DIARY FOR JULY.

1. Frid. Dominion Day. Long Vacation begins. Last day for County Treasurer finally to examine assessment rolls, &c.
3. SUN. *3rd Sunday after Trinity.*
4. Mon. County Court (except York) Term begins. Heir and Devisee sittings commence. Last day for notice of trial for County Court York.
9. Sat.. County Court Term ends.
10. SUN. *4th Sunday after Trinity.*
12. Tues. General Sess. and County Court sittings York.
17. SUN. *5th Sunday after Trinity.*
19. Tues. Heir and Devisee sittings end.
22. Frid. *St. Mary Magdalene.*
24. SUN. *6th Sunday after Trinity.*
25. Mon. *St. James.*
31. SUN. *7th Sunday after Trinity.*

The Local Courts' AND MUNICIPAL GAZETTE.

JULY, 1870.

EXEMPTIONS FROM TAXATION.

The recent case of *Pirie and The Corporation of Dundas*, reported in 29 U. C. Q. B. p. 401, is an important decision as to the exemption of manufactures from taxation, under 31 Vic. ch. 30, sec. 44, and as to power of municipality under that act.

Section 44 of the Ontario Act, 31 Vic. ch. 30, as our readers are aware, empowers municipal corporations to exempt from taxation for not more than five years manufactures of woollen, cottons, glass, paper, and such like commodities.

Under this section a by-law was passed by the Corporation of the Town of Dundas, enacting that every person or firm thereafter commencing any new manufacture of the nature contemplated by the section, who should employ therein more than $1,000, and pay to operatives more than $30 weekly, should be exempt for five years as to such property.

It was provided that the property should nevertheless be assessed, but entered in a separate page of the assessment roll, and that the clerk was to post up a list of such property, and the Court of Revision should hear and determine complaints against such exemptions, and if they were sustained should place the property on the roll in the ordinary column.

The persons claiming exemption were also required to file yearly a statement, verified under oath, shewing the capital employed and the sum paid for wages.

Upon the question being brought before the Court of Queen's Bench on a motion to quash the by-law in whole or in part for illegality, on the grounds that the by-law and its several provisions were in excess of the powers conferred on municipal corporations by the Legislature: that the by-law was for the exemption of "manufactures," not "manufacturers:" that it discriminated between old and new manufactures, in favor of the latter as against the former: that it did not specify the particular classes of manufactures nor name the manufacturers intended to be exempted: that it delegated to others the power to make such exemptions: that it provided for the amendment of the assessment rolls, authorized extra judicial oaths, and assumed to confer powers and to impose duties on the Court of Revision, &c.

It was held, that the by-law was bad, for exempting new manufactures only in preference to those of the same kind already established, and for exempting only those persons doing a specified amount of business.

The Court thought, however, that all manufacturers of the same trade might be exempted, so as to give them an advantage over other trades.

It was also held, that the by-law would not have been bad for exempting manufactures instead of manufacturers, nor for requiring the oath, nor on account of the provisions as to the assessment of the property and the reference to the Court of Revision.

But it was doubted whether it would have been objectionable to empower the mayor or the clerk to decide upon applications for exemption.

We learn with much pleasure that Mr. Gowan, Judge of the County Court of the county of Simcoe, and Chairman of the Board of County Judges, has started on a trip to England and the Continent for the benefit of his health, having been granted a long leave for that purpose should he require it.

If ever a man earned a holiday Judge Gowan has; for twenty-seven years he has been unremitting in the discharge of his judicial duties, and we believe we are correct in saying that the whole extent of his leave during that long period, except on official business, has scarcely exceeded in all four months. The members of the Bar and the officials of the County, on hearing of his in-

tended departure, presented him with a farewell address conveying their feelings of respect and wishes for his future welfare. The Board of Public Instruction for the County also passed a resolution to the same effect.

We desire to join with his numerous other friends in wishing him a pleasant and beneficial voyage and a safe return.

SELECTIONS.

THE POWER OF ONE PARTNER TO BIND THE FIRM BY SEALED INSTRUMENT.

That one partner cannot bind his co-partners by any instrument under seal, is a general rule firmly established, and we believe not questioned by any decision, either in England or America. The leading case is *Harrison* v. *Jackson*, 7 Term Rep. 207, decided by the Court of King's Bench, in 1797. In delivering the opinion of the court, Lord Kenyon, C. J., said: "The power of binding each other by deed, is now, for the first time insisted on. * * * Then it was said, if this partnership were constituted by writing under seal, that gave authority to each to bind the others by deed; but I deny that consequence just as positively as the former; for a general partnership agreement, though under seal, does not authorize the partners to execute deeds for each other, unless a particular power be given for that purpose. This would be a most alarming doctrine to hold out to the mercantile world; if one partner could bind the others by such a deed as the present, it would extend to the case of mortgages, and would enable a partner to give to a favourite creditor a real lien on the estates of the other partners."

The same point had already been decided in Pennsylvania, thirteen years earlier, in *Gerard* v. *Basse et al.*, 1 Dallas, 119. In that case one partner had executed a bond and warrant to confess judgment, to which there was one seal, and the signature "John A. Soyer, for Basse & Soyer." Judgment was entered on the bond against both partners, and the court held it good only as to the one signing, and gave the plaintiff leave to strike out the name of the other. In delivering the opinion of the court, Shippen, ,President, said: "there can be no doubt that in the course of trade, the act of one partner is the act of both. There is virtual authority for that purpose, mutually given by entering into partnership, and in everything that relates to their usual dealings each must be considered as the attorney of the other. But this principle cannot be extended further to embrace objects out of the course of trade. *It does not authorize one to execute a deed for the other;* this does not result from their connection as partners; and there is not a single instance in the books which can countenance such an implication."

The principle thus laid down in these two cases has been very rigidly adhered to in England, but in the United States there has always been more or less disposition to limit its generality, and though, as a general rule, it has not been shaken, yet several important exceptions may now be considered as firmly established in most of the states. Thus in *Hart* v. *Wither*, 1 Penn. Rep. 285, though the Supreme Court of Pennsylvania decided that the other partners were not bound by the deed, nothwithstanding it had been given in a transaction in the course of business of the firm, and the benefit had been received by them, yet Huston, J., dissented, and stated his reasons so briefly and pointedly, that they are well worth reproducing in his own language. "The grounds on which one partner is not permitted to bind the other by deed, in England do not exist, or at least, all of them do not exist here. They are: 1st. That the consideration of a deed cannot be inquired into—here it can. 2nd. That a bond will bind the lands of any partner who has lands, after his death—here a common note, nay account, is recovered after the death of the debtor out of land. It is admitted, even there, that one partner may bind another by bond, sealed in his presence, although with but one seal. This must be solely because his assent is clearly proved by his being present and agreeing, not dissenting; now I cannot see why assent clearly proved in one way is not as effectual as assent clearly proved in another. Here, the offer was to prove that each of the partners, who were iron masters, and had lands in partnership, as well as chattels, were in the constant habit of making contracts under seal, which were ratified by the others, and the benefits enjoyed by them—that this contract, on the face of it for wood, was for wood for their iron works, and was actually used at them and the benefit enjoyed by them all. I would then have permitted this to go the jury, and if they found a clear assent either before or after, I would hold them bound. One partner is often bound in equity, differently from what he is at law, because he has received the benefit: *Lang* v. *Keppele*, 1 Bin. 123. I would confine the power to partnership transactions, and to property which came into partnership, and was enjoyed by them under a contract which they knew was made by one of the firm."

Subsequent cases, not only in Pennsylvania but in most of the other states, have established the law in substantial conformity with the principles of Judge Huston's opinion. The leading cases on this point, are *Gram* v. *Seton*, 1 Hall, 262, and *Cady* v. *Shepherd*, 11 Pickering, 400. In the former case the Superior Court of New York City determined that one partner cannot make a sealed instrument, even though it be necessary in the usual course of business of the firm, unless authorized by the other partners, but authority need not be given expressly or under seal, but may be implied from the nature of the business or the conduct

of the partners. The instrument sued on in that case was a charter party, but an elaborate opinion was given by Jones, C. J., covering the whole class of sealed instruments. In the other case, *Cady* v. *Shepherd*, the Supreme Court of Massachusetts held, that the instrument would be valid and bind the firm, if previously authorized or subsequently ratified by them, and that such authority or ratification may be by parol. It may now be taken as settled law in most of the states, that either previous authority to a partner or subsequent ratification, will make his deed valid to bind the firm, and that such authority or ratification may be by parol: *Fichthorn* v. *Boyer*, 5 Watts. 159; *Bond* v. *Aitkin*, 6 W. & S., 165 (overruling *Hart* v. *Withers*, 1 Penn. 285, and adopting the reasoning of Huston, J., already quoted); *Mackay* v. *Bloodgood*, 9 Johns. 285; *Smith* v. *Kerr*, 3 Comst, 144; *Swan* v. *Stedman*, 4 Met. 548; *Pike* v. *Bacon*, 8 Shepl., 280; *Fleming* v. *Dunbar*, 2 Hill, S. C., 532; *Fant* v. *West*, 10 Rich. Law, 149; *Drumright* v. *Philpot*, 16 Ga. 424; *Grady* v. *Robinson*, 28 Ala 289; *Gwin* v. *Rooker*, 24 Mo. 290; *Price* v. *Alexander*, 2 Greene, Iowa, 427; *Haynes* v. *Seachrest*, 13 Iowa, 455; *Henderson* v. *Barbee*, 6 Blackf., 26; *Day* v. *Lafferty*, 4 Pike, 450; *McDonald* v. *Eggleston*, 26 Vt., 154; *Remington* v. *Cummings*, 5 Wis., 138; *Wilson* v. *Hunter*, 14 Wis., 683; *Shirley* v. *Fearne*, 33 Mi., 653; *Fox* v. *Norton*, 9 Mich. 207; *Charman* v. *McLane*, 1 Or., 339; *Lowry* v. *Drew*, 18 Tex. 786.

