DIARY FOR OCTOBER.

4. SUN..17*th Sunday after Trinity.*
5. Mon..County Court and Surrogate Court Term begins.
10. Sat...County Court and Surrogate Court Term ends.
11. SUN..18*th Sunday after Trinity.*
10. Thurs Law of England introduced into U. C. 1792.
19. SUN..19*th Sunday after Trinity.*
25. SUN..20*th Sunday after Trinity.*
28. Wed..*St. Simon and St. Jude.* Appeal from Chancery Chambers.
31. Sat. ..*All Hallow Eve.* Articles, &c., to be left with Secretary of Law Society.

The Local Courts'

AND

MUNICIPAL GAZETTE.

OCTOBER, 1868.

TAX SALES.

A very lengthy judgment has lately been given, in a case of *Cotter* v. *Sutherland*, by the Court of Common Pleas, as to the validity of tax sales under certain circumstances. We shall give hereafter a full note of all the points decided in the case referred to. The judgment is itself of such great length that we cannot find room to publish it in full. In the course of the judgment, the learned judge who delivered the judgment of the court had occasion to refer to the cases decided in this country bearing on tax sales in general, collecting them under several heads, as more easy of reference. We now propose to give our readers the benefit of his industry in this respect, as it will be of great value to our municipal readers throughout the country.

The points which have been decided are given in a condensed shape, and under a number of appropriate headings.

1.—The Surveyor-General's, or the Commissioner of Crown Lands' List.

The Surveyor-General's Schedule is made by the Act the very foundation of the whole proceeding: *Doe d. Upper* v. *Edwards*, 5 U. C. 598.

The land to be sold by the Sheriff should be stated in the list to have been described as granted or let to lease: *Doe d. Bell* v. *Reaumore*, 3 O. S. 243; *Doe d. Bell* v. *Orr*, 5 O. S. 433.

Land returned in June, 1820, for assessment, liable for the taxes for the whole of that calendar year: *Doe d. Slater* v. *Smith*, 9 U. C. 658.

Land not contained in the list is not liable to assessment or sale: *Peck* v. *Munro*, 4 C. P. 363.

The list may be shewn to be erroneous: *Perry* v. *Powell*, 8 U. C. 251; *Street* v. *County of Kent*, 11 C. P. 255.

Land held by the Crown Land Agent's receipt, and not by patent, lease, or license of occupation, and not occupied, is not liable to assessment, though returned by the Commissioner of Crown Lands as land to be assessed under the 16 Vic. ch. 182, sec. 48: *Street* v. *County of Kent*, 11 C. P. 255; *Street* v. *County of Simcoe*, 12 C. P. 284; *Street* v. *County of Lambton*, 12 C. P. 294.

2.—Assessment of Lands.

A whole lot, returned by the Surveyor-General as a single lot, must be assessed as one lot, though half of it may be in one concession and half of it in another: *Doe d. Upper* v. *Edwards*, 5 U. C. 574.

On a grant of three several lots, each lot must be separately assessed, and a sale of part of the whole block for arrears of taxes due on one lot is void; so also is the sale of part of one lot for the arrears due upon two: *Munro* v. *Grey*, 12 U. C. 647; *McDonald* v. *Robillard*, 23 U. C. 105; *Laughtenborough* v. *McLean*, 14 C. P. 175; *Ridout* v. *Ketchum*, 5 C. P. 50; *Black* v. *Harrington*, 12 Grant, 195; *Christie* v. *Johnston*, 12 Grant, 534; *Morgan* v. *Quesnel*, 26 U. C. 544.

If the Treasurer can take notice of land as liable to assessment, though not contained in the Surveyor-General's list, he must take notice of the particular part of the lot so granted, and apply the payments made to him on such part: *Peck* v. *Munro*, 4 C. P. 363.

A non-resident can be rated in his own name only at his own request: *The Municipality of Berlin* v. *Grange*, 5 C. P. 211, affirmed in appeal.

The ten per cent. on arrearages is to be added to the whole amount due on the land, and not merely on the amount of each year's assessment: *Gillespie* v. *The City of Hamilton*, 12 C. P. 426.

Quære—Whether land erroneously assessed as nonresident land, when it was in fact occupied land, can be properly assessed as nonresident land, or can be legally sold: *Allan* v. *Fisher*, 13 C. P. 63.

On a grant of the whole lot, where the east half had been assessed separately, it might be assumed the taxes on the west half had been

paid, and that the east half had been properly assessed by itself: *Allan* v. *Fisher*, 13 C. P. 63.

An assessment of so much per acre, in place of on the assessed value, is illegal under the 4 & 5 Vic. ch. 10: *Doe d. McGill* v. *Langton*, 9 U. C. 91; *Williams* v. *Taylor*, 13 C. P. 219.

3.—The Treasurer's Return of Lands in Arrear for Taxes.

Proof must be given of a return having been made under 6 Geo. IV. ch. 7, sec. 6, and the 9 Geo. IV. ch. 3, sec. 9, of the land in question having been the proper time in arrear for taxes: *Doe d. Bell* v. *Reaumore*, 3 O. S. 243.

The books of the Treasurer shewing land to be in arrear are sufficient proof of the fact of arrear.

Quære, if warrant alone would not be sufficient: *Hall* v. *Hill*, 22 U. C. 578. See 2 Error and Appeal, 569.

And that the taxes were in fact in arrear, and for the proper time: *Ibid; Doe d. Upper* v. *Edwards*, 5 U. C. 594; *Doe d. Sherwood* v. *Mattheson*, 9 U. C. 321; *Harbourn* v. *Boushey*, 7 C. P. 464; *Errington* v. *Dumble*, 8 C. P. 65; *Allan* v. *Fisher*, 13 C. P. 63; *Meyers* v. *Brown*, 17 C. P. 307; *Jones* v. *Bank of Upper Canada*, 13 Grant, 74.

An extract from the Treasurer's book, shewing the taxes to be unpaid, is not sufficient evidence of that fact: *Munro* v. *Grey*, 12 U. C. 647.

4.—Writ to sell.

Must be under the seal, as well as the signature, of the proper officer, and if not sealed all sales made under it are void: *Morgan* v. *Quesnel*, 26 U. C. 539.

It must be founded on the Treasurer's return, when the return was required: *Doe d. Bell* v. *Reaumore*, 3 O. S. 243; *Errington* v. *Dumble*, 8 C. P. 65.

A mistake in representing the taxes as due from 1st of July, 1820, to the 1st of July, 1828, in place of from the 1st of January to the 1st of January of these years, is not important, the taxes being in fact due for the full period of eight years: *Doe d. Stata* v. *Smith*, 9 U. C. 658.

A writ issued in 1837, and postponed by the 1 Vic. ch. 20, was properly acted on in 1839, and did not lapse: *Todd* v. *Werry*, 15 U. C. 614; *Hamilton* v. *McDonald*, 22 U. C. 136.

The omission to distinguish in the writ whether the lands were patented, or under lease or license of occupation, is fatal to it and to the sale: *Hall* v. *Hill*, 22 U. C. 578, affirmed by Er. & App. 569.

Describing the lands in the writ as "all patented" is sufficient: *Brooke* v. *Campbell*, 12 Grant, 526.

Describing the lands to be sold in a schedule which is incorporated with the warrant, so as to be a part of it, is sufficient: *Hall* v. *Hill*, 22 U. C. 578.

The writ should shew the particular land that is to be sold: there being confusion and doubt in this respect will avoid the sale: *Townsend* v. *Elliott*, 12 C. P. 217.

If the identity can be established it will answer: *McDonell* v. *Macdonald*, 24 U. C. 74.

The writ can issue only after the full period is past for which the land can be sold: *Kelly* v. *Macklem*, 14 Grant, 29.

When new county erected, and taxes become due to it, and taxes are also and were due before the separation, the writ to sell goes to the Sheriff of the new district to sell for the arrears due both counties: *Doe d. Mountcashel* v. *Grover*, 4 U. C. 23.

5.—Distress.

It must be shewn in sales under the earlier acts that there was no sufficient distress on the premises: *Doe d. Bell* v. *Reaumore*, 3 O. S. 243; *Doe d. Upper* v. *Edwards*, 5 U. C. 594.

The Sheriff was not obliged to look for a distress on the land between the time he first offered the land for sale and the time when the adjourned sale was held, and a distress in fact being on the land between those two periods did not defeat the sale: *Hamilton* v. *McDonald*, 22 U. C. 136.

The 13 & 14 Vic., ch. 67, did not require the Sheriff to search for goods and chattels, as a distress, before selling the land, the duty of distraining, if there be a distress, being thrown on the collector: the warrant simply requires the Sheriff to sell: *McDonell* v. *Macdonald*, 24 U. C. 74; *Allan* v. *Fisher*, 13 C. P. 63.

(*To be continued.*)

PROFESSIONAL COSTUME.

We have contended for a proper regard for the dignity of the Local Courts in the matter of the proper and seemly dress of the Judges. In England they go much further, as appears

from the report of a late case in the Mold County Court.

In the course of the hearing of one of the cases, his Honour suddenly interrupted the proceedings by saying, that the rule in these courts was, that advocates should appear in that costume which is proper to them. He said it was unbecoming for gentlemen belonging to the profession of the law to appear, as did the gentlemen who were conducting the case before him, one in a velveteen coat, and another in a shooting jacket, and hoped the rule would be complied with in future.

The gentleman who unluckily figured in the velveteen coat pleaded ignorance of the rule, and his opponent in the shooting jacket followed suit.

