity of judging whether the case was such as to render it proper to give any weight to it. It cannot be said that any positive rule of law or of practice governed the point, and we see no reason whatever to suppose that any injustice has been done by the decision.

Even if we doubted the strict regularity of the proceeding objected to, on the ground of the commissioner being also the attorney, we should be slow to interfere unless a very strong necessity for so doing was made out. But in this case the defendant raises nothing but technical objections; when they are overruled he declines making a defence, and admits he cannot deny the truth of the alleged want of qualification

(*a*) In this case also, Mr. Justice Draper said that he had conferred with the Chief Justice, who concurred in the judgment now given.

which is objected to his election. On the merits we see no reason to interfere with the judgment, and that being so, we should be establishing a bad precedent if we were to encourage appeals in cases of this description upon mere question of formal practice, and upon merely technical objections should set aside a judgment well founded on the real merits of the case.

Rule refused.

HENRY SMITH *v.* PATRICK ROONEY.

Appeal—County Court—Practice.

A County Court Judge arranged with the bar of his county "to transact all term business in vacation" and acting under such arrangements set aside a verdict and judgment after the term succeeding the assizes in which the verdict was rendered.

An appeal from his decision was allowed with costs, such arrangement being contrary to the express words of the statute.

Appeal from the county court of the county of Perth. This was an action of replevin, tried at the last November sitting, when a verdict was found for the defendant.

On the fourth of December following (the first day of the county court term) a notice was served on Mr. E. F. Ryerson, agent for defendant's attorney, that a motion would be made to set aside the verdict, "to-morrow, on the return of *Charles Robinson*, Judge of this Honourable Court, or so soon thereafter as counsel can be heard;" and this notice, with affidavit of service, was filed on the following day with the clerk of the court. The judge not having returned on the 16th of December judgment was signed, and on the 18th a notice was served on Mr. Ryerson apprising him that on the return of the judge a motion would be made to set aside the judgment, and on the 20th of December a summons was obtained, on which an order was made on the 5th of January to set aside the judgment.

On the 20th a rule *nisi* was also issued for a new trial, which was afterwards made absolute.

Mr. Ryerson stated in his affidavit filed in opposing these applications, that he had no authority in this cause to bind the defendant's attorney, or make any arrangement or terms whatever for him, and that his duties were confined to transmitting, serving, and filing papers in this cause.

The learned judge, in transmitting the papers, reported that the verdict was perverse, and that the order to set aside the judgment, and the rule for a new trial, were made in vacation, he "having made an arrangement with all the legal practitioners in the county of Perth, and among the rest with Mr. Ryerson, agent for the defendant's attorney, to transact all term business in said court in vacation."

The defendant appealed, on the ground, amongst others, that the term next after the verdict having elapsed without any proceeding taken by the plaintiff to set aside the verdict, such verdict could not afterwards be set aside.

Leith for the appeal.

C. Robinson contra.

8 Vic., ch. 13, sections 37, 42, 43, were referred to.

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

We are of opinion that it is impossible to sustain the proceedings appealed against.

The court would not (unless, perhaps, under some extreme circumstances) listen to a party applying against proceedings taken in a cause by his own express consent; as where a particular step was agreed on, or a particular objection was waived. But this is not a case of that description. The consent spoken of does not appear to have been a particular step in a cause, or even to be limited to a particular cause, but is described by the judge in his return as an arrangement made "with all the legal practitioners in the county of Perth, and among others with Mr. Ryerson, agent for the defendant's attorney, to transact all term business" in the county court in vacation. Except for this statement there is nothing to shew any such consent or arrangement. It does not appear in any affidavit nor is the summons to set aside the verdict on the judgment drawn up upon any such affidavit, nor does that *summons refer to anything* except to what took place at the trial, as its foundation.

Then it amounts to this: the statute fixes a term for the county court, and enacts that no motion for a new trial or non-suit *shall be entertained* after the rising of the court on the second day of the term, and that the party obtaining a verdict may enter his judgment on the third day of the next ensuing term.

The judge and the members of the bar of the county court enter into an arrangement to disregard the statute wholly, and to transact term business in vacation. And in pursuance of such arrangement a judgment entered regularly, and at the time authorized by the statute, is set aside in vacation, and a motion for a new trial is entertained and a new trial granted, not only after the second day, but after the expiration of the term next after the verdict is rendered. Even in this court, where it is only a matter of practice regulated by the court itself, and not fixed by express legislation, it is only under very peculiar circumstances that we hear a motion for a new trial after the four days. In the present case we think the rule for a new trial appealed against was beyond the authority of the court, as expressly limited by the act, and that there is no legal ground for setting aside the judgment apparent on the paper transmitted to us, even if it were competent to the judge to exercise such a power in vacation.

The appeal must therefore be allowed with costs, and the rules for setting aside the judgment and verdict discharged and set aside.

Judgment below reversed.

(In the Insolvent Court of Essex and Lambton.—A. Chewett, Judge.)

IN RE. DAVID MCCORMICK.

In the matter of the Petition of David McCormick, an insolvent debtor, who ceased doing business after the expiration, (on 30th May, 1849) of the Bankrupt Act, 7 Vic. ch. 10, and also a considerable time before this application, apparently without intention or ability of resuming such business. The usual notice being had, the Petition and Schedule was filed and verified on the 30th May, 1853, with the usual affidavits.

No opposition being then made to the petitioner's coming within the Insolvent Act, his petition stating that he was not a trader within the meaning of the *Statute* relating to bankrupts, and being sworn to by him, the Interim order was moved for and granted,—and in the two cases mentioned in the margin,* notices were served of intention to move for discharge of petitioner from custody of Sheriff on 2nd June, and opposed by *Mr. O'Connor* and *Mr. Johnson* on the ground that petitioner was not entitled to release under the Insolvent Act, inasmuch as he came within the meaning of the (expired 30th May, 1849) Bankrupt Act; and that if he was entitled to release under the Insolvent Act, then there was culpable negligence committed in contracting the debts.

It may be doubtful if the Court has any means, under the Act, of ascertaining either of these circumstances at this stage of the proceedings, the Act not having in any way provided clearly how it was to be ascertained,(a) (though greatly to

* Parker v. McCormick. McCrae v. McCormick.

(a) See observations on the Insolvent Law, Vol. I. part 2, U. C. Jurist, p. 36, in 1845-46.

be desired, for obvious reasons) as the petitioner seems entitled to the interim order on complying with the provisions of the Statute; and to his discharge from detention afterwards, and after a two days' notice. They seem to be matters intended to be investigated on the application for the final order, and in the meantime he is entitled to his interim order and discharge *from custody, on* application. But the opposing parties, having no evidence or affidavits to offer, applied for examination of petitioner on oath, which, whether authorized or not by Statute, was had, and elicited that he dealt with the Indians in 1850, down to June, 1851, at which time he failed, and ceased entirely, without intention or ability to resume business; and if this is the proper time and course to investigate the point, and the Court has power to do it (which it certainly ought to have now, though no where defined in the Act), I think it has not been shewn that the petitioner is now, or was at the time of his commencing proceedings by notice and petition, a *trader* within the meaning of the late expired Bankrupt Act, or within the meaning of any Bankrupt Act *now* in force, so as to deprive him of the benefit of the Insolvent Act, 8 Vic. ch. 48.

In the next year after passing of Bankrupt Act 7 Vic. ch. 10, and while it was in force, the Legislature passed the Insolvent Act, 8 Vic. ch. 48, which in the sec. describes who may have the benefit of it.