In a few of the states, however, it would seem that the strict technical reasoning of the English cases has prevailed, and it is held that to make the deed good there must be express authority (or ratification) *under seal: Little* v. *Hazzard*, 5 Harrington, 291; *Turbeville* v. *Ryan*, 1 Humphreys, 113; *Napier* v. *Catron*, 2 Hump. 534. In Kentucky the question hardly seems settled. The early cases of *Trimble* v. *Coons*, 2 A. K. Mars, 275, and *Cummings* v. *Carsily*, 5 B. Mon., 74, held that the authority must be under seal, but the latter case of *Ely* v. *Hair*, 16 B. Mon. 230, goes upon the ground that parol authority or ratification will be sufficient, but does not notice or expressly overrule the previous decisions.

Trimble v. *Coons*, *Peirson* v. *Carter*, 3 Murphy, 321, and a few other of the earlier American cases, appear to sanction the English rule (founded on the ancient decisions, that the same piece of wax might serve for the seals of several obligors), that if the deed was sealed by one in the *actual presence* of the other, it would bind both, thus making a most singular confusion of the authority itself, and the evidence by which it is proved, the foundation of an unsubstantial distinction effectually disposed of by a few words in the opinion of Huston, J., in *Hart* v. *Withers*, already quoted This distinction is now, however, abandoned in most of the American cases. In *Modisett* v. *Lindley*, 2 Blackf. 1 19, it is expressly held that presence is merely evidence of consent, for there the partner, though present, not having knowledge of the act, was held not bound. But in *Gardner* v. *Gardner*, 5 Cush. 483, it is held that signing by one person (whether partner or not) for another *in his presence*, and by his express direction, is a good signing by the latter; the opinion of Shaw, C. J., though very brief, and apparently not much considered, appearing to sustain the soundness of the distinction between an act done in or out of the presence of the party sought to be charged. In *Lambden* v. *Sharp*, 9 Humphreys, 224, it was held that where there are more signatures than seals, the court will presume that several of the parties adopted the same seal, but this presumption may be rebutted by evidence, and it will then be a question for the jury, whether the instrument is sealed by all. And if the signature be in the firm name only, it will be presumed to be the several signature and seal of all the partners, but open to rebuttal by plea and evidence as in other cases. To the same effect are *Davis* v. *Burton*, 3 Scam., 41, and *Hatch* v. *Crawford*, 2 Porter (Ala.), 54.

In all the foregoing cases it is to be borne in mind that the instrument must be made in the firm name, and purport to be the act of the firm. For if the partner though authorized to execute a deed in the partnership name, does in fact make it in his own name merely, it will bind himself only, and will moreover merge the firm debt, if the latter be on a simple contract, so as to discharge the other partners: *United States* v. *Ashley*. 3 Wash. C. C., 508. And the same effect will follow according to the authority of some cases, if the partner signing the firm name is not authorized to do so. In such case the suit should be against the party signing as on his individual obligation: *Clement* v. *Brush*, 3 Johns. Cas. 180; *Button* v. *Hampson*, Wright (Ohio), 93; *Nannely* v. *Doherty*, 1 Yerger, 26; *Waugh* v. *Carriger*, Id., 31; *Morris* v. *Jones*, 4 Harring. 428. And if the bond be declared on against both as a joint obligation, no recovery can be had even against the one who signed: *Lucas* v. *Sanders*, 1 McMullan, 311. In an action by a firm, however, on a sealed instrument, the defendant cannot plead that it was executed by one partner only, for the suit is a ratification by all who are joined in it: *Dodge* v. *McKay*, 4 Ala. 346.

The doctrine that a bond in the firm name by a partner not authorized to make it, merges a simple contract debt of the firm and substitutes the sealed obligation of the partner signing, has not, however, commanded universal assent. In *Doniphan* v. *Gill*, 1 B. Mon. 199, it was expressly rejected, the court holding that there was no merger where it appeared on the face of the instrument that there was no such intention in the minds of the parties at the time of execution. To the same effect, apparently, are *Fronebarger* v. *Henry*, 6 Jones, Law, 548, and *Despatch Line* v. *Bellamy Man. Co.*, 12 N. H. 235.

All of the foregoing cases, moreover, assume that the transaction in which the bond is made

is one arising in the due course of the partnership business. Otherwise the partner is on the same footing with any stranger, and to validate his act it must appear to have been expressly authorized under seal. Thus, in *Ruffner* v. *McConnel*, 17 Ills., 212, it was held that one partner, even though expressly authorized by parol, cannot convey land or make a contract specifically enforcible against the others. See also *Bewly* v. *Innis*, 5 Harris, 485, and *Snyder* v. *May*, 7 Harris, 235. For the same reason bonds of submission to arbitration, and warrants to confess judgment, have been uniformly held invalid, unless authorized by sealed instrument; they are not in the regular course of business, and therefore not partnership transactions: *Karthaus* v. *Ferrer*, 1 Pet., 222; *Crane* v. *French*, 1 Wend., 311; *Armstrong* v. *Robinson*, 5 G. & J., 412; *Barlow* v. *Reno*, 1 Blackf., 252; *Sloo* v. *State Bank*, 1 Scam. 428; *Mills* v. *Dickson*, 1 Richards, 487. But if an award be made, and the money received by both, or by one in the firm name, the acceptance will be good either as a release or as accord and satisfaction: *Buchanan* v. *Curry*, 19 Johns. 137; *Lee* v. *Onsott*, 1 Pike, 206.

Having thus considered how one partner may bind his co-partners by sealed instrument *with their consent*, and how that consent may be proved, we come now to how he may bind them *without their consent*. And first, he may *release a debt* by sealed instrument. This is well settled both in England and the United States: *Bowen* v. *Marquand*, 17 Johns, 58; *Smith* v. *Stone*, 4 Gill & J. 310; *Morse* v. *Bellows*, 7 N. H., 549; and he may authorize an agent, under seal, to release: *Wells* v. *Evans*, 20 Wend., 251; S. C., 22 Wend., 324. So he may sign a composition-deed with a debtor of the firm: *Beach* v. *Ollendorf*, 1 Hilton, 41. The reason that a release is good is stated by Kent, C. J., in *Pierson* v. *Hooker*, 3 Johns, 68, to be that the deed is good as to the partner signing, and a release by one of joint creditors is good as to all, citing *Ruddock's case*, 6 Co., 25. Perhaps an equally satisafctory reason is, that the rule itself which makes the deed of one partner in the partnership name bad, extends only to those cases in which the effect of the deed would be to charge the partners with a new liability.

A second class of cases, where a partner may bind his co-partners under seal without their consent, express or implied, was marked out by Chief Justice Marshall at an early day. In *Anderson* v. *Tompkins*, 1 Brock, 456, he said: "The principle of *Harrison* v. *Jackson*, is settled. But I cannot admit its application in a case where the property may be transferred by delivery under a parol contract. But I cannot admit that a sale so consummated is annulled by the circumstance that it is attested by a deed." The principle thus enunciated has always been favorably regarded by the American courts, and it is now well settled in most of the states, that if the act done would have been valid without a seal, the addition of the seal does not vitiate it: *Tapley* v. *Butterfield*, 1 Met. (Mass.), 515; *Milton* v. *Mosher*. 7 Metc., 244, *Everitt* v. *Strong*, 5 Hill (N. Y.), 163; *Robinson* v. *Crowder*, 4 McCord, 537; *Dubois' Appeals*, 2 Wright (Penn.), 236, *Deckard* v. *Case*, 5 Watts, 22; *McCullough* v. *Summerville*, 8 Leigh, 415; *Forkner* v. *Stuart*, 6 Grattan, 197; *Lucas* v. *Bank of Darien*, 2 Stew., 280; *Human* v. *Cuniffe*, 32 Mo., 316. In Kentucky, however, and perhaps in the other states where the strict ruling of the English cases is followed, this exception is not allowed. Thus in *Montgomery* v. *Boone*, 2 B. Monr., 244, Robertson, C. J., says: "The principle thus settled as to *deeds*, seems to have been recognized as applicable to all contracts under seal to pay money, even though a seal was not essential to the obligations of such contract. This may have been a perversion or extension of the principle as to *deeds* which was probably applicable at first only to such writings as would be ineffectual without a seal, and not to such as might be as binding and effectual without as with a seal. All judicial questions, however, has been concluded on this subject also by this Court."

In conclusion, we may regard the American decisions as now pretty well harmonized on the general principle, that a sealed instrument, executed by one partner only, in the firm name, is not valid to create a new liability on the part of the other partners, unless such liability is one which the partner could have created without seal, or unless his act was previously authorized or subsequently ratified by the other partners; and that such authority or ratification may be by parol, and may be inferred by a jury from the acts of the parties or the course of the business.—J. M. L.—*The American Law Register.*

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

INSOLVENT ACT, 1865, SEC. 13—EXECUTION—LIEN.—*Held*, under sec. 13 of the Insolvent Act of 1865, that where before the assignment the money had been made by the sheriff under a *fi. fa.* against the insolvent, the execution creditor was entitled to it; for that the section applied only where, but for its provisions, a lien would have existed on the property in question at the execution of the assignment, and not where it had been converted into money which belonged to the execution creditor.

Held also, that, under the circumstances of this case, set out below, the money must be treated as received under the execution.

[By the present Insolvent Act of 1869, 32-33 Vic. ch. 16, sec. 59, the law has been altered; and no lien or privilege shall be created upon

either the personal or real estate of the insolvent for the amount of any judgment debt by the issue or delivery to the sheriff of the execution, or by levying upon or seizing under such writ the effects or estate of the insolvent, if before the payment over to the plaintiff of the moneys actually levied under such writ the estate of the debtor shall have been assigned, &c.]—*Sinclair et al.* v. *McDougall*, 33 U. C. Q. B. 388.