His Honour then said he had been indulgent in these matters for some time, but his indulgence had been taken advantage of, and that he should not have been so exacting, but his attention had been called to the remissness of advocates generally. He must insist more regularly upon the observance. Subsequently his Honour refused an attorney's fee to one of these gentlemen in a case where the defendant had paid the money to the registrar on his way to the court, because he was not habited in a gown.

The following rules of court were then referred to by the Judge as applicable to his County Court Circuit:—

"The registrar of the court will appear in the proper costume of a chief officer of a court of record.

"The high bailiff will wear a gown of office.

"It is expected that every professional gentleman (not of the Bar) who practises in the courts, should, in order to distinguish him from a class of persons who in various instances improperly intrude upon the court, wear the usual professional costume of a black dress with a white neckerchief and a plain gown without bands.

"Should any professional gentleman appear from a foreign district, he will of course be heard, but it will be clearly intimated to him that should he have an occasion to appear again he must accord with the foregoing regulation."

We contend, as we have always done, that the more the dignity and respectability of these Courts are kept up, the better it will be for the public, and for the better observance of laws in general. The third rule refers incidentally to the rights which members of the legal profession may with much justice claim for a more especial recognition in the conduct of suits in Courts, whether of superior or inferior jurisdiction, for which they are necessarily better fitted than those who have received no training or knowledge of the laws, and who have paid a heavy sum (to put it simply upon the footing of a mercantile transaction,) as a license for the rights they should be privileged exclusively to enjoy.

THE PRESIDENT OF COURT OF APPEAL

The Hon. W. H. Draper, C.B., having resigned his seat, as Chief Justice of Upper Canada, has been gazetted President of the Court of Error and Appeal.

It is understood that the Chief Justice of the Common Pleas takes his place.

SELECTIONS.

CONSTRUCTIVE NOTICE.

We take it to be a principle of English law, that the purchaser of an estate is put upon inquiry into the existence of obligations on his part necessarily arising from the nature or situation of property irrespective of actual notice of those obligations. This principle was fully considered and elucidated by Lord Romilly, M.R., in the recent case of *Morland* v. *Cook*, 16 W. R. 777. The case also involves the consideration of the doctrine of *Spencer's case*, 5 Rep. 16, as to covenants running with the land; but our chief object at present is to address ourselves to the consideration of the foregoing principle.

The facts before the Court in *Morland* v. *Cook* stated as follows:—The owners in fee simple, under a deed of partition, of five adjoining estates in Romney Marsh, covenanted with each other upon the partition in 1792, that a sea-wall, which was for the common benefit of all should be maintained and kept in repair at the expense of the owners of the time being of the estates, that the expenses of repairing the sea-wall should be borne ratably, and that the expense of each owner should be a charge on his estate. The lands in question have been reclaimed, and lie several feet below the level of ordinary high-tides; they would, in fact, but for the protection the wall affords, be covered every day by the sea. People who live above the level of high-water mark, as a rule, concern themselves little with the rights and interests of those who live in levels and marshes under the protection of of sea-walls, and are little acquainted with the law of sewers so quaintly dealt with by Callis in his readings on sewers. That author te ls us (p. 114) that there are nine ways whereby the duty of repairing a sea-wall arises—namely, by frontage, ownership, prescription, custom, tenure, covenant, *per usum rei*, assessment of township, and, finally, by the law of sewe .

We return, however, to the case before us. The property—the liability of which under the covenant to maintain the sea-wall was the question in dispute—formed part of one of these estates, having been conveyed by the grantee under the deed of partition to a purchaser in 1829, and by him, in 1862, to the present defendant. This gentleman contended that he was a purchaser for value without notice of the liability under the covenant to repair, and therefore exempt from the obligation, because the contract under which he purchased contained a clause prohibiting him from inquiring into the title previous to the conveyance of 1829. There is no doubt that a special condition of sale limiting the extent of title is no excuse for a purchaser not insisting on the production of a deed beyond those limits, of which he had notice: *Peto* v. *Hammond*, 30 Beav. 495. But in this instance the defendant put in evidence to show that neither he nor his solicitor, had any knowledge or belief that such an obligation existed. The main question therefore, before the Court was this, whether, in the absence of actual notice of the obligation, the defendants were bound to repair, upon the obligation of making enquiry arising from the nature of the property so as to amount to constructive notice.

It is hard to imagine a case to which the doctrine of implied or constructive notice applies more nearly than the situation of an owner of marsh or fen land lying below high water mark. It must be obvious to any person of ordinary discernment holding land in such a district to what he owes his protection from the rising tide. No person, indeed, purchasing property of this kind could shut his eyes to the fact that the very existence of his estate is due to the bank which protects it being properly maintained. Nor, as we think, can a man be heard to say that he is exempted from liability, and which a reasonable person would be bound to make.

The case of *Rex* v. *The Commissioners of Sewers of the County of Essex*, 1 B. & C. 477, where the duty of maintaining a sea-wall was cast on a proprietor by reason of frontage, seems to decide merely this, that where an owner of land in a level is bound to repair a sea-wall abutting on his land, the other owners in the same level cannot be called upon to contribute to the repairs of the wall, although it has been injured by an extraordinary tide and tempest, unless the damage has been sustained without the default of the party who was bound to repair. The case is shortly reported, at least shortly for such laborious reporters as Messrs. Barnewall and Cresswell, and does not appear to us to do much more than explain the circumstances under which one who repairs by reason of frontage is entitled to contributions from his neighbours. The Master of the Rolls, however, treats the judgment of Abbot, C.J., in that case as laying it down as a proposition of unquestionable law, that all persons enjoying the benefit of a sea-wall are bound, and are liable at common law, to repair and maintain it in the absence of any special custom to the contrary, or some special contract exempting them. "That, in my opinion, establishes this proposition as a necessary consequence," the Master of the Rolls is reported to have said, "that where a man buys land below the level of high water, and which would be daily covered by the overflow of sea water were it not prevented by the obstacle of a sea-wall, the purchaser has notice, and is already made aware, that by law he is liable to contribute to its repair."

It is plain, however, that this is a doctrine, which, unless guarded in its application, according to the view of it taken by his Lordship, may readily be carried too far. To allow liabilities not mentioned or referred to in the deed of grant to be implied against the purchaser would, in our judgment, be against public policy as tending to affect the security of possessions. The only exception that ought to be allowed is in cases where liability is, as it were, necessarily appendant to the estate, as in the case of an estate having a sea-wall for its frontage, where if a person took it without notice of the obligation to repair, the inference would be irresistible that it was incumbent on the owner for the time being to repair the sea-wall to the extent of his frontage for the benefit, not of himself merely, but of all the owners of land in the same level. We think that no stronger case can be conceived than this. The principle, in the opinion of Lord Westbury, C., and of the Master of the Rolls, was carried too far in *Pyer* v. *Carter*, 1 H. & N. 916, 5 W. R. 371. The Court of Exchequer held, in that case, that even in the absence of any reservation in the deed of grant the right to drain is reserved by implication of law over the part granted in favour of the part maintained, inasmuch as the grantee must have known that the water from the house must drain somewhere, and was therefore put upon enquiry. Now, an implication of this kind, in our humble judgment, is by no means so strong as the implication in the former case. Drains are under ground, and do not meet the eye of an intending purchaser in the same way as a sea-wall. And it is by no means a necessity that a house should be drained in any particular direction, or should be drained otherwise than into a cesspool situate on the premises; and the exact state of things could perhaps only be asceatained after a more careful inquiry than an intending purchaser is usually able to make. But when a piece of land is below the level of the sea, which is excluded from it by a sea-wall, the truth of the matter is obvious to the capacity. Lord Westbury, C., evidently thought that the doctrine of inferential notice had been carried too far when he so pointedly disapproved of *Pyer* v. *Carter*, in his judgment in *Suffield* v. *Brown*, 12 W. R. 356. We hope we shall not be thought presumptuous if we submit that *Suffield* v. *Brown* goes a little too far upon the other side of the true principle of equity. It will be seen, if we mistake not, that Lord Westbury

held that if a grantor intends to reserve any right possessed by him over the property granted, it is his duty to reserve it expressly in the grant, rather than to limit and cut down the operation of a plain grant by the fiction of an implied reservation. Where the existence of the right is so obvious that it is inconceivable that its existence should be disputed, the omission to reserve it will sometimes occur, and when this is so it must surely be unreasonable that the vendor should lose a right which he would doubtless have reserved had its existence been less obvious. The doctrine of the American Courts on this subject will be found in Mr. Kerr's recent work on injunctions, p. 365, from which we make the following extract:—"The doctrine of *Pyer* v. *Carter* was also disapproved of by the Supreme Court of Massachusetts in *Carbrey* v. *Willis*, 7 Allen (Amer.), 354, and the true rule was there laid down to be in accordance with an earlier decision of the same Court in *Johnson* v. *Jordan*, 2 Metc. (Amer.), 234—that if the owner of two adjoining messuages or lots of land sells one of them, retaining the other, no reservation of the right of drain will be taken as reserved by implication of law over the part granted in favour of the part retained, unless it is *de facto* annexed, and is in use at the time of the grant, and is necessary to the enjoyment of the part retained. The principle laid down in *Pyer* v. *Carter* may be stated thus:—that if an easement be apparent and continuous, no express reservation is necessary in a grant of the servient by the owner of the dominant tenement. That the easement should be apparent and continuous is treated by Lord Chelmsford, C., in *Crossley & Sons* v. *Lightowler*, L. R. 2 Ch. 478, as an immaterial circumstance: for *non constat* that the vendor does not intend to relinquish it unless he shows the contrary by reserving it. His Lordship grounded his decision on the rule that the law will not reserve anything out of a grant in favour of the grantor except in cases of necessity, which we take to be the case here. It seems that *Crossley & Sons* v. *Lightowler* was not referred to in argument. Had it been so we think that Lord Romilly would have considered it to express his own views of the law.