1st. Any person *not being a trader* within the meaning of the Bankruptcy Act *now in force*.

2nd. Or not having been such trader before the passing of that Act.

3rd. Or any person having been a trader *before* the passing of that Act, but excluded from the operation thereof.

4th. Or being such trader, but owing debts amounting in the whole to less than £100.

The petitioner could only have been entitled to take the benefit of the Insolvent Act, as coming under the first head, namely, "as a person *not being* a *trader* within the meaning of the Bankruptcy Act."

"Being" a trader imports two things or states.

1st. The occupation, employment, or trade, which a person follows.

2nd. The *time* of his actually exercising that occupation, trade or employment.

"Not being" a trader, in ordinary language imports, that one does not follow, or is not occupied in trade, at the *time* in question, as an employment or business. The time in question was when proceedings were commenced by petitioner as insolvent, in April, 1853, after ceasing to trade in 1851, in June, not when he contracted the debt, in 1850. Within the *meaning* of the Bankruptcy Act now in force imports,—within the meaning of *an* Act, in existence and available,—not within the meaning of an Act which has no longer existence, or *meaning*.

He ceased trading in June, 1851, and did no business in paying or settling, &c., from that time to the present, and was no longer trading in the words of the Bankrupt Act, if in existence (it ceased 30th May, 1849). But it had expired; he could not well be said to be a trader within the meaning of an Act not in existence. It is contended that he came within the meaning of the then expired Bankruptcy Act. Could any creditor at the time he failed and ceased trading, in June, 1851, have made him a bankrupt under the summoning clause of the Bankruptcy Act, 7 Vic. ch. 10? or could he have made himself a bankrupt, by filing his Declaration of Insolvency, under the 15th sec. of the same?

Although the words "now in force" first referred to a time when the Act passed in 1845, yet these words should, I think, be construed so as to *continue* to have the same meaning,—simply if the words "in force" without the word "now" had been originally placed in the Insolvent Act, i.e., as long as in force and unrepealed, or as *now and still continuing* in force during the existence of the Insolvent Act. The words "now in force," although they may have originally been intended to mean at the *time of the passing* of this Insolvent Act, yet has another and more important meaning. I think it means also *in force* at the time when *the insolvent first had capacity and was under the necessity of availing himself of the benefits of either the Bankrupt* or *Insolvent Acts*. If the Bankrupt Act was not *then* in force, but had expired, he could not be a trader within it—nor was he *actually* trading at that time—see 1V C.P.R. 477, as to the word "*now*" holding and enjoying, &c., in the G.W.R.W., 4 Wm. IV. ch. 29, revised by 8 Vic. ch. 36. It does not mean persons *then* holding at the passing of the Act, but means persons holding for the time being. Rankin v. G.W.R.W., and 11 M. & W., 418; 11. Barn. & Ald. 341; 1V. do. 592; and see XII. U.C.R. 291,-Trinity, since decided in Q.B. in August, (not received till September or October following:) so that unless he was a trader under the meaning of an Act regarding bankrupts, *in force* at, or immediately before the time of his petitioning, he was entitled to the benefits of release contemplated by the Insolvent Act, *being* a trader within the meaning of *any* Bankruptcy Act in force. The Bankrupt Act, however, did not (when in existence) by its strict wording take within its letter persons failing and ceasing to be traders at the time of application, though it is said that such persons have been held to come within the meaning, spirit and equity of existing English Acts, (which may be in wording like ours.) But this is not a question of coming within the letter of an existing Bankrupt Act; it is more like the extension of the letter of a *non-existing* Bankrupt Act to *a case* not *expressly* provided for in that Act; and the cases on close examination do not appear to apply to a person who has failed and long ceased trading before the application, with no intention or ability to resume business.—2 Comyn, 68, and notes; 1 Har. Dig. 270. The Bankrupt Act says, sec. 1: All persons "*being*" merchants, or "*using*" the trade of merchants, or who seek their living by "*buying and selling*." If this Act were in force, this case might possibly have been fairly considered within its meaning, spirit and equity, (though of this we are not certain, as we have no decisions in our own courts.) But having expired it can *hardly* be considered *certainly* to be within its express words.—See 11. Comyn, 68; Doug. 92; 1 Har. 270, cited below.

Then do not the words of the Insolvent Act (being a highly remedial statute, as all are now by the Interpretation Act) take within its *strict letter*, as well as spirit, the case of a person failing and actually ceasing to trade, after the expiration of the Bankruptcy Act, and 18 months before this application, and not leaving it off merely for the purpose of coming under it, he not being *then* or now a *trader* within the Act then or now in force, relating to bankrupts; and if outside the meaning of the expired and non-existing Act, and its effect as well as its strict letter and wording, if unexpired, can be said in this case *not* to be within the meaning, spirit and equity, of the Insolvent Act, as well as *within* its strict words, it being still in existence, and affording the only remedy for protection of insolvents and benefit of creditors?

A few cases may be cited on the construction of Statutes, to shew that such remedial Statutes, as for the release of insolvents and safety of their creditors, whether considered strictly or liberally, would and should extend to this case; and premising that the Insolvent Act is to protect all persons from process against the person, of persons who have become indebted without any fraud, or gross or culpable negligence, (and) so as *nevertheless* their estates may be *duly distributed* among their creditors, which latter shew that the purpose of distribution was *mainly* considered, and that the protection from arrest was more incidental to this distribution, and being no evidence of fraud here.

It is strongly laid down that Statutes repealed, or which expire, cease to operate, and cannot afterwards be called on, but are regarded as not existing, whether in relation to matter of substance or form, except as to cases already concluded. 9 B. & C. 752; 6 Bing. 582; 8 M. & W. 211; 11 M. & W. 316; 8 A. & E. 456; 21 L.J.M. 207; and cited in IV. C.P. Rep. 19. The construction of a Statute must be such as is warranted by, or at least not repugnant to, the words of the Act, 7 B. & C. 560.

When the object of the Legislature is plain and unequivocal, such a construction should be adopted as will effectuate the intention of the law giver. 7 B & C. 569.

But they must not put on constructio. s not supported by the words, in order to give effect to what courts may suppose to be the intention—here, the supposed intention of another Act not in existence, 7 B. & C. 569.

A remedial Act is to be construed liberally, receiving an equitable or rather a benign interpretation, the letter of the Act being sometimes enlarged or sometimes restrained, and sometimes construed *contrary* to the letter. Thus it is said a Statute may be extended, by construction, to *other cases* within the same *occasion* of the Act, though not expressly within the words, as where a Statute mentioned reversions only, remainders were held within it.

On remedial statutes every thing is to be done in advancement of the remedy that can be given *consistently* with *any* construction that can be put upon it. Dwarris, 78, 753; 3 Dow. 15, S.P.; Cow. 391.

There is no reason, when the words of an Act do sufficiently extend to an inconvenience (really happening), that they should be construed so as not to extend to it, from a mere supposition that it was not so intended. 65, 730, Dwarris.

Statutes of Insolvents to be construed strictly as to *cessio bonorum* and rights of creditors, and to construe the Insolvent Act either strictly or liberally, would be equally in favor of the distribution among creditors, whereas a different construction would lead either to let the petitioner use the estate in jail, for his subsistence, or force him to give it to two creditors to get his release.