SCHOOL TRUSTEES — MANDAMUS TO CORPORATION TO PROVIDE MONEY — INSUFFICIENCY OF ESTIMATE AND DEMAND.—On application for a mandamus to compel a municipal corporation to provide $3,500 for a board of school trustees, it appeared that on the 15th March, the trustees wrote to the corporation, informing them that they had passed a resolution on the 12th inst., directing their chairman and secretary "to wait on the council at its next meeting, and submit an estimate for $3,500, for the purpose of building a brick school house, the same to be procured by the 10th April," and requesting the council to provide said amount in accordance with the estimate. On the same day, after receiving the letter, the corporation notified the trustees that they were unable to comply with the demand; and on the 13th April, an order upon the treasurer of the council by the chairman of the board of school trustees for the $3,500 was presented, and payment refused.

Held, that the statute, which requires the trustees to prepare and lay before the council an estimate, had not been complied with; and that the demand for payment within three weeks, without shewing that the corporation had funds in hand available for the purpose, was not reasonable. The mandamus therefore was refused. —*In the matter of the School Trustees of Mount Forest and the Corporation of Mount Forest*, 33 U. C. Q B. 422.

BANKRUPTCY.—The English Bankruptcy Act of 1861 is made applicable to "all debtors, whether traders or not." A person having privilege of parliament, and not a trader, was held not exempt from their operation.—*Ex parte Morris. In re Duke of Newcastle*, L. R. 5 Ch. 172.

INDICTMENT —An indictment charged A. with having made a false declaration before a justice that he had lost a pawnbroker's ticket, whereas he had not lost the said ticket, but "had sold, lent or deposited it" with one C., as A. well knew. *Held*, that the indictment was not bad for uncertainty, as the words quoted were surplusage.—*McQueen* v. *Parker*, L. R. 1 C. C. 225.

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

STATUTE OF LIMITATIONS—JOINT CONTRACTORS —PAYMENT.—Action on a note made by defendant and L., payable to C., and by him endorsed to plaintiff, due in July, 1859. Plea, Statute of Limitations. To take the case out of the statute, plaintiff proved that one T. C. owing defendant $30, got an order, with defendant's assent, from C., who then held the note, on L., requesting L. to pay defendant $30, which he, C., would credit on the note; and this sum was accordingly so paid, and credited.

Held, clearly a payment by L. on his own account, and not by or for defendant, so as to take the case out of the Statute as against defendant —*Cowing* v. *Vincent*, 33 U. C. Q. B. 427.

R. W. Co.—BRIDGE OVER RAILWAY—OBLIGATION TO REPAIR.—Where a Railway Company carried the highway across and over their road by a bridge: *Held*, under Consol. Stat. C. ch. 66, sec. 9, sub-sec. 5, sec. 12, sub-sec. 4, that the Company were bound to keep in repair such bridge and the fence on each side of it.—*Van-Allen* v. *The Grand Trunk Railway Company of Canada*, 33 U. C. Q. B. 436.

COPYRIGHT.—1. The proprietor of a newspaper has, without registration under the Copyright Act, such a property in its contents as will entitle him to sue in respect of a piracy. But the piracy of "a list of hounds" is not a case for an interlocutory injunction, as a correct list is easily got, and it is liable to frequent changes.—*Cox* v. *Land and Water Journal Co.*, L. R. 9 Eq. 324.

2. Plaintiff wrote an essay for the "Welsh Eisteddfod," to prove that the English are the descendants of the ancient Britons, which he published. Defendant afterwards did the like. His book was like plaintiff's in theory, arrangement, and, to a great degree, in the citation of authorities. The latter facts were explained by both parties having taken their references from Pritchard, and the theory by the occasion of writing. Two authorities were seemingly taken from the plaintiff, and certain results were based upon his tables. The writing was the defendant's. *Held* (reversing the decision of James, V. C., on the facts), the plaintiff was not entitled to an injunction.

Defendant had a right to take authorities even though sent there by plaintiff's book, which took the same.

An author has no monopoly in a theory propounded by him.

Per James, V. C. In cases of literary piracy, the defendant is to account for every copy of his book sold, as if it had been a copy of the plaintiff's.—*Pike* v. *Nicholas*, L. R. 5 Ch. 251.

3. Although a rival publisher is not justified in copying slips cut from a Directory previously published by another party by having sent out canvassers to verify them, and to obtain the leave of those whose names were on the slips to publish them in that form, he may use such slips to direct his canvassers where to go for the purpose of obtaining the addresses anew.—*Morris* v. *Wright*, L. R. 5 Ch. 179.

DEATH.—Those who found a right upon the fact that a person, who has not been heard of for seven years, survived a particular period, must establish that fact affirmatively by evidence.

A., a testator, died January 5, 1861, and left a residue to his nephews. The last that was known of B, one of his nephews, was that he was entered in the books of the American Navy as having deserted June 16, 1860, while on leave *Held*, that B. was not shown to have survived A., and that his personal representatives could not claim a share under A.'s will. — *In re Phené's Trusts*, L. R. 5 Ch. 139.

EXECUTOR AND ADMINISTRATOR.—1. The payment of one legacy by executors out of their own money, as a gratuity, is not an admission of assets for the payment of others. Neither is a payment out of the estate of one of two executors who were also residuary legatees, by his representatives, to the survivor in compromise of his claim as such residuary legatee. — *Cadbury* v. *Smith*, L. R. 9 Eq. 37.

2. Executors before probate directed A., the manager of the testatrix's chemical works, to continue to manage them, which he did. Goods of the testatrix thus in A.'s hands as agent of the executors were seized on *fi fa.* on the ground that he was executor *de son tort*. The executors afterwards proved the will. *Held*, that A. was not executor *de son tort*.—*Sykes* v. *Sykes*, L. R. 5 C. P. 113.

HUSBAND AND WIFE.—1. Money advanced for, and applied to, the support of a married woman who has been deserted and left without support by her husband, may be recovered of him in equity.—*Deare* v. *Soutten*, L. R. 9 Eq. 151.

FIXTURES.—Trade fixtures, which are annexed to a building by bolts and screws for the single purpose of steadying them when in use, and which can be removed without injury to the freehold, pass to the mortgagee under a previous equitable mortgage.—*Longbottom* v. *Berry*, L. R. 5 Q. B. 123.

ONTARIO REPORTS.

QUEEN'S BENCH.

(*Reported by* C. ROBINSON, ESQ., Q.C., *Reporter to the Court.*)

LOUGH V. COLEMAN ET AL.

Division court bailiff—Notice of action—Seizure under separate writs—Joint liability of execution plaintiffs.

A Division Court Bailiff is entitled, under C. S. U. C. ch. 19, sec. 193, to notice of action for a seizure and sale of goods under execution, although he is indemnified and directed to sell by the execution creditor.

Held, that upon the facts in this case set out below, there was evidence to show that it was one seizure and one sale under the direction and for the benefit of the two defendants holding separate executions, and that they were therefore jointly liable.

On the ground of excessive damages, the court refused to interfere, the excess being only $50.

[29 U. C. Q. B., 367.]

Trespass for entering the plaintiff's land, and seizing and taking certain cattle, &c.; with a count in trover.

Plea, by the defendants Coleman, not guilty, by Statute, Consol. Stat. U. C. ch. 19, secs. 193, 195, and 198. Pleas by the other defendants, Simson and Fluke, not guilty; and goods not the plaintiff's.

At the trial, before Wilson, J., at the Spring Assizes for 1869, at Cobourg, the plaintiff called Peter Coleman, one of the defendants, who proved that he was a bailiff of the Division Court, that he had in his hands two executions, at the respective suits of the defendants Simson and Fluke, against one John Swain: that he seized the goods in question under these executions, the other defendant Coleman being his son and assistant, and that afterwards these defendants, by separate bonds, indemnified him, and, being indemnified, he sold the goods. He first drew a joint bond, which Simson signed, but Fluke would not join in it, and he gave a separate bond, Simson signing his the day before the sale, and Fluke on the day of the sale. The witness stated he had no indemnity when he seized, but that he had the orders of the defendants, to go on and seize the property he found on the place, and he removed the property and kept it nine days before selling. He further stated that Fluke and Simson (the defendants) told him to seize and not to interplead, as they would take the property and sell it: that they did not jointly give him instructions, but each as to his own execution; that he made the seizure for both on the same day, and at the same time, and seized enough to satisfy both executions, and advertised separately under each. The witness produced the executions under which he sold the articles.

It was submitted, on the part of the defendants Coleman, the bailiffs, that the action against them failed, as they received no notice of action; and as to the other defendants, that there was no joint action or seizure by them to make them jointly liable, but separate executions and separate bonds of indemnity.

The learned Judge ruled that the bailiffs were entitled to notice, notwithstanding the indemnity and directions to seize and sell; but he would not nonsuit, as the case had to go to the jury on other questions, and he reserved leave to those defendants to move to enter a verdict for them if the court should be of opinion they were entitled to notice of action. And he further ruled that there was evidence of a joint seizure.

The jury found for the plaintiff, and $175 damages.

Hector Cameron obtained a rule *nisi* to enter a verdict for the defendants Coleman, and also for a new trial as to the defendants Simson and Fluke, on the ground that the verdict was against law and evidence; and for misdirection of the learned judge, in ruling that there was evidence to shew a joint liability by the defendants, and in leaving to the jury the question whether the defendants Fluke and Simson acted jointly, instead of the question whether there was any concert or agreement between them to act together; and also on the ground of the damages being excessive, and for more than the learned judge directed the jury to find.