The case was in part argued upon the theory that the covenant of 1792 bound the land in the hands of the purchaser, being a covenant running with the land according to the first resolution in *Spencer's case*. And the Court was of opinion that the covenant which we have stated above was a covenant which extended to a thing in *esse*, the thing to be done being annexed and appurtenant to the land conveyed, which goes with the land and binds the assignee, although he be not mentioned in express terms; and even if this were not so, the Court was of opinion that it being manifest to the defendant when he bought his land that it was protected by the sea-wall in question, he was bound to enquire by whom that sea wall was maintained, and must, therefore, be held bound to have had notice of all that he would have learned had he made such inquiry; and that, as by so inquiring he would have ascertained the existence of the covenant, he could not then repudiate that covenant, or refuse to perform the conditlon subject to which, virtually, he took the land. Whether or not the other parties to the covenant could enforce it at law, there is a class of cases of which *Tulk* v. *Moxhay*, 2 Ph. 774, is one, which establishes the principle that the right in equity to enforce performance of such a covenant does not depend upon whether the right can be enforced at law. The Court, in *Tulk* v. *Moxhay*, held that a covenant between vendor and purchaser on the sale of land that the purchaser and his assigns shall use, or abstain from using, the land in a particular way, will be enforced in equity against all subsequent purchasers with notice, independently of the question whether it be one which runs with the land. The recent case of *Wilson* v. *Hart*, 14 W. R. 748, L. R. 1 Ch. 463, where the covenant was that the building was not to be used as a beershop, may be referred to on this point.—*Solicitors' Journal.*

THE ACTION FOR BREACH OF PROMISE OF MARRIAGE.

Baron Bramwell has ventured to talk common sense to a jury on this subject, and we rather hope than expect that other Judges will follow his example. He has told a jury that when a man and a woman have found out that they could not agree, it was better for them to break the engagement than to keep it. This seems sufficiently obvious when put into print; nevertheless, it has rarely found expression in a Nisi Prius Court, Judge and jury and counsel usually, as by one consent, laying aside their good sense, and talking and acting upon sentimentalities which they would be as unanimously ashamed to acknowledge upon any other occasion. From the opening of the counsel for the plaintiff to the final verdict, it is always assumed that the woman is an injured innocent, the man a sneaking coward, and heavy *damages* are awarded to the plaintiff, for what?—for having escaped from a bad husband and a life of misery.

We were surprised to see our usually sensible and sober-minded contemporary, the *Daily News*, yielding to the sentimental mood, and commending this action as an alternative for the personal chastisement which irate fathers and brothers would otherwise inflict upon the offender. In putting forward this argument, the *News* falls into the fallacy that lurks at the bottom of all the arguments that are urged by the supporters of this action—that it is a protection to good and modest women. Now that is precisely what it is *not*. The really injured woman never seeks pecuniary damages for wounded affections. The very fact that a woman will go into a court and permit her heart's secrets to be exposed to public gaze, and her love passages made the jest of counsel and the provocation to "shouts

of laughter," is of itself proof that she is not a woman whom any man ought to be compelled to marry. The action, in fact, answers itself. It should be said, "Your presence here is proof positive that you had no true womanly feelings to be outraged, and therefore you have incurred no damage."

There is, of course, one shape which this action may assume that would entitle the plaintiff to compensation: where advantage has been taken of the engagement for the purpose of seduction. But even in such cases the wrong is the seduction, and that is the proper form of the action, the engagement being an aggravation of the damages.

As a matter of fact, nine-tenths of the actions for breach of promise of marriage are purely mercenary. The woman has first deliberately set a trap for the man, and caught him, as designing mothers and clever daughters know so well how; and it is a matter of calculation that the victim must be bled somehow. If he marries, his whole fortune is captured; if he recovers his senses and escapes, then a good slice of it: this latter is the event most desired, and (not unfrequently) the woman would herself have broken it off, if the man had proved more faithful than she had hoped.

How juries having a knowledge of the world can award the outrageous damages they so often give in cases where forty shillings would exceed the plaintiff's deserts, is one of those mysteries of the jury-box which the lawyers, who are excluded from that sage tribunal, are wholly unable to explain. Perhaps if the hint we published recently from one of the briefless, that he and his brethren might do useful duty as special jurymen, should be hereafter adopted, we may hope to learn something of the manner in which jurymen argue and form their judgments and arrive at verdicts. As it is, we can only urge upon the counsel for the defence in these cases, to substitute for feeble jests an earnest appeal to the common sense of the jury, and upon the Judge to give it effect, after the manner of Baron Bramwell, and perhaps some of us may yet live to see a rational view of this action accepted and adopted by juries. —*Law Times.*

TELEGRAMS.

Vice-Chancellor Giffard has held in *Coupland* v. *Arrowsmith*, 18 L. T. Rep. N. S. 755 that a telegram is admissable in evidence as a letter, if it be properly authenticated. It was objected that, as an advertisement was inadmissible as not being under the signature or in the hand-writing of the party, so also should be a telegram, which is neither written nor signed by the sender. But it was answered that a telegram is a message by A. to B.; unlike an advertisement, which is a general notice, it differs from a letter only in this, that the sender writes it by the hand of the telegraph clerk, as he might write a letter by his secretary. But it must be authenticated, of course.

The question, therefore, arises, what is a sufficient authentication of a telegram?

To answer this, let us see what is required to be proved. It is that the message came from B. the alleged sender of it. The written instructions for messages are, we believe preserved at the telegraph offices. The first step will be to procure this document, and ascertain by whom it was written. If by B. himself, the production of it, with proof of handwriting, will suffice; but if written by another, that other must be found, and his authority, and so backward until it is traced to B. But if, as must frequently happen, it is impossible to ascertain whose hand wrote the message, or who brought it, there remain only two courses; either to call B. himself to prove it, and when in the box he is so for all purposes—or to connect him with the telegram by other evidence; as the recognition of its contents by answers and replies, or by acts done in pursuance of, or in connection with, it. Manifestly, a telegram could not be proved merely by its production; but then it may and ought to be proposed for admission by the other party, refusing which, he would be charged with the costs of proof.

If the telegram instruction paper cannot be found, its loss should be proved by the clerk at the office who had the custody of it, and has made search for it, and then secondary evidence of it may be given by the telegraph clerk by whom the message was transmitted, who must prove that the message delivered was that sent.

As telegrams come more into use, this question of their admissibility in evidence, and the manner of proving them, becomes more important; therefore we have invited attention to it in the hope that some ingenious reader may suggest some means by which evidence of so much value may be better preserved and proved that it can be by the present arrangements.—*Law Times.*

The connection between "cheap" and "nasty," from the legal point of view, was illustrated in a case, *Anthony* v. *Bentley and another*, at the Lambeth County Court on Wednesday. It appears that the defendants, a couple of spinster ladies, had a brother in the last stage of consumption. He was possessed of a little property, including a lease or two, which he wished to make over in some way or other, he did not know how, to his sisters. A solicitor to whom he applied advised him to make a will in their favour. On being asked what the costs would be, the solicitor said, about £4. The brother thought that a large sum and declined to do anything then; he would think about it. He thought a deed of gift would be done cheaper; it would save probate and other duties, and charges, which he had a great dislike to paying. After a time he sent for a neighbour, who found him *in extremis*. He wished then to make the long delayed disposition of his property. The

neighbour knew the plaintiff as a man often about county courts, and asked him if he knew a lawyer who could be brought immediately to the dying man to make a deed of gift for a trifling sum. The plaintiff introduced some person not to the profession, who drew a deed of gift, which was only just executed when the man died. The plaintiff charged £2 for what he and his friend had done, and the present action was to recover £1 of that money still alleged to be due. It came out in evidence that the deed was so unsatisfactorily drawn that neither head nor tail could be made of it. Three counsel had been consulted, two of whom gave opinions in favour of the validity of the deed, and the third against it. Already the precious document had caused expense to the defendants to the amount of nearly £40, and was likely to cost still more. The judgment was, of course, for the defendants with costs, on the ground of the incompetence of the plaintiff and his friend to do what they had undertaken.—*Solicitors' Journal.*

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIPE.

NOTES OF NEW DECISIONS AND LEADING CASES.

Railways and Railway Cos.—Accident—Negligence—Evidence.—The plaintiff sued as administrator of his wife, charging in his declaration that by and through the carelessness and negligence of defendants, and for want of sufficient fences, &c., the locomotive and train of defendants were driven against a carriage in which plaintiff's wife was driving along the highway, from the effects of which collision she died.