It is said a trader may be an insolvent without being a bankrupt, and vicê versâ. Doug. 92, N.

Ceasing to be a trader *without* intention to resume, takes it out of the Bankrupt Acts. 11. Comyn, 68; 1 Harr. 270.

MUNICIPAL CASES.

(Digested from U. C. Reports.)
From 12 Victoria, chap. 81, inclusive.
(*Continued from page* 115.)

IV. *By-Law for Remuneration of Members of Council quashed.* 12 Vic. ch. 81, sec. 31, sub-sec. 7; sec. 41, sub-secs. 7 & 9; sec. 132.

Township Councils have no authority to pass by-laws providing for the remuneration of their own members.

In re. Wright and the Municipality, &c., of Cornwall. 9 U.C.B.R. Rep. 442.

XV. *By-Law. Tavern Licenses.* 12 Vic. ch. 81, sec. 31, sub-sec. 11; sec. 116; 13 & 14 Vic. ch. 65.

Municipal Corporations have no authority to *appoint* by their by-laws, or to nominate the persons who are to receive licenses for keeping taverns.

In re. Coyne and The Municipality, &c., of Dunwich; 9 U.C.B.R Rep. 448.

XVI. The 35th sec. of 14 & 15 Vic. ch. 109, has not a retrospective operation, and the Court therefore discharged a rule calling upon the defendants to pay the costs of an application on which a by-law had been quashed before the passing of that act.

Brown v. The Municipality, &c., of York; 9 U.C.B.R. Rep. 453.

XVII. *Quashing—Repealed By-Law.*

The Court discharged, with costs, a rule for quashing a by-law of the District Council, where it appeared that such by-law had been absolutely repealed before. 12 Vic. c. 81.

In re. McGill and The Municipality, &c., of Peterboro. 9 U.C.B.R. Rep. 562.

XVIII. *By-Law repealed and revived—No sum limited—Quashed.*

A District Council passed a by-law imposing a tax on certain lands, but limiting no sum to be raised. By two subsequent by-laws this was repealed and again revived.

Held, That the last by-law must be quashed, notwithstanding that the applicant had paid part of the tax imposed by the first.

The Canada Company v. The Municipality of Oxford; 9 U.C.B.R. Rep. 567.

XIX. *By-Laws passed to impose rates, under 4 & 5 Vict. ch. 10, and 12 Vic. c. 81—Quashed.*

By-Laws quashed: 1. As contrary to the 4 & 5 Vic. ch. 10, in not limiting the sum to be raised, and in imposing a tax on wild lands alone. 2. As exceeding the authority given to the District Councils by the 48th section of that Act. 3. As inconsistent with the requirements of 12 Vic. ch. 81, and not specifying the sum required, or the purpose to which it was to be applied. [And *semble*, that it is necessary under this Act (sec. 41, sub-sec. 22) as it was under 4 & 5 Vic. ch. 10, that the sum to be raised should be specified in the by-law, and then a rate authorised for using it]. 4. For taxing certain townships for specific sums, without shewing for what purpose the money was required.

Tylee v. The Municipality of Waterloo. 9 U.C.B.R. Rep. 572.

XX. *By-Law—Objections to, not apparent on the face—Mode of imposing rates for county purposes.* 12 Vic. ch. 78 & 81; 13 & 14 Vic. ch. 64 & 67; 14 & 15 Vic. ch. 109 & 110.

It is not necessary that a by-law to raise money for county purposes should contain all the provisions required to perfect the measure; and therefore, the same by-law which provides for raising the loan and imposing the rate need not apportion the sums to be paid by each municipality, for that may be provided for by a subsequent by-law.

A by-law imposing a rate for county purposes, to be levied on the *actual* value of all taxable property in the county, is not objectionable, though in villages, &c., the taxes are directed to be levied on the *annual* value, for such direction is intended only to apply to rates imposed for their own purposes.

The Court is not bound under the Act to quash a by-law, unless it appear to be illegal on the face of it. Where it is attempted to be proved so by extraneous evidence, it may be discretionary with the Court, upon such evidence, when acting under their Common Law jurisdiction, to say whether the by-law shall stand or not.

Guerson v. The Municipality of Ontario. 9 U.C.B.R. Rep. 623.

XXI. *By-Law—Special rates.* 12 Vic. ch. 81, secs. 177, 198.

A Municipal Council, under the 12 Vic. c. 81, in any by-law passed for payment of a debt or creating a loan, must settle and direct to be levied a special rate for such purposes.

The Municipal year, under the same Act, begins on 1st January, and ends on the 31st December, and not from the day appointed for the municipal election in one year to the same day of the next year.

A debenture issued by a Municipal Council under their corporate seal, and signed by the head of such corporation, for payment of a debt due, or loan contracted under a by-law which does not provide by special rate for payment of such debt or loan, does not estop such Municipal Council from setting up as a defence to an action on the debenture the invalidity and nullity of such by-law.

The 177th section of the Act relates to *all debts and interest* lawfully incurred and *becoming payable within the year.*

McLEAN, J. *dissentiente.*

Mellish v. The Town Council of Brantford. 2 U.C.C.P. Rep. 35.

[As to requisites of by-laws creating debts, see In re. Lells and The Village of St. Thomas. 3 U.C.C.P. Rep. 286.]

XXII. *By-Law—Variance in legal name of corporation—Additional rates.* 12 Vic. c. 81, s. 41, 175, and seq.; 13 & 14 Vic. c. 66.

A by-law of a Municipal Council is valid if it appears on the face of it to be enacted and passed by a municipal body having authority to make such by-law under 12 Vic. ch. 81.

A variance in stating the legal name of such Municipal Corporation, in a by-law, will not invalidate such by-law, if it appears on the face of it to be enacted and passed by a corporation having authority to pass it.

Municipal Corporations, under 12 Vic. c. 81, may by a subsequent by-law impose an additional rate to provide for any deficiency in the sum levied under a previous by-law for payment of debts incurred previous to January 1st, 1819.

In re. Hawkins v. The Municipality, &c., of U. C. of Huron et al. 2 U.C.C.P. Rep. 72.

THE LAW JOURNAL.

JULY, 1855.

THE DIVISION COURT EXTENSION ACT OF LAST SESSION.

The D. C. E. Act of 1853, in sec. 32, introduced the very convenient practice of giving short and legally defined titles to the statutes then embracing the D. C. Law, in which they can be legally and conveniently cited and referred to. Had this been followed out we would in the Act now before us entitled "An Act to extend the jurisdiction of the D. C.'s of U. C." have had a similar clause giving a certain title to the Act. This omission we will supply, so far as the readers of the *Law Journal* are concerned, by calling it "The U. C. D. C. E. Act of 1855," and to our list of abbreviations may be added D. C. E. Act of 1855, as representing it. We will not pause to notice the style and construction in the several clauses—the language in all is inelegant, if not incorrect; though it would be desirable that our laws should be at least respectable in these particulars, and that "ding-dong-ding-dong-dell" verbiage at least should be avoided. We incline to think the Act itself the work of some unskilful hand, or the hasty and careless production of some one who will feel ashamed of his bantling, when he can coolly survey it in print.