C. S. Patterson shewed cause, citing, as to the notice of action, Consol. Stat. U. C. ch. 19, sec. 193; *Pollock and Nicol's*, C.C. Prac. 35; *Parton* v. *Williams*, 3 B. & Al. 330; *Burling* v. *Harley*, 3 H. & N. 271; *White* v. *Morris*, 11 C. B. 1015.

Hector Cameron supported the rule, and cited *Anderson* v. *Grace*, 17 U. C. R. 96; *Add.* T. 2nd ed. 518; *Hume* v. *Oldacre*, 1 Stark. 352: *Maxwell* v. *Crann*, 18 U. C. R. 253.

MORRISON, J.—As to the first part of the rule, I am of opinion that the verdict should be entered for the defendants Coleman, upon the ground taken at the trial, that there was no notice of action under the 193rd section of the Division Courts Act, Con. Stat. U. C. ch. 19, which requires that for anything done in pursuance of that act, a notice in writing of any action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action.

It was contended on the part of the plaintiff, that as these defendants were indemnified they were not entitled to notice, as they were acting under the orders of the other defendants. It appears to me beyond doubt that the bailiffs were acting under the executions placed in their hands. The evidence of Peter Coleman showed that before he was indemnified he seized, removed and kept possession of the cattle for eight days, and that he sold the cattle under the executions. The question of *bona fides* was not raised, nor was the learned judge asked to leave the question to the jury, for the plain reason that there was nothing to shew that the bailiffs were not acting *bonâ fide* and under the executions.

Such being the case, *White* v. *Morris*, 11 C. B 1015, is a conclusive authority in favor of these defendants, the bailiffs. That was also an action against two bailiffs of the County Court and others, for seizing and selling goods under an execution. There the bailiffs entered on the premises for the purpose of seizing the goods, but on finding that they had been assigned to White, the plaintiff, withdrew; subsequently, upon receiving an indemnity from the execution creditors, they re-entered and seized, and sold the goods. The English County Courts Act, 9 & 10 Vic., ch. 95, sec. 138, has the same provision as to notice of action as that contained in our Division Courts Act. It was argued there that the officers being so indemnified were acting under the indemnity, and not under the statute and that they were not within its protection. During the argument, Jervis, C.J., said he could not see why an officer was to be deprived of a right which the statute had given him because he took an indemnity; and in giving judgment he says, "How can the circumstance of their taking an indemnity shew that the officers were not acting in pursuance of the statute? It is undoubtedly a fact in the case; but, notwithstanding that fact, the jury were well warranted in finding that they were *bonâ fide* acting in pursuance of the act; and therefore they were entitled to a notice of action, as well as to the other advantages given to them by the 138th sec. of the 9 & 10 Vic. ch 95. And Cresswell, J., said, "As to the other issues the only evidence to shew that the officers were not acting in pursuance of the statute, was the fact of their having taken an indemnity. But that fact was really entitled to little or no weight." (See also *Dale* v. *Cool*, 4 C. P. 460.)

Then as to the grounds taken in the rule for a new trial—namely, that the verdict was against law and evidence, and for the misdirection of the learned judge in ruling that there was evidence to go to the jury to shew a joint liability by the other defendants—after an examination of the testimony of the bailiff, defendant, who was examined on the trial, I am of opinion that the ruling and direction of my learned brother was right, and that the evidence as to the seizure and sale shews one seizure and one sale under the direction of both defendants, and that the sale was for their joint benefit, and quite sufficient to support the finding of the jury that the bailiffs acted jointly for the two defendants, Simson and Fluke.

As to the remaining question of excessive damages, from the report of my brother Wilson, I should have been better satisfied if the jury had limited the damages to the amount suggested to them by the learned judge; but in cases of this kind, unless there is so wide a difference between the amount of the verdict and the amount recommended, as would lead us to the conclusion that the jury were actuated by or proceeded on some wrong principle, we ought not to interfere. I cannot say that because the jury gave $50 more than I would probably have awarded the verdict should be disturbed.

The rule will be absolute only for so much as seeks to enter a verdict for the defendant, Coleman, and discharged as to a new trial.

WILSON, J., concurred.

Rule accordingly.

REGINA v. MASON.

Perjury—Indictment—Evidence.

Upon an indictment for perjury committed upon the hearing of a complaint before a magistrate, the information having been proved:

Held, upon a case reserved, that it was unnecessary to prove any summons issued, or any step taken to bring the person complained of before the magistrate; for so long as he was present, the manner of his getting there was immaterial.

The indictment was defective for not shewing the jurisdiction over the offence, by alleging where the liquor was sold, the sale of which without license was the com-

plaint; but as judgment had been pronounced, this could be taken advantage of only by writ of error.

Quære, whether it was not defective also, for not shewing that the person complained against was present, or that a summons issued, and that the magistrate was authorized to proceed *ex parte*.

[38 U. C. Q. B. 431.]

The defendant was convicted of perjury at the Assizes, at Toronto, before Galt, J., who reserved a case for the opinion of this court. The indictment was as follows:

The jurors for our Lady the Queen upon their oath present, that heretofore, to wit, on the 16th day of September, 1869, George Albert Mason came in his own proper person before A. M., Esquire, then and yet being police magistrate of the City of Toronto, in the County of York, and one of Her Majesty's justices of the peace in and for the said City, and then and there before the said A. M., Esquire, upon a certain information of G. A. Mason,—wherein it was sworn that the said complainant was informed and believed that James King (Caroline and Duchess), within the past three months, to wit, on the 7th day of September, A.D. 1869, did sell wine, beer, or spirituous liquors, without a license so to do, contrary to law,—in due form of law was duly sworn and gave evidence, and did then and there upon his oath aforesaid falsely, wilfully, and corruptly depose and swear in substance and to the effect following: "That on Wednesday, the first day of September, 1869, he, the said G. A. M., saw one Mrs. King, meaning one Mary King, the wife of one James King, of the City of Toronto, grocer, hand to one H. the bottle (meaning bottle of brandy) off the shelf, and that said H. paid her (meaning the said Mrs. King) for it, and that he (meaning the said James King) had at the time bottles of liquors exposed in his store for sale," which facts were material to the said issue, and to the matter being enquired into on the said information—whereas in truth the said G. A. Mason did not on Wednesday, the first day of September aforesaid, see the said Mrs. King hand to the said H. the bottle of brandy off the shelf, and the said H. did not pay her for it, and the said James King had not at the time bottles of liquor exposed in his store for sale; and the said G. A. M. did thereby commit wilful and corrupt perjury."

The information was produced and witnesses were examined, who swore to the falsity of the oath of the prisoner. No summons was proved to have issued on the information. The learned judge stated, "It does not expressly appear from my notes that King was present at the examination" (before the police magistrate) "but from what appeared at the trial I am satisfied that he was"

On the close of the case for the Crown, McMichael, on behalf of the prisoner, objected that there was no evidence of any case depending before the police magistrate: that the evidence shewed only a complaint; but there was no proof that any summons was issued, nor any step taken to bring the party complained of before the magistrate. The learned judge overruled the objection, but reserved the point.

The question for the consideratian of the court was, whether the objection was sustained on the evidence, and should prevail.

The prisoner was sentenced to be imprisoned in the common jail for twelve months, with hard labour, but execution was respited, under Con. Stat. U. C. ch. 112, until the question above stated had been considered and answered.

McMichael for the prisoner. No jurisdiction is shewn on the indictment, enabling the police magistrate lawfully to take the oath or deposition of the prisoner which was the subject of perjury. A summons to the person informed of to appear should have been shewn, or else that he had in fact appeared. There was therefore no proper trial or issue before the magistrate: *The King* v. *Pearson*, 8 C. & P. 119; *Regina* v. *Hurrell*, 8 F. & F. 271; *The Queen* v. *Overton*, 4 Q. B. 83.

Read, Q.C., for the Crown, cited *Regina* v. *Shaw*, 1 Leigh & Cave, 579; S. C. 10 Cox C. C. 66; *Regina* v. *Whybrow*, 8 Cox C. C. 438; Russell, C. & M., 4th ed., vol. III. p. 97; *Vestry of Chelsea* v. *King*, 34 L. J. M. C. 9; *Regina* v. *Atkinson*, 17 C. P. 295; Con. Stat. C. ch. 103.

WILSON, J.—The question submitted must, I think, be answered in the negative. There was a complaint proved, and it was not, in my opinion, necessary that any summons should have issued, or that any step should have been taken to bring the person complained of before the magistrate.

So long as the person informed against was present, the magistrate might rightly proceed, though he did not appear on summons, or did not require compulsion to make him appear. His actual presence was all that was required; the manner of his getting there was of no consequence to the investigation.

The Consol. Stat. C. ch. 103, secs. 20, 24, require the information to be laid on oath, unless it is expressly dispensed with by Act of Parliament. The summons may be issued if required. If it be issued and the party fail to appear, the magistrate may proceed *ex parte*: secs. 7, 32; or he may issue his warrant to apprehend the party: secs. 6, 32.

The case of *Regina* v. *Shaw*, cited, shews a summons not to be necessary if the party choose to appear without it, and there is nothing opposed to this rule in our statutes. The same law is stated in Paley on Convictions, and several authorities are cited for it.

This disposes of our duty, as we have answered the question put to us: *Rex* v. *Boultbee*, 4 A. & E. 498; *Regina* v. *Shaw*, 11 Jur. N.S. 415.

But it may be as well to state what we observed upon in the argument, that the indictment seems to be quite insufficient in point of law.

It is not stated where the liquor was sold. It may, for anything that appears, have been sold in an adjoining county, or in an adjoining province, or in some foreign country, and what right the police magistrate of the City of Toronto had to take cognizance of it is not shewn. There is therefore a total want of jurisdiction on the face of the indictment.

The Ontario Act, 32 Vic. ch. 32, sec. 25, requires the proceedings to be carried on before magistrates "having jurisdiction in the municipality in which the offence is committed."