It appeared that plaintiff with his wife and child and a couple of others, was returning from a pic-nic party, in a cab, along the highway, which at a certain place crossed defendants' line of railway. This crossing was not fenced, as required by law, and at the same time in question a very long excursion train, no mention of which was contained in the Company's time-tables, was approaching at a rapid rate and came in collision with the cab, injuring plaintiff, his wife and child and ultimately causing the death of his wife. The evidence shewed that the cab was being driven at a slow pace and up an inclined plane towards the railway track, which was considerably elevated above the highway: that though there were some slight obstructions in the way, the train could be seen for some five hundred yards from the crossing, but that neither the driver nor any of the party was looking out for the approach of trains, and in fact that the former did not see the train in question until his horses feet were upon the track, when it was only some seventy yards distant from him; whereas a witness, who was one of plaintiff's party, stated that had he (cabman) been on the alert, they would all have been saved. It was further shewn that the driver knew the locality, having in fact driven plaintiff and party over it on their way to the pic-nic, and the preponderance of evidence was to the effect that the railway whistle was heard at a distance of three or four hundred yards from the crossing. The jury having on this evidence found for the plaintiff,

Held, that he was not entitled to recover; for though the not fencing of the crossing by defendants was negligence on their part and a disregard in that respect of their statutory duty, still it did not constitute such negligence *per se* that plaintiff must recover against them, however culpable he may himself have been, and though such want of fencing was not the cause or occasion of the accident: that to justify a recovery for such a cause, it must appear that the damage to plaintiff resulted from the omission to fence as the proximate, if not the direct, cause of the accident, which the evidence did not warrant in this case, but rather that such damage arose from his own gross negligence, or that of his driver, in not keeping a proper look-out for the train, which, with this precaution, it clearly appeared, could easily have been avoided.

In an action by plaintiff against the same defendants, in his own individual right, for injury sustained from the same accident, the Judge at the trial at first directed the jury that, assuming defandants to have been guilty of neglect in not fencing, they must determine whether plaintiff did or did not so far contribute to the accident by his own negligence or want of ordinary care and caution, that but for such negligence or want of care, the accident would not have happened:

Held, that this direction was right. But afterwards, at the request of plaintiff's counsel, who did not wish the question of contributory negligence to be left to the jury, the Judge, as he took the same view, did not charge them to find specially on the question of negligence generally, as applicable to the state of the road, when defendant's counsel objected; so that in the confusion which arose the question of community of default being understood to be withdrawn from the jury, they were led to believe that because defendants were in default, plaintiff must recover: on this ground therefore, the Court, Richards, C. J., *dissentiente*, granted a new trial without costs.—*Winckler* (*Administrator*) v. *The Great Western Railway*, C. P. H. T. 31 Vic., 250.

Sale of goods by Sheriff—Statute of Frauds—Memorandum in writing—Delivery.—A sale of goods by a Sheriff or his bailiff under execution is within the 17th section of the

Statute of Frauds, and either of them may sign for the purchaser the memorandum in writing in the same manner as an auctioneer or his clerk.

The entry of defendant's agent as the purchaser is sufficient, if the defendant afterwards acknowledge the agent's authority, as was done in this case.

In this case a person, requested by the bailiff to act as his clerk, noted in pencil on the back of a letter the name of each purchaser, the article sold, and the amount bid; and after the sale was over, but on the same day, the bailiff made out a more extended memorandum, headed "List of goods sold and by whom bought, 17th October, 1866," and containing the article, the purchaser's name and the price. This he signed "D. Howard, bailiff:"

Held, insufficient, for it did not appear who the seller was, or terms of sale, and the second memorandum could not bind, for the bailiff's authority continued only during the sale.

Defendant after the sale wrote to the Deputy Sheriff speaking of the engine, one of the articles claimed for, as being on his lot, which belonged to him, and having been bid in for him by Mr. T. (the agent who had purchased at the sale), and saying that he had heard the Sheriff's fees had not been paid and that he intended to sell again.

Held, insufficient, for it did not shew the terms of sale, and it was not evidence of a delivery to satisfy the Statute, which the other evidence tended strongly to disprove.—*Flintoft* v. *Elmore*, C. P. H. T. 31 Vic., 274.

TENANT TO REPAIR—LESSEE AGAINST LESSOR—CONTINUING COVENANT—MEASURE OF DAMAGES.—In an action by lessor against lessee for breach of a covenant to repair fences, on or before a certain day. *Held*, 1st. That such a covenant is not a continuing covenant, and damages must therefore be assessed once for all. 2nd. The proper measure of damages in such a case is the amount by which the beneficial occupation of the premises during the term is lessened.

Whether the cost of repairing would also be a correct method of estimating the damages must depend upon the circumstances of each case.

Semble, if the cost of repairing would be so large as to be out of proportion to the tenant's interest in the premises, he would not be justified in repairing and treating the costs of such repair as his damages.—*Cole* v. *Buckle*, C. P. H. T. 31 Vic., 286.

ACTION ON BILLS OF EXCHANGE—MORTGAGE AS COLLATERAL SECURITY—MERGER—PLEADING.—To an action on bills of exchange defendant pleaded that E., another party to the bills, had given plaintiffs a mortgage containing a covenant to pay the amount of the bills, and that the remedy on the bills was merged in the higher security.

Held, that the mortgage being expressed to have been given, as "further security," and there being a provision that it should stand as security for any renewal of the bills, the mortgage was collateral and did not merge the remedy on the simple contract.

Held, also, that the remedy on the specialty and on the simple contract, not being *co-extensive* or between the same parties, the doctrine of merger did not apply.—*Gore Bank* v. *McWhirter*, C. P. H. T. 31 Vic., 293.

CARRIAGE OF GOODS—WANT OF NOTICE OF NECESSITY FOR PROMPT DELIVERY—BREACH OF CONTRACT—MEASURE OF DAMAGES.—In an action by plaintiffs against defendants for damages occasioned by non-delivery of a certain article of machinery contracted to be delivered for plaintiffs, it appeared that no notice had been given at the time of the contract to the defendants of the necessity for a prompt delivery of the machinery, nor of the use it was to be put to:

Held, on the authority of *Cory* v. *The Thames Iron Works Co.*, L, R, 3 Q. B. 181, re-affirming *Hadley* v. *Baxendale*, 9 Ex. 341, that the plaintiffs could only recover the value of the missing article, and were not entitled to the loss of profits arising from its non-delivery, or the wages of certain workmen employed upon the building in which the machinery was to be used.—*The Ruthven Woollen Manufacturing Company* v. *The Great Western Railway Company*, C.P.H.T. 41 Vic. 316.

LANDLORD AND TENANT—ASSIGNMENT OF LEASE UNDER SEAL—TAXES—DISTRESS—BEASTS OF THE PLOUGH—ACQUIESCENCE OF TENANT.—The defendant owner in fee, conveyed to E. D. and took back mortgage. E. D. then leased to plaintiff, and afterwards by writing, without deed, assigned lease to defendant. A dispute having arisen whether tenant or landlord should pay taxes, the lease being silent as to this, defendant distrained and plaintiff replevied. The Judge left it to the jury to say whether the plaintiff had attorned to defendant, and they found in the negative. On motion for a new trial, *Held*, that there could be no assignment without deed, and as the question of tenancy was raised by the pleadings, plaintiff must succeed, for he was not tenant by assignment, nor, as the jury had found, by attornment.

Held, also, that the landlord should pay the taxes, as the lease contained no provision as to them; and that as to the issue raised respecting beasts of the plough distrained, the tenant had acquiesced.—*Dove* v. *Dove*, C. P. H. T. 424.

ADMINISTRATION.—A. was appointed executor, and "in case of his absence on foreign duty," B. was made executrix. A. was in England at the death of testator, but was absent on foreign service in the royal navy when the probate was applied for, and was likely to be absent for some years. Probate was granted to B.—*In the Goods of Langford*, Law Rep. 1 P. & D. 458.

APPROPRIATION OF PAYMENTS. — New trustees proved against the estate of a defaulting trustee for the aggregate amount of the principal trust fund and arrears of interest, but recovered a sum less than the principal. *Held*, that said sum must be treated as capital. But one having a life estate therein was entitled to the future interest of the same.—*In re Grabowski's Settlement*, Law Rep. 6 Eq. 12.

BILLS AND NOTES.— In an action against the indorser, "Pay J. S., or order, value in account with H. C. D.;" *held*, not a restrictive indorsement.—*Buckley* v. *Jackson*, Law Rep. 3 Exch. 135.

CAUSE OF ACTION.—A contract was made abroad, but broken in England. *Held*, that the "cause of action" did not arise within the jurisdiction within the meaning of the Common Law Procedure Act, 1852, §§ 18, 19.—*Allhusen* v. *Malgarejo*, Law Rep. 3 Q. B. 340.

CONTRACT — ACCIDENT. — Defendant agreed to load plaintiff's ship with coal in regular turn, "except in cases of riots, strikes, or any other accidents beyond his control," which might prevent a delay in loading. A snow-storm prevented the loading. *Held*, not an "accident" within the above exception.—*Fenwick* v. *Schmalz*, Law Rep. 3 C. P. 313.

COLLISION.—In cross suits between a sailing vessel and a steamer, the Court of Admiralty held both vessels to blame, and decreed the damages to be equally divided between them. As the sailing vessel was sunk, this was, in effect, a severe judgment against the steamer, which appealed. Nothing appeared in the sailing vessel's case why, if she acted wrongly, the steamer should have been held to have been in the wrong also, and, on the evidence, the steamer seemed to have acted rightly. The decree was reversed. That the sailing vessel did not make out her case was *res judicata*, she not having appealed.—*Inman* v. *Rack, The City of Antwerp*, and *The Friedrich*, Law Rep. 2 P. C. 25.

CUSTODY OF CHILDREN.—The court gave the custody of two infant children—the one being three or four years, the other eighteen months old—to the mother, pending a suit for dissolution of marriage by the father, on the ground that her health was suffering from being deprived of their society, and that they were living with a stranger, not the father.—*Barnes* v. *Barnes and Beaumont*, Law Rep. 1 P. & D. 463.