The title is not part of the Act, but at least the same attention should be given to correctness as in the title of a book. It should express the whole scope of the Act. Now, the title to this statute is most defective in this particular, for at least three clauses contain matter of enactment which the title does not express or give any clue to. And the same remark applies with more force to the preamble which is alike defective and incomplete. The first section provides that any action cognizable in any D. C. *in amount* may be entered, &c., in the court holden in the division in which the defendants or *either* (sic) of them where there are *more* than one, shall reside, &c., at the time action is brought, notwithstanding that the dft. may at the time reside in another Co. or Division, &c., from that in which cause of action arose; and that proceedings may be conducted to judgment in the same manner as if dft. resided and cause of action arose in the same division, &c.

Let us glance hastily at this clause and see the effect it has in respect to venue in D. C. actions.

There does not seem to be any sufficient object in speaking of cause of action cognizable *in amount.* When a cause of action is spoken of it is not necessarily connected with the incidental right to sue in a particular court, and here by way of description it is properly referable to that branch of jurisdiction which relates to *subject matter.* It would have been sufficient to say any cause of action now cognizable in a D. C., unless indeed (which we presume is not the case) it was intended virtually to repeal the proviso to the first section of the D. C. E. Act of 1853, and give a jurisdiction *limited only as to amount*, or in other words, to give jurisdiction in actions for breach of promise of marriage, &c, &c, to £25, for malicious prosecution, libel, &c, &c, to £10. The object of the clause, we presume, was to enable suits on causes of action now cognizable in a D. C. to be brought in the division where the cause of action arose, irrespective of the residence of the dft. in the county where suit brought—a general rule as respects Inferior Courts being that the dft. should reside or carry on business within its jurisdiction to give the courts power to enforce their process against him. Why then bring into the clause under consideration a provision where the defendants or one of them dwell or carry

on business in the particular division, when that was already provided for by the 8th sec. of the D. C. E. Act of 1853? And why ring a change on the words therein used, using the word "reside" in the statute of last session, in place of the word "dwell," as used in the Act of 1853? Such legislation on the important point of jurisdiction is calculated to create doubt and embarrass.

The effect of the present enactment as to venue, we take to be as follows:—

1st. Suits may be entered in the court holden for the division in which the cause of action arose, irrespective of the Co. or place where the dft. may reside or dwell in U. C., only that the time for service of summons is extended with reference to the place where the dft. resides.

2nd. Or in the court holden for the division in which the dfts., or where there shall be more than one dft. wherein one of the dfts. shall dwell (or reside) or carry on his business at the time of action brought.

3rd. Or, by leave of the Judge in the court holden for any division adjacent to the division in which the dft. resides.

Respecting the last provision as to venue a word or two seems necessary. The 8th and 9th sections of the D. C. E. Act are not repealed by the Act of last session, and therefore stand where not inconsistent with the latter enactment. When the dft. resides close to an adjoining county where the court is held in the division in which the action is to be brought, it may still be advisable to apply for leave under the 9th section, and where the cause of action does not arise in the division in which the pltf. desires to bring the action, and the dfts. place of residence is in an adjoining county, he can only be sued upon leave of the Judge first obtained.

There is much more to be said respecting the change effected by the late Act in respect to local jurisdiction, and in respect to the Act generally, which we must defer for the present.

The 5th clause increasing the clerks and bailiffs' fees is in principle satisfactory; what we mean is, that the just claims of these officers has been recognized, and in some measure provided fo.: though in working out the tariff we fear the effects of hasty legislation will be felt by officers in more ways than one.

THE ACT TO AMEND THE CRIMINAL LAW.

The Act to amend the Criminal Law of this Province has appeared in the *Gazette*, and is one of the most important Laws of the Session. It is for the most part copied from the Imperial Act 14 and 15 Vic., ch. 100. As several alterations have been made from the language employed in the Imperial Act, it will be necessary for practitioners to be cautious in relying implicitly on English decisions which may not be applicable in every point to the provisions contained in our statute.

The prominent feature in the Act is its provisions with a view to prevent offenders escaping justice in consequence of technical mistakes not material to the merits of the case. It will not be possible for us to examine the Act in detail at this time, and indeed we could not do justice to the subject in one number. We deem it better in any case to wait until the Act becomes generally known, when we may look for communications throwing light on its provisions.

The last clause, giving short forms for Indictments in certain cases, and referring to forms given as *guides* in forming other Indictments, will be found exceedingly valuable, especially in the business of the Quarter Sessions.

DIVISION COURTS.

(Reports in relation to)

ENGLISH CASES.

E.X. JACKSON *v.* BEAUMONT. *June 9.*

County Courts jurisdiction—Whole cause of action—Prohibition.

Where goods were ordered at Leeds and delivered at Manchester, Held, no cause of action within the District of the County Court of Leeds, and that there was no jurisdiction in the County Court—see sec. 60 of 9 and 10 Vic., c. 95, applying only when the whole cause of action arises within the District. Also, Held, that the fact of applying for and obtaining a case for appeal was not such an acquiescence in the decision of the County Court Judge as to deprive the party of his right to a prohibition, as he had always objected to the jurisdiction.

T. Jones showed cause against a rule calling upon the plaintiff to show cause why a writ of prohibition should not issue to restrain the judge of the Co. C. of Yorkshire, holden at Leeds, from proceeding any further in this case. An appeal had also been lodged in this case, which it will now be unnecessary to argue. The plaint was for £26 3s., alleged to be due as the balance of an account of £76 3s. At the trial, which was by a jury, on the part of the plaintiff witnesses were produced to prove the sale and delivery of the goods, and the defendant produced a consignment note, signed by the plaintiff, to show that the transaction was one of consignment only, and not of sale; but the plaintiff alleged that his signature to that note had been obtained by fraud, and the Co. C. judge left it to the jury to say if there had been any fraud. Defendant's advocate then contended, that there was no cause of action within the jurisdiction of the court, and that the plaintiff should therefore be nonsuited, it appearing that the defendant resided at Manchester, and the goods were sent there by way of Leeds, and that therefore the delivery of the goods was not complete until the arrival at Manchester. The plaintiff and the defendant's agent were then recalled by the judge and questioned, and they said that nothing was said about the carriage of the goods; and the judge ultimately left it to the jury

to say, first, whether the goods were delivered as a sale or only as a consignment; and secondly, whether or not it was understood, nothing in fact having been said, that the goods were to be delivered at Leeds or at Manchester: and the jury thereupon found for the plaintiff. It was now contended that this writ ought not to go, the defendant having acquiesced in the jurisdiction of the judge by applying to him to state a case for appeal. Admitting, for the sake of argument, that the defendant may elect, he has chosen to appeal, and thereby put the plaintiff to much expense, and cannot now come and ask for a prohibition. The writ of prohibition is not a matter of absolute right, otherwise it would be granted on a motion of course; and if the defendant were even entitled to it, he has forfeited his right by acquiescence: (*Marsden* v *Wardle*, 23 L. J. 263, Q.B.; *Borthwick* v. *Walton*, 24 L. J. 83, C. P.; *Buggin* v. *Bennett*, 4 Burr 203; *The Bishop of St. David's* v. *Luky*, 1 Ld. Raym 545; 9 & 10 Vic., c. 95, secs. 58, 59, 60, were referred to.)

Edwin James, Q.C. (*C. E. Pollock* with him) contra, were not called on.

ALDERSON, B.—I think the writ of prohibition ought to go. It seems to me that the defendant has in no way acquiesced; on the contrary, he persists in objecting to the jurisdiction of the judge from the beginning to the end; and I think it clear that there was no jurisdiction. The whole cause of action must arise within the district of the Co. C., and here it is clear that the whole cause of action did not arise within the district; and then the judge calls a witness to give himself jurisdiction. I think that was most unseemly conduct, and that the writ should go.