The police magistrate has drawn his information without shewing his jurisdiction over the offence, and he has also alleged the selling without license to have taken place "within the past three months," which is the period fixed by Con. Stat. C. ch. 103, sec. 26, without noticing that this limitation is shortened by the Ontario Act,

32 Vic. ch. 32, sec. 25, to twenty days (*a*). See *Wray* v. *Toke*, 12 Q. B. 492.

The indictment may also be objectionable for not stating that King was present at the examination, or for not shewing a summons to have issued, and that the magistrate was authorized to proceed *ex parte* by reason of King's default to appear after service of the summons had been duly made on him.

These exceptions to the validity of the indictment cannot now be taken unless by writ of error, as judgment has been pronounced on the prisoner.

The respiting of execution in this instance is perhaps no favour to the prisoner, as it might have been if his sentence had been a capital one, or had been imprisonment in the penitentiary, or had been in any respect different or more severe than his present imprisonment. The addition of hard labour, that is, such hard labour as our gaols impose or enable to be imposed, is not in fact any addition to the pain of imprisonment.

If the proceedings are not reversed in error, it may be well that the time of imprisonment from sentence pronounced to this time, should be counted as part of the sentence.

The judgment is therefore affirmed.

Conviction affirmed.

Oliver v. The Union Board of School Trustees of Ingersoll.

Grammar and Common School Trustees — Joint Board— Corporate existence.

A joint board of grammar and common school trustees are a corporate body, capable of contracting and being sued, though the separate corporate existence of each continues; and they were held liable therefore for work done upon a contract made by them with the plaintiff for an addition to the school house.

School Trustees v. *Farrell*, 27 U. C. R. 321, commented upon.

[33 U. C. Q. B. 409.]

Action on the common counts.

The defendants contended, under the plea of never indebted, that they were not liable in law, not being a corporate body capable of being sued.

The cause was tried at Woodstock, in the Fall of 1868, before Morrison, J. A verdict was rendered for the plaintiff, for $75 damages, with leave to defendants to move to enter a nonsuit, if the court should be of opinion the defendants were not liable.

In the term thereafter, *Anderson* obtained a rule calling on the plaintiff to shew cause why a nonsuit should not be entered.

In Michaelmas Term last, *M. C. Cameron*, Q.C., shewed cause. The action is brought to recover the balance of money still due to the plaintiff for building a grammar school, being an addition to the school house in Ingersoll. It is contended by defendants that they are not liable; but the Con. Stat. U. C. ch. 63, sec 25, sub-sec. 7, 23 Vic. ch. 49, sec. 10, and 29 Vic. ch. 23, sec. 5, shew that defendants are a body that have extensive powers, and may hold property. They may therefore contract with respect to it. The contract was made with the defendants, which distinguishes this case from that of *The Joint Board of Grammar and Common School Trustees of Caledonia* v. *Farrell*, 27 U. C. R. 321.

Anderson supported the rule. The united board does not merge the separate and respective existence of the two trustee corporations which form it. It is simply a board of government, and if legal rights are enforced they must be by or against the constituent part or parts of the board that is or are affected. The case referred to, which was cited by defendants at the trial, is expressly in their favour.

Wilson, J.— The question is, whether the decision in the case referred to is one which we can adopt, if it be applicable to the facts of this case. It was given on a County Court Appeal, and is therefore not as binding on us as a decision which could have been appealed from would have been.

There the Education Office sent to the chairman of the board of grammar school trustees a circular advising him of the payment of $242 for *that* school. The money was paid into the Bank of Upper Canada, at Toronto, as agents for the treasurer of the County, and the bank sent a draft to the treasurer's order for the money on the bank agency in Hamilton.

This draft remained in the treasurer's possession from the 11th of July till the 26th of September, at which time the bank stopped payment. The treasurer then sent the draft to the plaintiffs, but they refused it, and sued him for the money.

It was admitted the money was the trustees' apportionment of grammar school funds for the previous six months.

It was contended in the court below that the treasurer was not liable, but if there was a liability that it rested on the county council, and that the trustees as a union board could not sue, as the money belonged to the grammar school board, and not to the united board.

On appeal the learned Judge who delivered judgment appears to have relied chiefly on the fact that "the money was paid to the treasurer as grammar school money * * * If so, and, as we think, the grammar school trustees, notwithstanding the union under the joint board, still existed as a separate corporation, it would seem to follow that it should be sued for by and in the name of such corporation," as the ground for holding the action could not be maintained by the union board.

The general question which the learned judge stated in the earlier part of his judgment—"Is the joint board a corporation capable as such of suing?"—he did not answer. He may have thought it unnecessary, as beyond the requirements of the case.

I am not able therefore to take much benefit from the decision in that case, as I should have

---

(*a*) The information was as follows:

City of Toronto, } The information and complaint of
To wit: } G. A. Mason, of the City of Toronto, taken on oath before me, A. M., Esquire, police magistrate of the said city, this sixth day of September, 1869. The said complainant upon his oath saith he is informed and believes that James King, Caroline and Duchess, did within the past three months, to wit, on the seventh day of September, 1869, sell wine, beer, or spirituous liquors, without having a license so to do, contrary to law. Complainant therefore prays a summons may issue, that justice may be done in the premises.

Sworn before me, &c.

(Signed) G. A. Mason.

(Signed) A. McNabb, P. M.

been able to do, no doubt, if the general question proposed had been as generally answered.

In the present case the defendants as a corporation made a contract with the plaintiff for an addition to the school house. The work has been done, and all of the money paid but the trifling sum of $75, which is the occasion of all this serious litigation.

To form a satisfactory opinion on the subject the Statutes must be carefully considered.

By Con. Stat. U C. ch. 63, sec. 25, sub-sec. 7, the board of trustees of each grammar school may "employ in concurrence with the trustees of the school section, or the board of common school trustees in the township," &c., "in which such grammar school may be situate, such means as they may judge expedient for uniting one or more of the common schools of such township," &c., "or departments of them, with such grammar school; * * * and the schools thus united shall be under the management of a joint board of grammar and common school trustees, who shall consist of and have the powers of the trustees of both the common and grammar schools; but when the trustees of the common school exceed six in number, six only of their number, to be by them selected, shall be the common school portion of such joint board."

By the Con. Stat. U. C. ch. 64, the trustees of common schools have in general the corresponding power which trustees of grammar schools have. The trustees of common schools may "take such steps as they may judge expedient to unite their school with any public grammar school, which may be within or adjacent to the limits of their section:" sec. 27, sub-sec. 7. And the board of school trustees of cities, towns and villages, may also "adopt at their discretion such measures as they judge expedient, in concurrence with the trustees of the county grammar school, for uniting one or more of the common schools of the city, town, or village, with such grammar school:" sec. 79, sub-sec. 9.

By 23 Vic. ch. 49, sec. 10, it is enacted: "It shall be lawful for any school trustee corporation to dispose by sale or otherwise of any school site or school property not required by them in consequence of a change of school site, and to convey the same under their corporate seal, and to apply the proceeds thereof for their lawful school purposes; and all sites and other property given or acquired, or which may be given or acquired for common school purposes, shall vest absolutely in the trustee corporation for this purpose; and in like manner, and for like purpose, it shall be lawful for any united board of grammar and common school trustees to dispose by sale or otherwise of any school site or school property belonging to the united board, or to the grammar school or common school trustees respectively."

By 29 Vic. ch. 23, sec. 5, it is enacted that "in all cases of the union of grammar and common school trustee corporations, all the members of both corporations shall constitute the joint board, seven of whom shall form a quorum; but such union may be dissolved at the end of any year by resolution of a majority present at any lawful meeting of the joint board called for that purpose. On the dissolution of such union between any grammar and common school, or department thereof, the school property held or possessed by the joint board shall be divided or applied to public school purposes, as may be agreed upon by a majority of the members of each trustee corporation; or if they fail to agree within the space of six months after such dissolution, then by the municipal council of the city, town, or incorporated village within the limits of which such schools are situated, and, in the case of unincorporated villages, by the county council."

These statutes declare, that the schools thus united shall be under the management of a joint board of grammar and common school trustees: that this joint board shall consist of and have the powers of the trustees of both the common and grammar schools; that the board may have and hold property: that it may sell and dispose of such property in like manner and for like purposes as any school trustee corporation may sell or dispose of it: that it may sell and dispose of, in like manner and for such like purpose, the property belonging to the grammar or common school trustees repectively, composing such united board.

The conclusion I draw from these provisions is that the joint board when formed is a corporate body, having the powers of both the constituent corporations, and the possession, management, and power of sale and disposition of all the property of the newly constituted body, as well as of that of the constituent bodies.

The *management* of the affairs of the joint board being under the trustees of each subordinate corporation, cannot alone prevent the independent and separate existence of the new body, for every such corporation must be under the individual management of some persons, sometimes of a number of persons generally, sometimes of distinct integral bodies or persons, and sometimes of a select body or number.

The affairs of municipal corporations are under the management of the councils; of banks and such like bodies, under the management of directors; of school corporations, under the management of trustees; of these united boards under the management of a joint body, consisting of integral parts of the constituent corporations.

I think the language used with respect to the joint board and the powers conferred and the duties imposed on it, constitute a body corporate by implication of law: *The Conservators of the River Tone* v. *Ash*, 10 B. & C. 349; *Ex parte Newport Marsh Trustees*, 16 Sim. 346.

The language is somewhat the same in ch. 64, sec. 37, which enables the township councils to erect and support a township model school, "and in such event the members of such township council shall be the trustees of such model school, and shall possess the powers of common school trustees in respect to all matters affecting such model school."

I think it cannot be doubted that the members of the council would become a corporate body by the name of the "Trustees of the Township of ——— Model School."