FACTOR — PLEDGING GOODS—AGENT. — By the Factors' Act, 5 & 6 Vict. c. 39, § 1, "Any agent who shall thereafter be intrusted with the possession of goods" may make a valid pledge of the same, although the pledgee know of the agency. A party, to whom the plaintiffs had sent wine for sale, pledged the same to the defendants after his authority had been revoked and the wine demanded of him by the plaintiffs, but wrongfully detained by him. The *bona fides* of the defendants was not questioned. *Held*, that the pledgor was not "an *agent*, nor *intrusted*, within the meaning of the act."—*Fuentes* v. *Montis*, Law Rep. 3 C. P. 268.

FALSE IMPRISONMENT.—Defendant, upon whose premises a felony had been committed, acting on information given him by his own coachman, the most material part of which was derived from R., a neighbor's coachman, gave the plaintiff into custody on the charge, without making any personal inquiry of R. The plaintiff was living openly in the neighborhood, and it was not suggested that he was likely to run away. In an action of false imprisonment, the judge instructed the jury, that, under the circumstances, there was no probable cause; and the verdict being for the plaintiff, the Court of Exchequer Chamber refused to disturb it.— *Perryman* v. *Lister* (Exch. Ch.), Law Rep. 3 Exch. 197.

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

ASSAULT.—The prisoner assaulted a constable in the execution of his duty. The constable went for aid, and after an hour returned with three others, but found the prisoner had locked himself up in his house. Fifteen minutes later the constables forced the door, entered, and arrested the prisoner, who wounded one of them in resisting the arrest. *Held*, that the arrest was illegal.—*The Queen* v. *Marsden*, Law Rep. 1 C. C. 131.

INSOLVENCY.—R., having a contract to supply meat to a lunatic asylum for six months from April 1, assigned it on that day to H., who delivered his own meat in R.'s name, without the knowledge of the asylum. R. became bankrupt, and his assignee claimed the sum then due for

meat as "goods and chattels" in the "possession, order, or disposition" of R. as reputed owner with the consent of H., the true owner, within the Bankrupt Act 12 & 13 Vict. c. 106, § 125. *Held*, that the debt passed to the assignee.

(Per WILLIS, J., *dissentiente*). The meat never having been in R.'s possession, the debt arising thence was not within his possession, order, or disposition.—*Cooke* v. *Heming*, Law Rep. 3 C. P. 334.

HIGHWAY — DEDICATION.—The defendant company, by the Railways Clauses Act, 1845, § 16, were empowered to divert ways, subject to the Lands Clauses Act. Section 84 of the latter prohibits entry upon lands to be permanently used for the purposes of the act, until the same had been paid for. *Held*, that the former section did not authorize the company to divert a public footpath on to land of which the company had not obtained the ownership. (Per Lord CAIRNS, L.J.) A highway is not an easement, but the dedication to the public of the occupation of the surface of the land for the purpose of passing and repassing; the public generally assuming the obligation of repairing it. This is a permanent user of the land, within sec. 84.—*Rangeley* v. *Midland Railway Co.*, Law Rep. 3 Ch. 306.

ONTARIO REPORTS.

COMMON PLEAS.

BELL v. MCLEAN.

Sale for taxes—Non-resident land—Taxes not due for five years—Deed by Sheriff's successor—C. S. U. C. ch. 55, sec. 97—27 & 28 Vic. ch. 28, sec. 43.

The collector's roll was delivered to him on 26th August, 1852, and the Treasurer's warrant under which the Sheriff sold the land, which was non-resident land, for unpaid taxes, was issued on 11th August, 1857:

Held, that, as under sec. 42 of the Assessment Act of 1853 (C. S. U. C. ch. 55, sec. 97), the taxes could not be considered due until one month after the Collector had received his roll, the taxes for that year were not due at the time the roll was delivered to him, and that therefore no portion being due for five years on 11th August, 1857, the sale was void.

Semble, per A. Wilson, J., that the taxes of the preceding year, for the purposes of sale for arrears, are not to be considered as in arrear till after the expiration of the year in they are imposed.

Semble, that a deed made by the successor of the Sheriff who made the sale for taxes, is good under 27 & 28 Vic. ch. 28, sec. 43.

[C. P. H. T. 31 Vic., 1868.]

Ejectment.

The titles of both parties were admitted.

The defeudant claimed under a tax title, and it was admitted he was entitled to recover if the tax title was good in law.

The plaintiff took the following exceptions to it:

1. Taxes were not in arrear for five years when the warrant issued to sell the land.

2. The warrant described the land to be sold as *patented* without specifying for what kind of estate.

3. The notices of sale described the land in same manner.

4. Publication not made a sufficient time. The first advertisement was in the *Gazette* on the 22nd of August, 1857, and the last on the 14th of November, 1857. Statute of 1853, sec. 57 (C. S. U. C. ch. 55, sec. 128) required three months' publication. The first advertisement in the local paper [a weekly] was on the 26th of August, 1857, and the last on the 25th November, 1857.

5. The notices advertised a sale for the 1st December, and no adjournment appeared to have taken place, and the sale was made, not on the 1st, but the 3rd of December.

6. The Sheriff's deed did not describe the land by boundaries, but simply as the west-half of the lot.

7. The whole west-half should have been assessed together, as three acres of it had been sold separately from it.

8. The land was sold by Sheriff Moodie, and the deed should have been made by him, whereas it was made by his successor, Sheriff Taylor, who had no authority to make it.

9 The sale was in 1857, yet no deed was given till 1865, and no registration of such sale was made, while the plaintiff claimed by a connected registered title traceable from the Crown, one of which registrations was since 1857, that is, on the 27th of February, 1865, while the Sheriff's deed was not made till the 14th, and registered on the 15th, of March, 1865; and the plaintiff had no notice of such Sheriff's deed.

The verdict was entered in the plaintiff's favour with leave to the defendant to move to enter the verdict for him, in case the Court should be of opinion that the objections so taken were not entitled to prevail.

In Easter Term last, *Wallbridge*, Q.C., obtained a rule to set aside the verdict, and enter a nonsuit for the defendant, because the objections taken at the trial were not valid objections to the defendant's title.

Bell, Q.C. (of Belleville), shewed cause:—

As to the first objection, the evidence of the County Treasurer was, that the Collector's roll for Township of Elzevir, in which the land lies, was not completed and sent to him before the 26th of August, 1852, while the warrant to sell was made and delivered to the Sheriff on the 11th of August, 1857, several days less than five years from the time the Collector's roll was complete.

By the 13 & 14 Vic. ch. 67, sec. 10, the assessments for a year are not to be held as due, for the purposes of a sale of land, until the 31st December of that year, and perhaps not until the Collector's roll is returned, if after that day. Here the roll never was returned. Under sec. 33 the Collector must first demand payment before he can enforce payment. By sec. 45 the Treasurer was required to make a list of lands on which taxes remained due at the time the Collector made his return. By sec. 41 the Collector's roll was returnable on the 14th of December. The taxes, so as to charge lands by way of sale, were not due till that time.

By the Act of 1853, sec. 55, the sale could only be made "whenever a portion of the tax on any land has been due for five years." The Treasurer is then to issue his warrant for that purpose.

The warrant issued before any portion of the taxes had been due for five years: the sale was

therefore void: *Corbett* v. *Taylor*, 23 U. C. 454; *Ford* v *Proudfoot*, 9 Grant, 479; *Kelly* v. *Macklem*, 14 Grant, 28.

As to the eighth objection, he cited *Riley* v. *The Niagara District Bank*, 26 U. C. 21; *McKee* v *Woodruff*, 13 C. P. 583; 27 & 28 Vic. ch. 28, sec. 43; and as to the ninth objection, *Bruyere* v. *Knox*. 8 C. P. 520.

Wallbridge, Q C., contra. The taxes for 1852 must have been due before the end of that year, and before the return of the Collector's roll, because he could enforce payment of them before that time.

The taxes for a year are imposed for that year, beginning on the 1st of January, and ending on the 31st of December, being the taxes for that year; they are the taxes for the whole of it, and may be claimed as due for the whole year.

As to the eighth objection, the Statute speaks of the Sheriff making the deed; that is, the person who fills the office of Sheriff at the time when the deed is made. The individual himself filling that office has no title, personally, in the land to convey: the transfer is just as well, and better in most respects, made by the official for the time being who is Sheriff when the deed is executed, than if made by a person not Sheriff in fact, though he happened to be so when the sale was made. A person who is *not* Sheriff cannot make the deed at all: if made by any one, it must be made by the person who is Sheriff.

As to the ninth objection, he referred to *Burnham* v. *Daly*, 11 U. C. 211; 29 Vic. ch. 24, sec. 57, *Mitchell* v. *Greenwood*, 3 C. P. 465; *Doe d. Spafford* v. *Brown*, 3 O. S. 90.

As to the seventh objection, the three acres were not in fact separated from the west-half lot till October, 1854, so that the whole half lot was rightly assessed for 1852, 1853, and 1854, which are the only years for which the sale was made.

A. WILSON, J., delivered the judgment of the Court.

I do not consider the second, third, fourth, fifth and sixth objections, nor, I may add, the seventh The second and third objections are answered by the case of *Brooke* v. *Campbell* (12 Grant, 527). The fourth and fifth objections have been disposed of already in the case of *Cotter* v. *Sutherland*.

The sixth objection is not good, because the west-half lot is a good and full description of itself; and the seventh objection has been removed altogether.

The objections to be considered are those upon which the case has been argued.

The case of *Corbett* v *Taylor* (23 U. C. 454) shews that the taxes imposed for a year are not to be considered as due from the first of that year; that they cannot be due before they are imposed.