PLATT, B.—Unless we construe a uniform protest against the jurisdiction to be acquiescence, we cannot say there has been anything here approaching to it; and this was certainly a very indecent attempt on the part of the judge to give himself jurisdiction.

MARTIN, B.—I am of the same opinion. The writ of prohibition is a writ of right, like *madamus* and *quo warranto*; here there was no acquiescence, unless it be such acquiescence as an oyster may give when he is opened. I think, on the statement of the judge himself, he had no jurisdiction.

ALDERSON, B., read from Wilmot's notes, p. 82: "A writ which issues upon a probable cause, verified by affidavit, is as much a writ of right as a writ which issues of course." I believe that is good law, and I am sure it is excellent sense.

Rule drops.

MONTHLY REPERTORY.

Notes of English Cases.

COMMON LAW.

C.C.R. REG. v. CHANDLER. *April* 28.

Child, maintenance of—Neglecting to provide food—Allegation of means.

Where, in an indictment of a single woman, the mother of a bastard child, for neglecting to provide it with sufficient food, it was alleged that she neglected her duty "during all the time aforesaid, being able, and having the means to perform and fulfil" said duty;" and, as to that allegation, the evidence was that she was cohabiting with a man who was not the father, and there was no evidence of her actual possession of means, for nourishing the child, but it was proved that she could have applied to the relieving officer of the union, and, that if she had done so, she would have received relief, adequate to the support of her child and herself.

Held, that the allegation was not proved, and that the conviction could not be supported.

C.C.R. REG. v. FROST AND RUSSELL. *April* 28.

Matter of description, proof of—Name—Amendment—Surplusage—14 & 15 Vic., ch. 100, sec. 24.

Matter of description in an indictment, though unnecessarily alleged, must be proved as laid. Therefore, where in an indictment for assaulting a gamekeeper of the Duke of Cambridge under 9 Geo. 4, c. 69, s. 2, the duke was described as "George William Frederick Charles, Duke of Cambridge," and it was proved that "George William" were two of his names, but that he had other names, which were not proved, and it was found by the verdict that the jury were satisfied of the identity of the duke, and the prisoners were convicted.

Held, that the conviction was wrong; that under 14 & 15 Vic., c. 100, s. 24, an amendment might have been made at the trial, by which the conviction would have been supported by striking out all the christian names, but it was now too late; that the court of Quarter Sessions were not bound to amend.

That an amendment, by striking out the two names only which were not proved would have been wrong.

C.C.R. REG. v. OATES. *April* 28.

False pretences—Pleading—Existing facts, pretence of—Overcharge by tradesman.

An indictment for obtaining money by false pretences must shew on the face of it, a false pretence of an existing fact, Where the pretence averred was, that the prisoner falsely pretended that he, having done certain work, there was money "due and owing" to him for and on account of the work—parcel of a larger sum claimed by him; whereas there was not then "due and owing" to him such money being parcel, &c.; and after verdict of guilty had been recorded, judgment was arrested.

Held, that the indictment was bad, and the arrest of judgment proper, upon the ground that a false pretence of an existing fact was not sufficiently alleged, and that the averment would be proved by evidence of a wrongful overcharge, or misrepresentation of matter of law.

C.C.R. REG. v. PERRY. *April* 28.

Concealment of birth, 9 Geo. 4, c. 31, s. 14—Temporary disposition.

If a woman endeavour to conceal the birth of her child by placing the dead body under the bolster of a bed, and laying her head partly over the body, intending to remove it to some other place when an opportunity offer, it is an offence within 9 Geo. 4, c. 31, s. 14.—(POLLOCK, C. B., dissentiente.)

Q.B. PARKER v. WALLIS, AND ANOTHER. *May* 5.

Statute of frauds—Contract for sale of goods—Acceptance and receipt.

A verbal contract was made for the purchase of twenty coombs of turnip seed on the 21st of June, 1854. On the 26th of July it was delivered at the defendants' premises. The defendants always repudiated the goods, alleging the seed to be hot and mouldy; but they had spread it out in their premises, alleging that this was done by the plaintiff's authority.

Held, that as on the trial the plaintiff denied this authority, and as the seed was shewn to be of good quality, there was evidence to go to the jury of an acceptance and receipt by the defendants, so as to satisfy the statute of frauds.

Q.B. REG. v. JUSTICES OF CAMBRIDGESHIRE. *May* 7.

Hearing of appeal and decision by Justices, one of them being interested.

Where on the hearing of an appeal one of the Justices taking part in the decision, is an interested party, this court will grant a certiorari to bring up the order of Justices and quash it, the application for the certiorari being made by the attorney for the unsuccessful party, although he was at the trial, and it was shewn by affidavits that he must have known of the interest of such Justice, and did not object to his remaining on the bench.

C.C.R. REG. v. KEITH. *April* 28.

Engraving—Promissory note of banking company, 1 Wm. 4, c. 66, s. 18—Ornamental border—Note in popular sense—Extrinsic evidence—"Purporting" to be part.

Upon an indictment under 1 Wm. 4, c. 66, s. 18, for engraving upon a plate part of a promissory note, purporting to be part of the note of a banking company, it was proved that the prisoner having cut out the centre of a note of the British Linen Banking Company on which the whole promissory note was written, had procured to be engraved upon a plate, merely the royal arms of Scotland and the Britannia, which formed part of the ornamental border, but placed upon the plate in the same manner as they are found in a complete note of the company.

Held, that the plate so engraved, satisfied the words of the section.

That the ornamental border of such a note, is part of the note within the section, as "note" is there used in the popular sense.

That in order to ascertain whether that which was engraved "purported" within the section to be part of a note, extrinsic evidence was admissible to the jury, and they might compare it with a genuine note of the company.

Q.B. CARMAN AND OTHERS *vs.* REYNOLDS. *June* 6.

Setting aside Judgment on ground of mistake—Jurisdiction—Amendment of particulars of demand.

Even after the satisfaction of a judgment by payment, the Court has jurisdiction to set it aside for the purpose of enabling the plaintiff to correct a mistake in his particulars of demand, the defendant being put into the same position as if a mistake had not been made, and the application being made within a reasonable time.

(ERLE, J., dubitante.)

CHANCERY.

V.C.W. GADE v. PRENDERGAST. *April* 19, 25.

Illegitimate Children.

Gift in a settlement in trust "for all the children, as well those already born as those which shall hereafter be born of F. R. by E. his wife." F. R. had five children by E., all born before their marriage, which took place in 1811—none after the marriage.

Held, that these illegitimate children took under the gift of the settlement.

M.R. MORLAND v. ISAACS. *April* 26.

Policy—Debtor and Creditor.

A creditor insured his debtor's life, charging him with the premiums in account, in which the debtor acquiesced. No express contract was made as to the ownership of the policy, but the creditor admitted, by his answer, that he should have assigned the policy to the debtor, if requested, on payment of the debt.—The debtor having died,

Held, that the creditor was a trustee of the balance of the policy monies after satisfaction of his debt for the personal representatives of the debtor.

L.J. SHEPPARD v. OXENFORD. *April* 30.

Injunction—Demurrer—Public Company—Protection of the property till the hearing.

The Court will interfere by injunction to secure the property of an association from being appropriated by the trustee, who is also sole director, for the purpose of recouping himself the sums he has advanced, although questions are raised as to the legality of the association, and although relief might be refused at the hearing.