In such a case, "The trustees of any one or more common schools may, at their discretion, and with the consent of such council, *merge* their schools into such model school:" sec. 38. And this would not have been provided for if the trustees of the common school being a corpora-

tion were intended to have been *merged* into any other body which was not a corporation.

The separate existence of the grammar and common school corporations, after their union, is no argument against the corporate existence and active exercise of corporate powers by the joint board, for the continued existence of the constituent bodies is expressly provided for. The joint board is to be selected from the constituent boards, and they are to resume their original functions on a dissolution taking place. So also, in the case of a union of common school sections, "the several parts of any altered or united school sections shall have respectively the same right to a share of the common school fund for the year of the alteration or union, as if they had not been altered or united: sec. 43.

In my opinion, then, these defendants had the power to contract for the work which is the subject of this suit, and they were therefore liable to be sued for it as a corporate body, and the joint board, I think, is a corporation capable as such of suing and of being sued.

The facts of this case are not the same as they were in the case against Farrell. Perhaps the cases are not reconcileable. However that may be, the only conclusion I can form is, that the rule fails in law.

MORRISON, J., concurred.

Rule discharged.

THE TRUSTEES OF SCHOOL SECTION NUMBER SEVEN, IN THE TOWNSHIP OF STEPHEN, v. MITCHELL.

School Trustees—Action against Secretary-Treasurer.

Held, affirming the judgment of the County Court, that a Board of School Trustees could maintain an action for money had and received against their secretary-treasurer, to recover a balance of money in his hands not expended or accounted for.

[29 U. C. Q. B. 382.]

Appeal from the County Court of Huron.

The defendant, it appeared, had been secretary treasurer of the plaintiffs for several years, and this action was brought to recover from him a balance of money proved to be in his hands as secretary-treasurer, unexpended or unacounted for by him.

The only question raised at the trial was the right of the plaintiffs to recover the amount proved in this action for money had and received. The learned County Court Judge held that the plaintiffs could recover, and a verdict was rendered for them for $66 20.

In the term following a rule *nisi* was granted to set aside the verdict and for a new trial, which after argument was discharged, and the defendant appealed.

Moss, for the appellant, cited *Bartlett* v. *Dimond*, 14 M. & W. 49; *Pardoe* v. *Price*, 16 M. & W. 451; *Edwards* v. *Bates*, 7 M. & G. 590.

C. S. Patterson, contra.

MORRISON, J.—To support this action all that is necessary to be proved is, that the defendant received the money in question for the purposes of the corporation, the plaintiffs. What was contended on the argument was, that the defendant did not stand in the relation of agent of the plaintiffs: that the moneys he received were received not for the use of the corporation, but for school purposes: that the relation between the defendant and the plaintiffs was that of trustee and *cestui que trust:* and that the remedy was only in equity for an account.

I must confess that I would consider it to be a great misfortune if we were compelled to hold, in a case of this kind, that a suit in equity was necessary to ascertain or rather to enable the plaintiffs to recover the balance of moneys withheld from them by their treasurer. We however, think that it is quite clear that the legal title to recover moneys in the hands of the secretary-treasurer of school trustees, and witheld from them, is in the corporation, and that it can be recovered in this form of action.

By the 27th section of the School Act, Consol. Stat. U C. ch. 64, the school trustees are authorised to appoint one of their number (as in this case) to be secretary-treasurer of the corporation, who shall give security for the correct and safe keeping, and forthcoming (when called for) of the papers and moneys belonging to the corporation, and for the receiving and accounting for all school moneys, &c., and the disbursing of such moneys in the manner directed by the majority of the trustees. These provisions clearly indicate that the defendant, as the officer and treasurer of the plaintiffs, received the school moneys in question as for and belonging to the corporation, and when his term of office expires or ceases his duty is to hand over whatever money may be in his custody to the corporation, and if he refuses to do so, the same may be recovered from him in this form of action. We are therefore of opinion that the view taken by the learned Judge in the court below was correct, and that the appeal should be dismissed with costs.

WILSON, J. concurred.

Appeal dismissed.

SARGEANT v. ALLEN.

Pound-keeper—Sale by after security given—Right of action

The plaintiff sued defendant, a pound-keeper, for selling the plaintiff's horses impounded, after the plainiff had given him satisfactory security as required by the statute, (Municipal Act of 1866, sec. 355,) and demanded the horses. A count in trover was added; and the plaintiff had a verdict on both. On motion for a nonsuit, because the first count did not allege that the act complained of was done maliciously:

Held, affirming the judgment of the County Court, that the verdict was right on both counts, for the special count shewed a case in excess of jurisdiction, and within sec. 1, therefore, not sec. 2, of Consol. Stat. U. C, ch. 126.

The proper mode of taking the objection would have been by demurrer, or in arrest of judgment.

[29 U. C. Q. B. 384.]

Appeal from the County Court of Grey.

The declaration contained three counts:

1. That defendant, as pound-keeper, received two colts of the plaintiff, and impounded the same for certain alleged damages and costs charged upon the same, and sold them at a gross undervalue.

2. That defendant, as pound-keeper, having received the colts, the plaintiff offered to defendant and gave to him satisfactory security, as required by 29–30 Vic. ch. 51, sec. 355 (Municipal Act of 1866) for all costs, &c.; and that the plaintiff demanded the colts from defendant, yet defendant refused to give them to the plaintiff, and wrongfully sold them.

3. Trover.

Plea, general issue, by statute, Consol. Stat. U. C. ch. 126, secs. 1, 10, 11, 16, 19 20; 29–30 Vic. ch. 51, sec. 355, sub-secs, 1, 2, 3, 4, 10, 12, 13, 17, public acts.

The jury found for defendant on the first count, and for the plaintiff on the second and third counts.

Defendant obtained a rule on the plaintiff to shew cause why the verdict on the second and third counts should not be set aside, and a nonsuit entered, because the second count shewed that defendant was a public pound-keeper and acted as such, and it did not allege that the act complained of was done maliciously and without reasonable and probable cause; and because the third count could not be maintained against defendant, who was a public officer; he should have been declared against specially, and malice and want of reasonable and probable cause alleged against him.

This rule, after argument, was discharged, and the defendant appealed, on the same grounds.

McMichael, for the appellant. It is settled that defendant is a public officer within Consol. Stat. U. C. ch. 126: *Davis* v. *Williams*, 13 C. P. 365. The second count is defective, because it does not allege, according to the statute, that defendant acted maliciously and without reasonable and probable cause; and the fact of a sale of the colts impounded stated in the count did not, nor did the evidence as to the same, though made after tender of the bond by the plaintiff, deprive defendant of his protection under the statute. This view prevents the third count being used against the defendant: *Brose* v. *Huber*, 15 U. C. R. 625, 18 U. C. R. 282; *Huist* v. *Buffalo & Lake Huron R. W Co.*, 16 U C R. 299; *Alton* v. *The Hamilton and Toronto R. W. Co.*, 13 U. C. R. 595.

Moss, for the respondent. Even if the second count be objectionable as framed, the trover count is maintainable, because defendant by his wrongful refusal to take the bond, without any excuse for his refusal, forfeited the protection of the statute, and became a wrong-doer. He could not suppose he was acting within the line of his duty, or under the provisions of the statute; his conduct became wilful and unjustifiable: *Connors* v. *Darling*, 23 U. C. R. 541; *Neill* v. *McMillan*, 25 U. C. R. 485; *Kendall* v. *Wilkinson*, 4 E. & B. 680; *Pease* v. *Chaytor*, 1 B. & S. 658; *Pillott* v. *Wilkinson*, 3 H. & C. 845; *Grainger* v. *Hill*, 4 Bing. N. C 212; *Aldred* v. *Constable*, 6 Q. B. 381; *West* v. *Nibbs*, 4 C. B. 172.

WILSON, J.—This is a case in which the defendant, a public officer, had the right to receive the colts and to impound them.

The owner was also entitled at any time before sale to replevy or get back the colts on demand made for them, without payment of any poundage fees, on giving satisfactory security to the pound-keeper for all costs, damages, and poundage fees that might be established against him.

The plaintiff, alleges in his second count, that before any sale of the colts by defendant he offered to give and did give to defendant satisfactory security, as required by the statute, for all costs, &c, and then demanded the colts back from defendant yet defendant refused to give them up, and wrongfully and improperly sold them.

The defendant does not now dispute these facts. What he says is, that the count should have been framed on the first section of Consol. Stat. U. C. ch. 126, and should have alleged that the sale was made maliciously and without reasonable or probable cause, and that the third count, which contains no such allegation either, cannot be maintained.

The facts shew an excess of jurisdiction, under the second section of the Act.

The pound-keeper is to sell only in the event of the cattle not being replevied or redeemed. Here the plaintiff not only offered to the defendant security under the statute, but he gave it to him; yet the defendant sold the colts, when his duty was to return them to the plaintiff.

Pease v. *Chaytor*, 1 B. & S. 658, appears to me to be quite in point. *Leary* v. *Patrick*, 15 Q. B. 266, and *Kirby* v. *Simpson*, 10 Ex. 358, are also applicable.

The defendant complains only of the count in question on the ground of pleading—that it does not contain the allegation of malice, &c., according to the first section of the Act. He does not complain of any improper direction of the judge, nor that the verdict was against law and evidence, because it was proved the defendant had reasonable and probable cause for believing he had the right to act as he did, or that he had the right to proceed to a sale notwithstanding the delivery of the bond, or that he disputed or denied the sufficiency of the bond; but merely that, as a matter of pleading, the count is insufficient because it is not alleged he acted maliciously, &c.

Properly he is not entitled to have a nonsuit entered. It is, if an objection at all, the proper subject of a demurrer, or a motion in arrest of judgment.

The third count, however, is free from such objection, and as there is no complaint against the direction to the jury or their finding, the plaintiff is entitled to retain his verdict; *Booth* v. *Clive*, 10 C. B. 827; *Hardwick* v. *Moss*, 7 H. & N. 136.