The deed in that case was made on the 13th of April, 1863, and the by-law fixing the rate was passed on the 21st of July of that year. The question was whether the defendant's covenant, that no taxes were in arrear, was broken by the subsequent imposition of taxes in that same year. It was not necessary to determine that the taxes for that year became due by the mere imposition of them; or that the computation of time from which lands became liable to be sold for arrears of taxes is to be reeckoned from the time the taxes are imposed.

In *Ford* v. *Proudfoot* (9 Grant, 479) Spragge, V. C., was of opinion no taxes could be due before they had been imposed by the Council, and that the time for selling for arrears must begin to count from that time at the soonest. He does not say that this is so: it was only necessary for him to determine that it could not be from a time so early in the year as the 25th of February. His opinion was further stated as follows: "It is clear from the sections to which I have referred, that no taxes for a year or part of a year are made payable until the Collector's roll is placed in the Collector's hands, because, until that is done, there is no hand to receive them."

In *Kelly* v. *Macklem* (14 Grant, 29) it was determined there must be the full period of arrear of taxes due, for which lands can be sold, before the warrant to sell issues.

The time in the present case is more circumscribed than in any of those referred to; for here, no doubt, the taxes had been imposed by the Council more than five years before the warrant to sell issued, though that fact was not proved affirmatively, for the parties rested on the fact of the Collector's roll not having been completed and delivered to the Collector until the 26th of August, 1852, from which it appeared the warrant to sell was issued within the five years, and therefore too soon, according to the Act of 1853, under which the sale was made.

The passage quoted from the judgment of the learned Vice Chancellor, in *Ford* v. *Proudfoot*, shews that, in his opinion, the five years should not begin to count before the delivery of the roll to the Collector, for until then there is no hand to receive them.

In *Corbett* v. *Taylor*, Draper, C. J., said: "We take arrears to mean something which is behind in payment, or which remains unpaid; as, for instance, arrears of rent, meaning rent not paid at the time agreed upon by the tenant: it implies a duty nad a default."

The section of the Statute, which was in force and affected the sale, declared "that the taxes levied or assessed for any year shall in all cases be considered and taken to have been imposed for the then current year, commencing with the first day of January, and ending with the thirty-first day of December, unless otherwise expressly provided for by the enactment or by-law under which the same are imposed, or authorized or directed to be levied."

This provision has been continued down to the present time; it was first enacted in 1850, ch. 67, sec. 10.

A person who pays the taxes imposed on him for a particular year before the end of that year, pays the amount in advance: he pays it up to a day which has not yet arrived: the time for its payment has gone by, but the time for its complete accrual has still to come.

In one sense the tax may be said to be due when it is imposed by the passage of a by-law for that purpose; but it cannot strictly be said to be due until the Collector has got his roll; nor even then, for he cannot distrain or take any compulsory proceeding to enforce payment until he has called at least once on the party taxed, and demanded payment, or transmitted a statement by post demanding payment, if the party be not resident within the municipality. .

If payment be refused or neglected for fourteen days after such demand, the Collector may enforce payment. Until this proceeding has been adopted and the Collector is in a position to enforce payment, how can it be said the taxes are due?

Why cannot the Collector enforce payment before demand, or before the expiration of fourteen days from demand? The answer is, because the taxes are not due; they are not in arrear.

And as to taxes against lands of non-residents [the land in question having been so assessed], the Collector by sec. 42 of the Act of 1853 could not proceed by distress against any goods found thereon till after one month from the date of the delivery of the roll to him: until the lapse of that month the taxes therefore should not be considered as due and in arrear.

By sec. 46 the Collector was to return his roll to the Treasurer of the township, unless the time were extended.

By sec. 47 the Collector was also to deliver to the Treasurer of the township an account of all taxes remaining due on the roll.

By sec. 49 the Treasurer of the township was, within fourteen days after the time for the return of the Collector's roll, to furnish to the Treasurer of the county a correct copy of the roll, so far as the same related to all lands in the municipality, distinguishing the rates with which they may be chargeable, &c.

By sec. 50, after the roll has been returned to the Township Treasurer, no more money shall be received by any officer of the municipality to which the roll relates; but the collection of such arrears shall belong to the Treasurer of the county alone. Now, if the roll were returned by the Collector to the Township Treasurer on the 14th of December, the person liable for non-resident land tax might pay the County Treasurer on the 15th of December, and if he did, he would be paying his taxes in advance for the remaining period of that year. If so, the same rule will hold till the end of that year, and then his taxes would not be in arrear till after the expiration of that year, for no demand would have been made on him to have made them due at an earlier day.

By sec. 51 the County Treasurer is then to enter the taxes unpaid on lands in a book, and on the first of May in each year is to balance his books, by entering against each parcel of land the arrears due at the last settlement "and the taxes of the preceding year which may remain unpaid; and he shall ascertain and enter therein the total amount of arrears, if any, chargeable on the land at that date."

The first intimation the County Treasurer has that there are any arrears of taxes due on land in any township within his county is by the copy of the Collector's roll sent to him by the Township Treasurer.

He is alone to receive payment of such arrears, and he is to enter in a book, on the first of May after getting the roll, the lands on which the taxes *of the preceding year* are unpaid; and then by sec. 55, whenever a portion of the tax on any land has been due for five years, he is to issue his warrant to levy on the lands therefor.

I incline to think very strongly that the taxes of the preceding year, for the purposes of sale for arrears, are not to be considered as in arrear till after the expiry of the year in which they were imposed.

It is only after that time the County Treasurer has anything to do with them: the fiscal year is clearly correspondent with the calendar year in this respect, and the *preceding year's* taxes are those unpaid at the end of the year.

By fixing this definite period the computation of time is made easy for all parties, and there is nothing inconsistent in holding that taxes may be due, to enable a distress or suit to be maintained for them at one period, and that they may be considered as due at another period for the purposes of a sale of the land itself

The Treasurer's books will certainly not show five years' arrears, if any warrant for sale be issued by him, unless the time be computed from the first of the year after the preceding year's taxes have been imposed.

It is not absolutely necessary to go so far as this: it is sufficient for this case that at the time the Collector got his roll, on the 26th of August, 1852, the taxes for that year against the non-resident land were not due, and if not due then, no portion of the tax on this land was due for five years on the 11th of August, 1857, when the County Treasurer issued his warrant to sell the land.

The plaintiff is entitled to succeed on the first objection.

As to the eighth objection, the deed made to the defendant by Sheriff Taylor, who succeeded the Sheriff who made the sale, may be good under the 27 & 28 Vic. ch. 28, sec. 43: the Statute seems expressly to authorize it.

And as to the ninth objection, it will be better not to express an opinion upon it: the 29 Vic. ch. 24, sec. 57, seems to give a sanction to the due registration of the deed; but as the case is disposed of on the first ground, there is no object in discussing the last ground. See also Statutes of Ontario, ch. 20, secs. 58–59. The rule will be discharged.

Rule discharged.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-law, Reporter to the Court.)*

CARSLEY V. FISKEN ET AL.

Division Courts—Jurisdiction—Prohibition.

The defendants at Toronto agreed to sell to plaintiff at Kingston certain barrels of oil. Upon the the oil being delivered at Kingston, it was found to run short, and an action was brought for the shortage in the Division Court at Kingston. It was objected by defendants that the action could not be brought in Kingston, but the Judge overruled the objection, whereupon a prohibition was asked for, and it was

Held, that the action should have been brought where the defendants resided.

[Chambers, July 21, 1868.]

This was an application for a writ of prohibition to prevent the County Judge of Frontenac from further proceeding in an action in the first Division Court of that County, between the above parties, on the ground that said Judge had no jurisdiction to hear the case.

The facts of the case were that the defendants, who resided and carried on business at Toronto, offered by letter written at Toronto, to sell to the plaintiff, who resided and carried on

business at Kingston, a quantity of coal oil at a certain price. The plaintiff at Kingston accepted the offer of the defendants by telegraph to them at Toronto, and they thereupon shipped the oil to him at Kingston. Upon its arrival, however, the plaintiff found, as he alleged, that the quantity of oil stated to have been contained in the barrels ran short, owing, as was supposed, to leakage, which it was sworn must have taken place before it reached Kingston. The plaintiff then sued defendants in the Division Court at Kingston for the shortage.

It was objected at the trial that the action could not be brought at Kingston, on the ground that the cause of action did not arise there within the meaning of the statute, and that it could therefore only properly be brought where the defendants resided, under the further provision of the statute.

The learned judge overruled the objection, and gave judgment for the plaintiff for the full amount of the claim.

The defendants then applied for a prohibition. *McKenzie*, Q C., shewed cause

The following cases were cited: *Watt* v. *VanEvery*, 23 U. C. Q B. 196; *Kemp* v. *Owen*, 14 U. C. C. P. 432. 10 U. C. L. J. 269; *Aris* v. *Orchard*, 6 H. & N. 159.

MORRISON, J.—In the case of the Judge of the County Court of Brant, in *Watt* v. *VanEvery*, the Chief Justice of Upper Canada, in giving judgment, held that the cause of action within the 71st section of the Division Court Act, is not the contract only, but the contract and breach for which the plaintiff claims damages. The sale of the oil in the present case took place where the defendants reside, at Toronto, to be delivered to the plaintiff at Kingston, and the breach is that the full quantity of oil was not delivered to the plaintiff at Kingston, the barrels being short of measure. On the authority of the cases cited, the cause of action arose partly at Toronto and partly at Kingston, and the plaintiff must therefore sue the defendants in the Division Court of the division in which they reside, viz. at Toronto.