V.C.K. IN RE. HONNOR'S TRUST. *April* 20, *May* 3.

Statute of Mortmain—Scheme to purchase land, and thereon build alms-houses.

Part of an accumulated fund, left originally by will to a company, is proposed by a scheme settled by the master to be laid out in the purchase of freehold lands to build alms-houses thereon.

Held, notwithstanding the provisions of the Statute of Mortmain, the Court would sanction such a scheme.

V.C.W. SNEESBY *vs.* THORNE. *May* 5, 7.

Vendor and Purchaser—Specific performance—Sale by Executor.

Where a contract for sale is entered into without the authority of his co-executor, by one of two executors acting in a fiduciary character, unless the sale is manifestly necessary and beneficial, the Court, having regard to the interests of the *cestuis que* trust, will not enforce specific performance of the contract, but will leave the purchaser to his remedy at law.

V.C.S. CAMPBELL v. HOOPER. *May* 24, 26, 31.

Mortgage by lunatic—Foreclosure—Legal and equitable remedies against contracting party, afterwards found lunatic—Acquiescence.

C. C., by deed of the 18th April, 1848, mortgaged lands in fee; by a second deed of the 16th Nov., 1849, she mortgaged the equity of redemption in the same lands; by a third deed of the 18th April, 1850, to which C.C. and the mortgagees were parties, the two mortgages were transferred, and a further sum secured to the plaintiff. The moneys advanced by the plaintiff were paid into a bank to the account of C.C. In 1816 a commission of lunacy was sued out against C.C., but the proceedings were stayed under a compromise to which the defendants were parties, and by a decree of the Court. In 1851 another commission of lunacy was sued out against C.C., under which she was found by inquisition a lunatic from 1st May, 1846. In 1852 she obtained leave to traverse the inquisition, but before the traverse was tried, she died intestate, leaving the defendants her coheiresses and next of kin. The plaintiff's solicitors were also the solicitors of C. C., and opposed the commissions on her behalf, but the plaintiff said that in April, 1850, he had no knowledge of the alleged lunacy of C. C., or of the proceedings up to that time.

The plaintiff brought his bill for foreclosure, which was opposed on the ground that, owing to the lunacy of the

mortgagor, he had no legal title, and that he must establish his claim at law:

Held, that the plaintiff was entitled to equitable relief, and to a decree for foreclosure.

The cases of *Snook v. Watts*, 11 Beav. 105; and *Jacobs v. Richards*, 18 Beav. 308 note, observed upon.

V.C.W. FARINA *v.* SILVERLOCK. *June 5, 6.*

Injunction—Trade mark—Labels—Printer.

A party alleging that he had the exclusive right of using a particular label and wrapper on bottles containing a specified liquid, filed a bill against a printer to restrain him from printing and selling labels in imitation of his labels which contained his trade-mark, and in his affidavits he swore that the defendant had vended such labels of a spurious manufacture, and that he was injured thereby. The defendant swore that the plaintiff had no exclusive right to the labels as a trade-mark, and insisted that he himself was entitled to sell the imitation labels in the ordinary course of his trade. But the court granted the injunction, holding that a man had no right to provide others with the means of committing fraud, and determining that the court would so interfere before any actual fraud had thereby been completed.

R.C. ARMSTRONG *v.* BURNET. *May 7.*

Specific legacy of shares—Public company—Future calls—Primary fund for payment—Specific and residuary legatees.

A testator bequeathed shares in a bank, upon which two calls had been made at the formation of the company in 1836; there was a power to make further calls, which had not been exercised up to the time of the testator's death in 1843. The deed of settlement contained a covenant on the part of shareholders for the payment of all future calls, but declared that the liability of shareholders should cease after transfer to a new holder. The legatees being infants, the executors had transferred the shares into their own names, and paid a call made subsequently to such transfer. The legatees, on attaining twenty-one, had accepted the legacy:

Held, that the call must be paid by the legatees, and not out of the testator's general personal estate:

Semble, where shares in a public company are specifically bequeathed, on which it may be presumed that no further call will be made, and it was so considered by the testator, a call made after the death of the testator falls upon the specific legacy; but where it is known that future calls will be required to carry out the company's operations, and the testator has covenanted for the payment of all future calls, his general personal estate is still applicable for that purpose.

Blount v. Hipkins, 7 Sim. 43, considered.

L.J. TENCH *v.* CHEESE. *June 1.*

Thellusson Act, observations of the Lord Chancellor on—Accumulation—Annuity—Mixed fund for payment of.

A testator, by his will, dated in 1831, after directing an annuity of £500 to be paid to M. for life, "out of the whole of his estate, and the accumulations and savings (if any)," devised to trustees "all the rest, residue and remainder of his real and personal estate, and the accumulations thereof, which he hereby directed his trustee or trustees to place out on mortgages, or in Government securities, or in the public funds, upon trust for the eldest son of M., upon his attaining the age of twenty-one;" and, "if there should be no son of M. then upon trust for her eldest daughter;" and failing such issue, then "as to the whole of his said real and personal estate, and the accumulations and savings (if any) of the rents, dividends and income thereof, subject and without prejudice as aforesaid," to E. on his attaining the age of twenty-five years. The testator died in 1832. M. is still living and has had no issue:

Held, overruling the decision of the Master of the Rolls; that the words above quoted amounted to a direction to accumulate, which was prohibited by the statute 39 and 40 Geo. 3, chapter 98.

Where there is a mixed fund of real and personal estate, the mere fact of the real and personal estate being given, does not constitute them a mixed fund for the payment of debts, legacies or annuities, but in order to effect that purpose, there must be a direction for the sale of the real estate, so as to throw the two funds absolutely and inevitably together to answer the common purposes.

L.J. WHEATLEY *v.* BASTOW. *June 9.*

Principal debtor, surety and creditor—Assignment of debt—Solicitor and client—General authority—Solicitor misconducting himself, ordered to show cause why his name should not be struck off the rolls.

A., B. and C. were entitled in equal shares in reversion to a fund in court. In 1811 B. as principal, and A. as surety, assigned the two-thirds to which A. and B. were entitled to D., by way of mortgage, to secure £1,000 and interest. E., a solicitor who acted professionally for the other parties, also covenanted as a surety for B. for the repayment of the loan. E. also prepared a settlement by which D. assigned the debt and securities to trustees. The trustees neglected to obtain a stop-order, and no notice was given to A. of the assignment to the trustees. In Dec. 1846 an order was obtained on petition by B. and C. directing that the shares of B. and C. should be sold, and the proceeds paid to the petitioners in moieties. The petition was prepared by E. It contained a false statement that part of the mortgage-debt had been paid, and did not set forth the mortgage-deed so as to show that A. was a surety for the debt. E. also, without authority, instructed counsel to appear and consent on behalf of A. and D. E. retained the whole or a portion of B.'s moiety in his hands, and did not apply it in discharge of D.'s debts.

On a bill by A., the surety, praying for a declaration that D. and all claiming under the settlement, were bound by the statements in the petition of 1846, and that the moneys of B., retained by E., ought to be considered as received for D. or his trustees:

Held, that neither A. nor D. were bound by what had taken place upon the petition, E. having acted in the matter without express authority, and without any general authority to act for either of them.

The neglect of the trustees to obtain a stop-order, whatever equity it might create as between them and their *cestuis que* trust, did not affect their right against the surety.