I think the second count does shew a case in excess of jurisdiction, and therefore it was not necessary to allege that the defendant acted maliciously, &c.

If it do not shew such a case, a nonsuit or verdict for defendant is not the proper remedy, so long as the alleged objection appears on the face of the count, and the count itself was proved.

The third count is free from any insufficiency of pleading, and no objection has been made to the charge or finding. On that count, at any rate, the plaintiff must have a verdict, but I think he is entitled to his verdict as it stands on both counts, and that the appeal must be dismissed with costs.

MORRISON, J., concurred.

Appeal dismissed.

INLOLVENCY CASE.

IN RE HEYDEN, AN INSOLVENT.

Insolvent—29 Vic. ch. 18, sec. 13—Lien for costs.

Held, overruling *In re Ross*, 3 P. R. 394, that under 29 Vic. ch. 18, sec. 13, a judgment creditor who had an execution in the sheriff's hands at the making of the assignment, was entitled to rank for his costs of the judgment as a privileged creditor against the insolvent.

[29 U. C. Q. B., 262.]

This was an appeal from a decision of the judge of the county court of Brant, affirming the award of the official assignee, who awarded that

the petitioner Molson, was not entitled to rank on the division sheet of the insolvent as a privileged creditor for the amount of the costs of a judgment recovered against the insolvent, upon which an execution had been issued, and placed in the hands of the sheriff of the county of Brant, against the goods of the insolvent, at the time of the making of the assignment by the insolvent to the official assignee.

It appeared from the judgment of the learned county court judge, that although he affirmed the award of the official assignee, yet in his opinion that award was bad in point of law, but that he felt himself bound to follow the judgment of the late Mr. Justice John Wilson in *In re Ross*, 3 P R. 394.

Miller, for the appellant.

Hugh McMahon (of London), for the assignee.

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

We have considered the case of *In re Ross*, 3 P. R. 394, and we are of opinion that the conclusion arrived at in that case cannot be upheld.

The 13th section of the statute 29 Vic ch. 18, (Insolvent Act of 1865) enacts that "no lien or privilege upon either the personal or real estate of the insolvent shall be created for the amount of any judgment debt, or of the interest thereon, by the issue or delivery to the sheriff of any writ of execution, unless such writ of execution shall have issued and been delivered to the sheriff at least thirty days before the execution of the deed of assignment, or the issue of a writ of attachment, under the said act; but this provision shall not apply to any writ of execution heretofore issued and delivered to the sheriff, nor affect any lien or privilege for costs which the plaintiff heretofore possessed under the law of that section of the province in which such writ shall have issued."

The expressions "lien or privilege" used in the section do not accurately or clearly define the intention of the legislature as applicable to this province. The word "privilege" is frequently used in the Lower Canada laws as referring to certain preferential or secured rights or claims, and in all probability that word was used in reference to that province, and the word lien as applicable to Upper Canada.

The expression lien is generally used to designate a right which a party has to retain that which is in his possession or power until certain demands are satisfied, and a particular lien may arise by mere operation of law. Now before the passing of the Insolvent Acts, an execution creditor, when he placed his writ in the sheriff's hands, had a particular lien on his debtor's property to the extent of his debt and costs. The Insolvent Act, by the 13th section above cited, deprived him of that lien for his judgment debt unless the execution had been delivered to the sheriff thirty days before the insolvency proceedings; but the section further provided that it should not apply to nor affect any lien or privilege for costs which the plaintiff possessed under the law of that part of the then province in which said writ was issued. The object of the section was to provide against judgments being a lien, and the costs thus referred to, we must take to be the costs of recovering the judgment; and as a lien for such costs did exist in Upper Canada before the passing of the act for the amount of those costs on the debtor's goods when the execution was placed in the sheriff's hands, it is only reasonable to assume and hold that the legislature meant and intended that such lien and the right to recover those costs in full, should not be affected by the provisions of the 13th section, but that the same should be secured to the judgment creditor as a privileged claim on the assets of the estate.

It is most likely that the legislature considered that as the execution creditor incurred these costs in prosecuting his claim to judgment and execution, he was entitled to a lien for them, otherwise he would be placed in a worse position than any other creditor.

During the argument we were referred to the case of *Converse et al* v. *Michie*, 16 C. P. 167, to the closing remarks of the learned Chief Justice of the court, where he says that the plaintiff "does not seem entitled to any lien for his costs." The effect of the decision in that respect, as stated by the learned judge of the county court of Wentworth, in *In re Scott, an insolvent*, to which we were referred, is, we think, correct,* namely, that what *Converse* v. *Michie* decided was, that in that case the property of the insolvent was vested in the assignee under the attachment of insolvency at the time the *fi. fa.* of the plaintiff issued, and that consequently there could be no lien for either debt or costs, and the question now under discussion could not arise.

On the whole, we are of opinion, that the order of the county court judge should be reversed, as well as the award of the official assignee, and that the petitioner Molson be allowed to rank as a privileged creditor for the amount of the costs in question on the estate of the insolvent; and as to the costs of this application, that they be paid out of the estate.

Appeal allowed.

UNITED STATES REPORTS.

FRIEDMAN v. RAILROAD CO.

The dying declaration of the deceased, as to the cause of the accident, is not evidence in an action for negligence.

Opinion by Hare, P. J., July 2, 1870.

This was an action brought by a widow and her children to recover damages for the death of her husband, who was fatally injured by the wheels of a passenger car belonging to the defendants. The plaintiff offered to prove the dying declaration of the deceased, that his death was due to the negligence of the conductor. This evidence was objected to and admitted under an exception. The point is now before us on a motion for a new trial.

A death-bed declaration is a statement made out of court and brought before the jury indirectly through the testimony of witnesses. It is therefore contrary to the rule which forbids hearsay evidence. The reason for this exception has been differently stated. The law, it has been said, presumes that a dying man can have no motive to falsify the truth, and standing in the shadow of another life does not need the sanction of an oath.

*This case has not been reported. A copy of the judgment was handed to the court during the argument. *In re Fair and Buist*, 2 U. C. L. J. N. S., 216, was also referred to.

If this were the foundation of the doctrine, no declaration made in the immediate view of death could be shut out, and a man might be convicted of theft or arson, on evidence that he had been charged with the offence by some one who was about to leave the world. The authorities, however, seem to agree, that such proof can only be adduced in trials for murder, and to show the cause of the death. It is therefore the nature of the offence, and not the situation of the witness, which justifies the relaxation of the rules of evidence. The fear of detection naturally prompts the murderer to choose an occasion when his victim is alone; if the statements of the latter were not admissible the crime might go unpunished for want of proof. This argument was felt with peculiar force in earlier times when violence was more common than it is at present, and a practice to which necessity seems to have introduced, has grown inveterate through the lapse of time.

It is obvious, that a doctrine which is so strictly limited in criminal cases can hardly apply in civil. Conceding that the statements of a dying man carry as much weight with them as if they were under oath, there are other considerations which should not be overlooked. To render testimony safe it must be subject to cross-examination. It is not enough that the witness desires to speak the truth, there should be an opportunity to sift his statements, and elicit facts and circumstances that may have been overlooked from inadvertence. The suppression of a seemingly immaterial incident may lead to error without an intention to deceive. The deceased is said to have declared in the present instance, that his death was caused by the fault of the conductor, and the jury may have thought that his conclusion was one which they were not at liberty to disregard. If he had been required to state the grounds upon which this opinion was based, it might have appeared that the conductor was free from blame, and that the accident was due to his own negligence. There is another danger that the statements of the dying man will not be faithfully repeated by those who hear them Their passions or interests may lead them to suppress certain portions of the story, and give undue prominence to others. The authorities afford but little light on a point which is of so much importance that it should be well settled.

Dying declarations have been treated in some instances as admissable under all circumstances and for every purpose: *Clymer* v. *Setler*, 3 Bur. 1244; *Farrund* v. *Shaw*, 2 N. C. Repository, 402; while they have been viewed in others as an exceptional growth of the criminal law which has no place in civil jurisprudence: *Wilson* v. *Howen*, 15 Johnson, 284. In *Fallom's Adm'r.* v. *Ammon*, 1st Grant's Cases, 125, cited at the argument for the plaintiffs, the declarations were admissable on other grounds, and did not require the aid of the principle under consideration. There is seemingly but one decision bearing on the only question which admits of a reasonable doubt; whether such statements can be received to show the cause of the death when it is material to the issue. I refer to the case of *Daily* v. *The New York and New Haven Railroad*, 32 Conn., which is identical with the present, and where the court excluded the evidence. The silence of the reports is significant of the opinion of the profession. If, in the innumerable cases in which actions have been brought to recover damages for fatal accidents, it had been thought possible to introduce the last words of the deceased as proof of negligence, we should not have been at a loss for a guide in this instance.

It results, from what has been said, that the rule for a new trial must be made absolute. If the point were a doubtful one, we should have preferred to let the record go for review to the court above. When, however, there is a moral certainty that the judgment will be reversed, it is due to the cause of justice, and the best interests of all concerned, that the issue should be tried again while the facts are still fresh in the memory of the witnesses.

Rule absolute.

—*Philadelphia Legal Intelligencer.*

CORRESPONDENCE.

Division Courts.—Statement of Costs.

To The Editors of the Law Journal.

Gentlemen,—Is it the duty of a Division Court Clerk to give a statement in detail of the costs of a suit when requested by the person liable to pay the same, or may he refuse to give the items, merely giving the total, regardless of what makes up the amount. It appears to me every person liable to pay costs is entitled to a bill giving each separate item for which he is to pay.—Yours, &c.,

A Subscriber.