The rule will go for the prohibition, but under the circumstances detailed in the affidavits there will be no costs.

Prohibition granted.

THE QUEEN v. PATRICK BOYLE.

31 *Vic. cap.* 16—*Warrant under—29, 30 V. c. 51, sec. 357—31 V. (Ont.) c. 30, sec. 38—When alderman qualified as J. P.—Habeas Corpus—Return to.*

Held, 1. That under the Municipal Acts an alderman is not *ex officio* legally authorized to act as a J. P. until he has taken the oath of qualification required for such.

2. That a warrant of commitment under 31 Vic. c. 16, signed by one qualified J. P. and by an alderman who has not taken the necessary oath, is invalid to uphold the detention of a prisoner confined under it, though it might be a justification to a person acting under it, on an action against him.

3. That the mere fact of the warrant having been countersigned under the statute by the Clerk of the Privy Council does not withdraw the case from the jurisdiction of a Judge on a *habeas corpus*.

4. That the prisoner may contradict the return to the writ of *habeas corpus* by showing that one of the persons who signed the warrant was not a legally qualified J. P.

[Chambers, July 27, 1868.]

The prisoner, Patrick Boyle, was committed to the Gaol of the City of Toronto on the 4th May last, under the provisions of 31 Vic, cap. 16, on a charge of being a member of a treasonable society, called the Fenian Brotherhood.

An order was obtained on behalf of the prisoner from Mr. Justice Adam Wilson, upon which a writ of *habeas corpus* was issued, by virtue of which the Gaoler, on the 22nd July, brought up the prisoner, and returned to the writ that the prisoner was detained by virtue of a warrant of commitment of George D'Arcy Boulton and Geo. McMicken, Esqrs., two of Her Majesty's Justices of the Peace in and for the County of the City of Toronto, and which warrant was to the writ annexed.

The warrant, as stated on its face, was issued under the authority of the Act 31 Vic. chap. 16, and was in the following words:—

"To all or any of the Constables, &c.

"Whereas Patrick Boyle was this day charged before us, two of Her Majesty's Justices of the Peace in and for the County of the City of Toronto, on the oath of Charles Follis, for that he, the said Patrick Boyle, is a member of and hath joined a certain unlawful, illegal and treasonable association, in the said City of Toronto, called the Hibernian Benevolent Society, which Society is connected with and is part of an association in the said City of Toronto by the name of the Fenian Brotherhood; the said association being unlawfully composed of and connected with certain other lawless persons, citizens of the United States of America, being a foreign State, at peace with Her Majesty, for the purpose of making hostile incursions into Canada, and with the intent of levying war against her said Majesty, the Queen, therein, and that he, the said Patrick Boyle, hath joined himself to divers persons who have entered Canada with design and intent to commit felony within the same, and hath been guilty of treasonable practices in the city of Toronto, in said Province, contrary to the laws of the said Province and Dominion, and against the peace of our said Lady the Queen, her Crown and dignity:

"These are, therefore, to command you, the said constables, &c., to take the said Patrick Boyle, and him safely convey to the common gaol of the county of the city of Toronto, and there deliver him to the keeper thereof, together with this precept.

"And we hereby command you, the said Keeper of the said common gaol, to receive the said Patrick Boyle into your custody, in the said common gaol, and there safely keep him until he shall thence be delivered by due course of law; he being committed by us, as aforesaid, under and by virtue of a certain Act of the Legislature of the Dominion of Canada, known as "An Act to authorize the apprehension of such persons as shall be suspected of committing acts of hostility or conspiracy against her Majesty's person or Government."

"Given under our hands and seals, this fourth day of May, A. D., 1868, at the city of Toronto, aforesaid.

"(Signed),

"G. D'ARCY BOULTON. [L. S.]

"G. MCMICKEN. J. P." [L. S.]

The prisoner denied, on affidavit, that he was or ever had been a member of the said Fenian society, or connected therewith, or with any secret society whatever.

The warrant and return being read and filed,

O'Donohoe moved for the discharge of the prisoner, upon the ground that the warrant was invalid, as Mr. Boulton, who assumed to act as a Justice, was not authorized or entitled to act as such, or to join in the warrant of commitment, he (Mr. Boulton) being an alderman of the city of Toronto, and not having taken the oath required by sec. 357 of the Municipal Act of 1866, as amended by the 38th sec. of chap. 30 of the Acts of last session of this Province; the Act under which the prisoner was committed requiring that the warrant should be signed by *two* Justices of the Peace. He also moved that the prisoner should be admitted to bail, if the learned judge should hold the warrant good, as it had not been countersigned by a clerk of the Queen's Privy Council, as provided by the 1st sec. of the 31 Vic. chap. 16, above referred to.

James Patterson, for the Crown, took a preliminary objection that the affidavit filed could not be read, being irregularly sworn; and he also stated that he had been instructed by the Minister of Justice that the warrant was duly countersigned within the 30 days by the Clerk of the Privy Council, and, by inadvertence of the gaoler, the proper and true return to the writ of *habeas corpus* had not been made.

It was then agreed that the prisoner should be remanded until the 24th July, when the prisoner was again brought up. The gaoler then stated that he desired to amend his return, and filed an affidavit, shewing that about the 1st of June he received from the sheriff of the county of York a certified copy of the warrant of commitment, duly certified by the clerk of the Queen's Privy Council, which certified copy he produced; and he further swore that when he made his return to the *habeas corpus*, such certified and countersigned warrant had escaped his memory, and that since he made his return he discoverod that he had it in his possession. Affidavits were also filed shewing that such countersigning was done within the 30 days prescribed, and Mr. Patterson moved that the gaoler be allowed to amend his return; and, after hearing the parties, the learned judge ordered the return to be amended, and upon the same being read,

Patterson, for the Crown, now objected, and contended:

1. That as it appeared that the warrant had been duly countersigned, the provisions of the 31st Vic., chap. 16, deprived the judge of authority and jurisdiction to entertain the motion made on the part of the prisoner, either with a view to his discharge or to his being bailed.

2. That if a judge had authority to examine into the validity of the warrant or detention of the prisoner, Mr. Boulton, being an alderman of the city of Toronto, was also a Justice of the Peace, *ex-officio*, and that the Act of the Province of Ontario amending the Municipal Act did not apply to Mr. Boulton, and that if it did, his acts, nevertheless, as a Justice of the Peace, were not void, although he himself might be liable to a penalty, or perhaps to a criminal information, but the acts of a Justice of the Peace who is not duly qualified are not absolutely void, as he contended: *Margate Pier Co.* v. *Hannam*, 3 B. & A. 267.

3. That it was not competent for the prisoner to contradict the return made by the gaoler, which return set out that the warrant was signed by two Justices of the Peace, &c

In reply it was alleged, that neither he nor his counsel were aware or could obtain the particulars of the charge against him, or upon what information he was arrested: that no statement was made or taken in his presence, on oath or otherwise, of the facts or circumstances of the case before his commitment, as required by the 30th sec. of the Statute relating to the duties of Justices out of Sessions, in relation to persons charged with indictable offences; and, in order to ascertain what evidence, depositions or proceedings were had touching the restraint of the prisoner's liberty, and to the end that the judge might consider the same, and the sufficiency thereof to warrant such restraint, should he hold that the warrant was not one within the operation of the 31st Vic., a writ of *certiorari* had been issued, requiring a return of the depositions, &c., under the 2th sec. of the Act of 29&30 Vic. "for more effectually securing the liberty of the subject" Such writ was served on the committing justice, Mr. Boulton, and on the Clerk of the Peace for the city of Toronto; and he filed affidavits shewing that neither Mr. Boulton nor the Clerk of the Peace had in their possession any proceedings whatsoever touching the commitment of the prisoner; and that upon search at the office of the County Attorney for the county of York, and at the office of the clerk of the Police Court of the city of Toronto, no papers or documents were to be found.

Under the 39th sec of chap. 102, the information, depositions, &c., should have been delivered by the Justice, without delay, to the County Attorney, or the Clerk of the Peace for the city. No depositions were produced on the part of the Crown.

Morrison, J.—After carefully considering the whole case, I am of opinion that the prisoner is entitled to be discharged It appears, as already stated, that he was arrested on the 4th May last under the warrant referred to, purporting to be signed by two Justices of the Peace for the city of Toronto. It is clear that Mr. Boulton (one of them) was not acting under any commission as a justice, but that he was an alderman of the city of Toronto, and it is manifest that he, as such alderman, did not take the oath of qualification, as provided by the 38th sec. of the statute of the Province of Ontario. These are the most important facts appearing and bearing on the case.

Several objections in point of law were taken by the Crown. First, as before stated, that the warrant being duly countersigned by the Clerk of the Privy Council that the subject matter was wholly withdrawn from my jurisdiction. I see nothing in the statute to warrant such a conclusion. The object of the Legislature and the words of the statute indicate that, as some protection to persons who might be charged with any of the offences mentioned in the Act of Canada (31 Vic. chap. 16), they could only be committed upon a warrant signed by two Justices, and such warrant, being countersigned within 30 days, as provided, then, in such case, no Judge should bail or try any such prisoner without an order from the Queen's Privy Council of Canada. The object of the statute, so far as any of the offences mentioned therein, was to suspend the operation of the writ of *habeas corpus*, and to deprive the subject res-

trained of his liberty of one of the most inestimable of privileges; and it is my duty to see, in favor of liberty, that the provisions of the statute are scrupulously observed. If it appears that the provisions of the statute have been observed, and that the warrant is in accordance therewith, in such case the prisoner's liberty is entirely in the hands of the Privy Council.