The assignment of a debt by the creditor without notice to the surety does not operate to discharge the surety.

E. appearing upon the evidence in the cause to have been guilty of irregular and fraudulent conduct as a solicitor, was ordered to show cause why his name should not be struck off the rolls.

M.R. RE THOMSON. *May 30.*

Attorney and client—Original letters and copies of letters written—Right of client to.

Where an attorney has ceased to be employed, he must deliver up to his late client all original letters received by him relating to his late client's business; but he is entitled to retain all copies of letters made of letters written by him on behalf of his late client, and if the client require copies they must be made by the attorney at the client's expense.

V.C.W. PEMBERTON v. McGILL. *May* 29.

Executor—Probate—Receiver.

Receiver appointed at the instance of an executor, about to leave England, who has propounded the will, but not actually obtained probate (which has been decreed) before filing his bill, the property being in the hands of his co-executrix, a married woman, who has opposed probate and refuses to render any account, her husband living apart from her in America.

CORRESPONDENCE.

To the Editor of the "Law Journal."

REATTACHMENT.

SIR,

I do not find that the following Case is provided for by our D. C. Act. Your views on the point will be useful, I apprehend, to Counties generally:

Debt contracted in County A.

Last place of residence in County B.

Property left in County C.

How may an attachment be made to operate on the property?

The Law has it that the action must be commenced in the County *in which the debt was contracted*, or *in the County where the debtor last resided*. How then is the property to be reached in *another* County? If a Judge may allow the Attachment to issue in County C, where the property is, how is *service of the summons* to be made *in the County* B, where the debtor last resided?

Is this one of those cases in which the leave of a Judge may be had for the purposes of the suit? If so, to which Judge of the several counties (A, B, C,) should the application go?

Is a *Debt* liable to seizure under an Attachment or an Execution from the Division Courts?

I am yours, &c., R. N.

[R. N. puts a point of some difficulty under the Act. We incline to the opinion that in the above supposed case the proceeding by attachment would not apply unless a personal service could be made. In order to proceed by attachment, there must be goods, &c., *liable to seizure*, and the substituted service can only be made on some person dwelling at the last place of abode, trade or dealing of the defendant, &c., or by leaving the same at the said dwelling, if no person be found therein and it is not contemplated by the Act that the officer should go out of his own county to make the service.

The proceeding under the 9th section of the D. C. E. Act would not, we think, apply. As a general rule, choses in action are not seizable: it is only those of a certain description that are made liable to seizure, viz., promissory notes, bonds, &c., (see sec. 89 D. C. Act.) The mere right of suing for money due is all that constitutes *a debt*; and not coming within the terms of the Statute, a mere debt cannot be taken. There must be something tangible to seize, or in other words, some of those evidences *of debt* mentioned in the 89th section, that the Bailiff can *take* and *seize* and *hold*.—ED. L. J.]

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

APPEAL TO QUARTER SESSIONS.

SIR,

A question of considerable importance has arisen in the County of Lambton in respect to an appeal by a *complainant*.

An order of dismissal of the complaint was made by a Justice. Notice of appeal against this order was given and a recognizance was entered into in the terms of 13 & 14 Vic., chap. 51, sec. 1. One of the conditions of the recognizance is "to try the appeal;" another is "to abide the judgment of the Court, and to pay such costs as shall be awarded."

The complainant failed to prove notice of appeal, and his appeal was thereupon dismissed with costs.

The complainant, under advice of counsel, refused to pay the costs. The question thereupon arose what was the remedy for the respondent.

By the Justices Act of 1853, ch. 178, sec. 23, the course is pointed out, but it would seem to be limited to cases where the appellant is not bound in recognizance.

The latter part of sec. 1 of the Act of 13 & 14 Vic., ch. 54, empowers the Court of Sessions to issue process for enforcing its judgment, but there seems some question open whether the word "offender" does not exclude the complainant from subjection to this process.

In connection with this question is also to be considered the 31st section of the Act of 1853, which repels all Acts contrary to the provisions of "this Act." The course taken by the respondent was to move for estreat of the complainant's recognizance. This was ordered by the Court, and it is now contended by the complainant's counsel that this recognizance was not subject to estreat; he says he is fortified in this opinion by several of the eminent counsel in Toronto.

Will you be so kind as to place the matter in your Journal, so as to elicit some opinion upon the proper course to be taken in such cases.

I remain, sir,

Your obd't serv't,

P. T. P.

THE STUDENT'S PORTFOLIO.

CONDUCT OF ADVOCATES. (a)

"When a cause is undertaken, the great duty which the counsel owes to his client, is an immovable fidelity. Every consideration should induce an honest and honourable man to regard himself, as far as the cause is concerned, as completely identified with his client. The criminal and disgraceful offence of taking fees of two adversaries, of allowing himself to be approached corruptly, whether directly or indirectly, with a view to conciliation, ought, like parricide in the Athenian law, to be passed over in silence in a code of professional ethics.* All considerations of self should be sunk by the lawyer in his duty to the cause. The adversary may be a man of station, wealth, and influence; his good will may be valuable to him; his enmity may do him great injury. He should not permit such thoughts to arise in his mind. He should do his duty manfully, without fear, favour or affection.

At the same time, let me observe that no man ought to allow himself to be hired to abuse the opposite party. It is

(a) The above is an extract from Judge Sharswood's "Professional Ethics."

* A pleader is suspendable when he is attainted to have received fees of two adversaries, in one cause. Mirrour of Justices, ch. 2, sec. 5.

not a desirable professional reputation to live and die with, that of a rough tongue, which makes a man to be sought out, and retained to gratify the malevolent feelings of a suitor in hearing the other side well lashed and vilified. Treat your opponent with civility and courtesy, and if it be necessary to say severe things of him or his witnesses, do it in the *language, and with the bearing of a gentleman.*

The practitioner owes to his client, with unshaken fidelity, the exertion of all the industry and application of which he is capable to become perfect master of the questions at issue, to look at them in all their bearings, to place himself in the opposite interest, and to consider and be prepared as far as possible, for all that may be said or done on the contrary part. The duty of full and constant preparation, is too evident to require much elaboration. It is better, whenever it is possible to do so, to make this examination immediately upon the retainer, and not to postpone it to later stages in the proceedings. The opportunity is often lost of ascertaining facts, and securing evidence, from putting off till too late, the business of understanding thoroughly all that it will be necessary to addue on the trial. In this way, a lawyer will attain what is very important, that his client may be always prepared, as well as himself, have his attention alive to his case, know what witnesses are important, and keep a watch upon them, so that their testimony may not be lost, and upon the movements of his adversary, lest he should at any time be taken by surprise. It would be an excellent rule for him, at short stated periods, to make an examination of the record of every case which he has under his charge. It always operates disadvantageously to an attorney in the eyes of those who employ him, as well as the public, when he fails in consequence of some neglect or oversight. Frequent applications to the court, to relieve him from the consequences of his inattention, tell badly on his character and business. He may be able to make very plausible excuses; but the public take notice, that some men with large business never have occasion to make such excuses, and that other men with less, are constantly making them. Every instance of the kind helps to make up such a character. A young man should be particularly cautious, and dread such occurrences as highly injurious to his prospects. If he escapes the notice and animadversion of his constituent, and the legal consequences of his neglect, by the intervention of the court, or the indulgence of his opponent, the members of the bar are lynx-eyed in observing such thing. Nothing is more certain, than that the practitioner will find in the long run, the good opinion of his professional brethren of more importance, than that of what is commonly called the public. The foundations of the reputation of every truly great jurist, will be discovered to have been laid here. Sooner or later, the real public endorse the estimate of the lawyer, entertained by the associates of the bar, unless indeed there be some glaring defect of popular qualities. The community know that they are better qualified to judge of a man's legal attainments, that they have the best opportunity of judging, and that they are slow in forming a judgment. The good opinion and confidence of the members of the same profession, like the king's name on the field of battle, is "a tower of strength;" it is the title of legitimacy. The ambition to please the people, to captivate jurors, spectators, and idlers about the court, may lead a young man into pertness, flippancy, and impudence, things which often pass current for talent and ability, with the masses; but the ambition to please the bar, can never mislead him. Their good graces are only to be gained by real learning, by the strictest integrity and honour, by a courteous demeanour, and by attention, accuracy, and punctuality, in the transaction of business.

It may appear like digressing from our subject, to speak of these qualities, attention, accuracy and punctuality, but like the minor morals of common life, they are little rills which at times unite and form great rivers. A life of dishonour and obscurity, if not ignominy, has often taken its rise from the fountain of a little habit of inattention and procrastination. System is everything. It can accomplish wonders. By this alone, as by a magic talisman, may time be so economized that business can be attended to and opportunities saved for study, general reading, exercise, recreation, and society.—'*A man that is young in years,*' says Lord Bacon, 'may be old in hours, if he has lost no time.'"

NOTICES OF NEW LAW BOOKS.

Elements of International Law, by HENRY WHEATON, L.L.D., Minister of the United States at the Court of Prussia, &c.&c. *Sixth Edition, with the last corrections of the Author, and additional Notes, containing a notice of Mr.* WHEATON'S *Diplomatic Career*, by WILLIAM BEACH LAWRENCE, formerly Chargé D'Affaires of the United States, at London. Boston: Little, Brown & Co. 1855.

The high position which the late Mr. Wheaton occupied in the Diplomatic world, the frequent embassies in which he was engaged, and the study of the Law of Nations, to which he devoted his lifetime, would of themselves be a sufficient guarantee of the value of the Work we have just received; but when to this is added the fact of this, the sixth edition, being edited by Mr. W. B. Lawrence, the late United States Minister to the Court of St. James, together with the addition from his pen of Notes and Emendations, and of a Biographical Memoir of the Author, a further value is added to the book, and to those interested in the subject, or whose pursuits in any way lead them to the contemplation of International or Constitutional jurisprudence, this will be found a most valuable Work. Being the cotemporary of Chancellors Kent and Walworth, and of Mr. Justice Story, and their personal friend, the high estimate which those celebrated Lawyers held of the talents of Mr. Wheaton, and of his publication, is given in several instances in Mr. Lawrence's Biography: nor is it confined to them alone, many others speaking to the same effect, and amongst them the English *Times* and *Edinburgh Review*, the former of which has stated, "We cannot mention the name of Henry Wheaton "without a passing tribute to the character, the learning, and "the virtues of a man, who, as a great international lawyer, "leaves not his like behind."

Much interest attaches to the biography by Mr. Lawrence. Whilst purporting to detail the course and incidents of Mr. Wheaton's life, as an author, an antiquarian, and diplomatist, it forms an interesting sketch of the political state of Europe from the year 1805 to the present time, from which much information may be acquired: but we must at the same time mention that there is nevertheless, throughout his remarks, a pervading tone of jealousy towards Great Britain, and a desire to impute, in several instances, the improper management—nay, even the violation of treaties, by England, which, to say the least, is in bad taste, and must detract from his merits as an author, ex-minister, and statesman.

The work has been some time in the press. The period of its issue is rather felicitous, as during the present war between the allied forces of Great Britain and France with Russia,

constant emergencies are arising in which a reference to its contents enables the reader to acquire information. We may quote, for instance, in reference to the charge made by the Allies that the Russians avail themselves of a period of truce to repair their shattered fortifications,—the law, as laid down on that point,

"Besides the general maxims applicable to the interpretation of all international compacts, there are some rules peculiarly applicable to conventions for the suspension of hostilities. The *first* of these peculiar rules, as laid down by Vattel, is that each party may do within his own territory, or within the limits prescribed by the armistice, whatever he could do in time of peace. Thus either of the belligerent parties may levy and march troops, collect provisions and other munitions of war, receive reinforcements from his allies, or repair the fortifications of a place not actually besieged.

The *second* rule is, that neither party can take advantage of the truce to execute, without peril to himself, what the continuance of hostilities might have disabled him from doing. Such an act would be a fraudulent violation of the armistice. For example:—in the case of a truce between the commander of a fortified town and the army besieging it, neither party is at liberty to continue works, constructed either for attack or defence, or to erect new fortifications for such purposes. Nor can the garrison avail itself of the truce to introduce provisions or succours into the town, through the passages or in any other manner which the besieging army would have been competent to obstruct and prevent, had hostilities not been interrupted by the armistice.

The *third* rule stated by Vattel, is rather a corollary from the preceding rules than a distinct principle capable of any separate application. As the truce merely suspends hostilities without terminating the war, all things are to remain in their antecedent state in the places, the possession of which was specially contested at the time of the conclusion of the armistice.*

The work is divided into four parts, treating—

1st. Definition, Sources and Subjects of International Law.

2nd. Absolute International Rights of States.

3rd. International Rights of States in their Pacific Relations.

4th. International Rights of States in their Hostile Relations.

These are again sub-divided into chapters, under more minute heads, and a Table of Cases cited, and Index, complete the value of the work.

APPOINTMENTS TO OFFICE, &c.

NOTARIES PUBLIC IN U.C.

HENRY A. JONES, of Brockville, Esquire, Attorney-at-Law, JAMES FRASER, Junr., of Kingston, Esquire, Attorney-at-Law; and PETER BALL LONG, of Brantford, Esquire, Barrister-at-Law, to be Notaries Public in Upper Canada.—[Gazetted 7th July, 1855.]

ROBERT COOPER, of the City of London, Esquire, Barrister-at-Law; and JAMES BONWELL FORTUNE, Claverton, Rice Lake, Gentleman, to be Notaries Public in Upper Canada.—[Gazetted 14th July, 1855.]

* Vattel, Droit des Gens, liv. iii. ch. 16. §§ 246—251.

LAW SOCIETY OF UPPER CANADA,

(OSGOODE HALL.)

Easter Term, 18th Victoria, 1855.

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

On Monday the 4th of June—DONALD FRASER and JAMES FOSTER BOULTON, Esquires.

On Tuesday the 12th of June—JOHN MACDONALD, WILLIAM FLANAGAN, and ANTHONY LACOURSE, Esquires.

On Saturday the 16th of June—JOHN VANDAL HAM, Esquire.

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

Junior Class.

Messieurs DAVID ASHE SAMPSON, HENRY O'BRIEN, JEHIEL MANN, Junior, and SAMUEL WELD.

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

For the Optime Class:

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

For the University Class:

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

For the Senior Class:

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

For the Junior Class:

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

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

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

Lecturer next Term—ADAM WILSON, Esquire, Q.C.
Subject—The Law of Landlord and Tenant.
Hour of Lecture—From 9 o'clock to 10 o'clock, A.M.

ROBERT BALDWIN,
Treasurer.

Easter Term, 18th Victoria, 1855.