It was not attempted to be argued that if the Clerk of the Privy Council countersigned a warrant signed by only one Justice, that such a warrant would justify the detention of a prisoner under the statute, without bail or trial. So here, if Mr. Boulton was not authorized to act, or could not lawfully sign a warrant as a Justice, the prisoner's case would not be within the operation of the statute. Then, as to the second objection, that the affidavit cannot be received to contradict the return, the gaoler returning that the prisoner was detained under a warrant signed by two Justices of the Peace, naming them. The return just amounts to this—the cause of the detention was the warrant annexed. It would be absurd to hold that because the gaoler in his return designated the parties who signed the warrant as two Justices, an ivestigation into the fact was precluded. In *Baily's case*, 3 E. & B. 614, Lord Campbell allowed the prisoner to use affidavits to shew that the Justices had no jurisdiction. So here, I am of opinion, that it is competent to the prisoner to shew that the persons signing the warrant have no authority to act as Justices. But the point is disposed of by the 3rd sec. of chap. 45 of 29 & 30 Vic., which was not referred to in the argument. That section provides that although the return to any writ of *habeas corpus* shall be good and sufficient in law, it shall be lawful for any Judge before whom such writ shall be returnable to proceed to examine into the truth of the facts set forth in such return, by affidavit, and to do therein as to justice shall appertain, &c.

The only question that remains upon the present return is, whether the further detention of the prisoner can be sustained by this warrant, upon which two points arise: 1st., whether Mr. Boulton was lawfully authorized to act as a Justice of the Peace for the city of Toronto. 2nd. If he was acting unlawfully, by reason of his not first taking the oath of qualification, was the act of his siguing the warrant invalid, so far as the detention of the prisoner is concerned?

By the 357th section of our Municipal Act, as amended by the 38th sec. of 31 Vic. cap. 30 of the statutes of Ontario, passed on the 4th March last, it is enacted that the Reeve of every town, &c, shall be, *ex-officio*, a Justice of the Peace for the whole county, &c., and aldermen in cities shall be Justices of the Peace in and for such cities: *Provided always*, that before any Alderman or Reeve shall act in the capacity of a Justice of the Peace for the city or county, he shall take the same oath of qualification, and in the same manner as is by law required by Justices of the Peace." And the amending Act repealed all Acts or parts of Acts inconsistent with its provisions relating to the Municipal Institutions of Upper Canada. So that, whatever authority Mr. Boulton, being an alderman, had as a Justice of the Peace, previous to the 4th March, was gone, and after that date, the date of the passing of the amending Act, his authority to act as a Justice of the Peace depended upon the 357th sec. as amended. And as it is in fact admitted that Mr. Boulton did not take the oath of qualification, and did not comply with the 357th section referred to, he was acting unlawfully and in contravention of the statute. I do not mean to say that Mr. Boulton was acting wilfully in the matter, because, from the affidavits filed, he appears to have acted in ignorance of the then state of the law. Then, did the neglect of Mr. Boulton to take the oath required, and which the statute makes a condition precedent to his acting as a Justice of the Peace, render his act invalid for the purpose of the imprisonment of the prisoner? It is contended by the Crown that the proviso added to the 357th section did not prevent an alderman from acting as a Justice of the Peace without taking the oath; that by his doing so it only subjected him to be prosecuted; and the case of the *Margate Pier Co.* v. *Hannan et al.*, 3 B. & A. 267, was relied on as an authority. I perfectly concur in that decision and the grounds upon which the judgment is rested, viz., that the acts of a Justice of the Peace who has not duly qualified himself are not absolutely void, so that a seizure under a warrant signed by him would not make the parties who executed it trespassers. And so in the case of the warrant now before me, as in the case alluded to; it might form a good justification to an action brought against any person or officer who acted under it, and that any act done under it, such as the detention of the prisoner in custody, would very properly be sustained. But there, I think, its validity ends; that while it is not absolutely void, yet, upon an application of this nature, it is so far defective that a person detained in custody under it may be discharged. It seems to me it would not be quite consistent to hold that while a magistrate would be liable to be indicted and punished for the act of signing a warrant, a person arrested under it would nevertheless be liable to be detained in custody. On grounds of public policy, I can see good reason why acts done under such a warrant should be justified and sustained, but I cannot bring myself to the conclusion that it is a sufficient warrant for the detention of the prisoner. In doubtful cases the Courts always lean in favor of liberty, and upon this point the prisoner is entitled to my judgment in his favor.

The only other matter for consideration is, whether the warrant, being signed by Mr. McMicken, whose authority as a Justice of the Peace is not objected to, the prisoner should not be held to bail, but in that view of the case I have nothing before me to shew that any charge was made against the prisoner, or that proceedings were had to authorize any such commitment, such as the examination of the prisoner, &c. The prisoner positively denies under oath that he is guilty of any such charge as is mentioned in the warrant. He has taken, as already stated, the usual steps to ascertain and bring before me, by writ of *certiorari*, the grounds of the charge and the proceedings taken against him without effect, and on the part of the Crown nothing is shewn. I therefore see no grounds for the further detention of the prisoner, and he must be discharged.

Prisoner discharged.

REVIEWS.

THE AMERICAN LAW REVIEW. Boston: Little, Brown & Co., 110 Washington St., Boston. $5 00.

The October number commences with an interesting sketch of the life and times of Lord Brougham, which may be usefully read in connection with the notices of that eminent man, to be found in the English periodicals.

A large space is devoted to the discussion of the "Erie Railroad Row;" certainly a curious name for a legal article, but probably a correct one, if the reviewer is to be credited; of this we may hereafter speak more at length.

This number contains, in addition, the Digest of English Law Reports for May, June, and July, which we continue to extract for the benefit of our readers—A Selected Digest of State reports, which must be invaluable to Americans, and, considering our near proximity, often useful to us—Book Notices—A list of new law books published in England and America since July, 1868, excellent as an easy and reliable reference; and, lastly, a summary of events of professional and legal interest. We most heartily commend this magazine to our readers in Canada. The price is merely nominal, and the contents excellent.

A ROMANTIC LAW CASE.—The courts of law will in all probability be occupied early in the ensuing session with one of those remarkable cases which so often occur in romances, and so seldom in real life. It appears that about a hundred and twenty years ago a large estate close to one of the most important of English manufacturing towns, was in the possession of the great-grandfather of the parties to the present litigation. Since that time the land has been built upon to a great extent, and now forms the most wealthy suburb of the town in question. At the death of the owner, his eldest son, finding that there was no will, naturally claimed the estate. The children of a second marriage, however, who had never lived on good terms with their half-brother, protested against his title on the ground that his parents had never married, and that he was consequently illegitimate. It seemed at first that there was no ground for this statement. The parents had always been received in society, and no one had ever heard of any scandal in connection with them. On making inquiry it was, however, found impossible to discover any trace of the marriage, and the eldest son was forced to submit, and leave the home he had always considered his own, without a shilling. He went into town and embarked in trade, apparently without much success, for his grandson is at the present time a shoemaker in a back street, and in a very small way of business. The tradition of the lost estate has, however, always been preserved, and some time since this descendant of the elder son recommenced the search for proof of the marriage in question. After much trouble he succeeded in getting at the copies of the registers which are preserved in the Chancery at Chester, and there, in the index, he discovered, somewhat easier than was expected, the names of the original possessor of the estate and his first wife. There was, however, no such entry in the body of the book. At last, however, in going through it for the last time, it was discovered that two leaves had been fastened together, and on their being separated a copy of the entry of the marriage from the books of a Manchester church was duly found. On referring back to the church itself, the book was produced, but the entry was not there. Further examination showed, however, that this book had been tampered with, but in a different way—a leaf had been cut out with scissors, and the marks were even then distinctly visible. On these facts the action will be brought, and when it is remembered that the present family have been in possession for nearly a century, and that they are highly respected, and their members married amongst the wealthiest people in the county, it may readily be imagined that the matter is creating a good deal of interest. The value of the property at stake is between one and two hundred thousand pounds.—*Western Morning News* (*English*).

A few days since a wag wrote and placed the following pretended rule of court in the court-room of one of our courts of record, where the rules of practice were wont to be posted: "Whenever any attorney shall frequent saloons as a habit, and cannot be found at his office, if he has any office, it shall be necessary for such attorney to file with the clerk of the court a list of the saloons so frequented by him; and notice, of any motion left at such saloon or saloons shall be considered as sufficient notice to such attorney of any motion in a case pending in this court." A certain attorney who loved a social glass, and was in the habit of frequenting a certain saloon in the city more than his office, seeing this notice and supposing it to be genuine, left word with the clerk that he could be found at the saloon of ——. Judge of the surprise of the aforesaid attorney on the following day, when he moved the court, under the above rule, to reinstate an important case of his that had been dismissed in his absence, on the ground that no notice had been left at the saloon where he had been waiting the whole of the day before, and was informed by the good-natured judge, with a smile, and amid roars of laughter from the entire Bar, that the rule was a *hoax.—Chicago Legal News.*

Lord Campbell tells how, at the opening period of his professional career, soon after the publication of his "Nisi Prius Reports," he on circuit successfully defended a prisoner charged with a criminal offence; and how, whilst the success of his advocacy was still quickening his pulses, he discovered that his late client, with whom he held a confidental conversation, had contrived to relieve him of his pocket-book, full of bank-notes. As soon as the presiding judge, Lord Chief Baron Macdonald, heard of the mishap of the reporting barrister, he exclaimed, "What! does Mr. Campbell think that no one is entitled to *take notes* in court except himself?"—*Jeaffreson.*