[We think that the Clerk should as a matter of course give every interested enquirer any information that is in the power of the Clerk to give, and in the case put by "Our Correspondent," the Clerk should with alacrity have satisfied the person who had to pay costs, that he was charged no more than was right. We do not say that the Clerk should have taken the trouble of pointing out the tariff and rules relating to costs, although such civility on his part would not be amiss, but he should, at least, have given a memorandum of his charges so that the party against whom they were charged might had the opportunity, if he so pleased, of ascertaining their correctness.

We think, however, that Rule number 88 gives parties power to compel a Clerk to make up his bill, and all that is necessary in such a case as that mentioned by "A Subscriber" is to require the Clerk to tax his costs, when he is bound to deliver his bill in detail, as mentioned in that Rule. In all cases where the Clerk declines to give such information the party interested may always obtain redress

by applying to the Judge, who will soon cause the Clerk to do his duty.

There is another thing in reference to the above letter, which shews that the Clerk is bound to furnish a bill—the Statute, (sec. 36, O'Brien's D. C. Act) says, that the Clerk shall tax costs, *subject to revision by the Judge*—which clearly shews that a bill must be prepared, otherwise it would be almost impossible that any revision by the Judge should take place.—Eds. L. C. G.]

Municipal Law—Qualification of Township Councillor.

To the Editors of the Local Courts Gazette

Gentlemen,—Please be so kind as to give your opinion in the July number of your valuable paper on the following question:—

Mr. A. is assessed on the last revised assessment roll for the following amounts, real estate three hundred dollars, rental two hundred dollars, personal property one hundred dollars, making a total of $600. Can he qualify as Township Councillor for 1871?

A Subscriber.

[Correspondents should always, when asking questions, give full references to statutes, &c., so as to save time and trouble, and make their meaning clear. We take it for granted, moreover, that questions are asked *bona fide*, not for some special case or to meet some particular view, but to elicit information on subjects of general interest, and that they are not asked without some thought beforehand on the subject. It would be well, therefore, for correspondents to argue subjects out to the best of their ability in their letters to us. So far as we understand the case now put to us, probably Mr. A. would be qualified, but we do not express any decided opinion on the point.—Eds. L. C. G.]

Division Courts—Statute Labour.

To the Editors of the Local Courts Gazette.

Gentlemen,—Suppose a party residing and carrying on business in the City of Hamilton, such as a foundry or the manufacture of sewing machines, should send out an agent with a load of goods to sell. The agent comes here to Beverly and makes a sale of some of the goods, and takes a promissory note for the same payable in three months. The sale and delivery are made here, the note is made here, and the maker of the note resides here, but the note is dated at Hamilton. The note is not paid when it is due, and the holder finds it necessary to sue it. He enters the note in the Division Court at Hamilton; the defendant is served, and he gives notice of defence. At the trial the defendant pleads that the note is sued in the wrong Division, and proves that the contract was made and the note given in Beverly. Would the defendant in such case be entitled to a nonsuit?

Does the Assessment Act of 1866, as amended by 33 Vic. cap. 27, exempt clergymen from the performance of statute labour. They are exempt from paying taxes where their property does not exceed the value of $2,000, but are they exempted from the performance of two days statute labor, required by the 80th and 82nd sections of the Assessment Act, commonly known as Poll Tax.

An answer to the above questions in the next number of the *Gazette* will oblige,

A Subscriber.

Beverly, June, 1870.

[We think in such a case as that put by "Subscriber" the defendant would be entitled to a non-suit. The fact of the note being dated at Hamilton is only *primâ facie* evidence that the contract was made there, but as soon as it was shewn that the contract was made or the cause of action arose in another division, the plaintiff would be out of court. The notes in "O'Brien's Division Courts Act," throw considerable light on the subject, and on reference to them "Subscriber" will see from decisions there cited that even in less strong cases than the one put by him the plaintiff would be compelled to sue at Beverly.

We know of nothing to exempt clergymen from the performance of statute labour.—Eds. L. C. .G]

Moore v. The Home Insurance Company.—*Held*, 1. That deposit by the insured of bills of sale, and documents requisite for showing ownership of a vessel, with the Collector of Customs for registration, is sufficient to give an insurable interest, though actual registration be not made till after the destruction of the vessel by fire. 2. That if this be not so the insured may fall back upon any *anterior* title registered, from which he can deduce insurable interest. 3. One of two trustees, part owners, can insure a vessel. —*L. C. Jurist.*

AUTUMN CIRCUITS, 1870.

EASTERN.—*The Hon. the Chief Justice of the Common Pleas.*

Pembroke	Wednesday	Sept. 28.
Ottawa	Monday	Oct. 3.
L'Original	Monday	" 10.
Cornwall	Thursday	" 13.
Brockvile	Tuesday	" 18.
Perth	Monday	" 24.
Kingston	Thursday	Nov. 3.

MIDLAND—*Hon. Mr. Justice Galt.*

Napanee	Tuesday	Sept. 27.
Picton	Tuesday	Oct. 4.
Belleville	Friday	" 7.
Whitby	Tuesday	" 18.
Lindsay	Tuesday	" 25.
Peterborough	Tuesday	Nov. 1.
Cobourg	Tuesday	" 8.

NIAGARA.—*Hon. Mr. Justice Gwynne.*

Owen Sound	Tuesday	Sept. 18.
St. Catharines	Monday	" 19.
Welland	Monday	" 26.
Barrie	Monday	Oct. 3.
Milton	Wednesday	" 26.
Hamilton	Monday	" 31.

OXFORD.—*Hon. Mr. Justice Morrison.*

Cayuga	Wednesday	Sept. 28.
Simcoe	Monday	Oct. 3.
Berlin	Wednesday	" 12.
Stratford	Monday	" 17.
Woodstock	Monday	" 24.
Guelph	Monday	" 31.
Brantford	Monday	Nov. 7.

WESTERN.—*Hon. Mr. Justice Wilson.*

Walkerton	Wednesday	Sept. 21.
Goderich	Monday	" 26.
Sarnia	Tuesday	Oct. 4.
St. Thomas	Wednesday	" 12.
London	Monday	" 17.
Chatham	Monday	" 31.
Sandwich	Monday	Nov. 7.

HOME.—*The Hon. the Chief Justice of Ontario.*

Brampton	Tuesday	Sept. 27.
Toronto	Tuesday	Oct. 11.

CHALLENGING THE ARRAY.—On the evening of the trial my second brother, Henry French Barrington, a gentleman of considerable estate, of good temper, but irresistible impetuosity, came to me. He was a complete country gentleman, utterly ignorant of the law, its terms and proceedings; and as I was the first of my name who had ever followed any profession, the army excepted, my opinion, so soon as I became a counsellor, was considered by him as oracular. Having called me aside out of the bar-room, my brother seemed greatly agitated, and informed me that a friend of ours, who had seen the jury list, declared that it had been decidedly packed! He asked me what he ought to do. I told him we should have "challenged the array." "That was my own opinion, Jonah," said he, "and I will do it now!"

He said no more, but departed instantly, and I did not think again upon the subject. An hour after, however, my brother sent in a second request to see me. I found him, to all appearances, quite cool and tranquil. "I have done it," cried he, exultingly, "'twas better late than never," and with that he produced from his coat pocket a long queue and a handful of powdered curls. "See here!" continued he, "the cowardly rascal!"

"Heavens!" cried I, "French, are you mad?"

"Mad!" replied he, "no, no! I followed your advice exactly. I went directly after I left you to the grand jury-room to 'challenge the array,' and there I challenged the head of the array, that cowardly Lyons! He peremptorily refused to fight me, so I knocked him down before the grand jury and cut off his curls and tail; see, here they are, the rascal, and my brother Jack is gone to flog the sub sheriff."—*Barrington's Sketches.*

SANTEE V. SANTEE.—A testator bequeathed the interest of $1,000 to his widow for life, and also certain specific articles, as hay, wheat, &c., to be paid by the devisee of a tract of his land "during her life." and also the occupancy of certain rooms in his dwelling-house "during her lifetime or so long as she may choose to occupy the same herself." The devisee of the land gave the widow his bond conditioned for the payment of the interest and specific articles at the times they became due. *Held*: 1. That the widow's right to the receipt of the interest money, and the hay, &c., was not limited to the time of her occupancy of the rooms in the homestead. 2. That where the time of delivery and the particular articles to be delivered are fixed by contract, it is the duty of the obligor to seek the obligee to make the delivery. 3 If the obligee is out of the commonwealth, but his whereabouts is known to the obligor, then, although the latter is not obliged to follow him out of the State, yet it is his duty to inquire by letter as to what reasonable place he will appoint at which to receive the goods.—*Philadelphia Legal Gazette.*

COSTS FOR SLANDER.—Who is there that has not read of the despair of Snap and the disgust of Gammon when Snap rushed into the office on Saffron Hill with the news that the plaintiff in an action for slander had recovered one farthing damages, and that Lord Widdrington had told the defendant's attorney to give Snap another farthing, thereby making one halfpenny to Snap for all his exertions on behalf of a pauper client? Possibly some readers may not have perceived the point of Lord Widdrington's suggestion, and it is refreshing to have it brought to the mind by a decision of the Court of Queen's Bench, given last Term. In *Marshall* v. *Martin*, 39 L. J Rep. Q. B. 85, the plaintiff had a verdict for slanderous words, damages one shilling, and Baron Pigott indorsed on the record the certificates required by 3 & 4 Vic. 24, s. 2, and by section 5 of the County Courts Act 1867, in order to give the plaintiff his costs. But the Court of Queen's Bench held that the good old statute, 21 Jac. I. c. 16, s. 6, was still in full force and unrepealed, and that Mr. Marshall under and by virtue of it should "have and recover so much costs as the damages so given amounted unto, without any further increase of the same, any law, statute, custom, or usage to the contrary in anywise notwithstanding."—*Law Journal.*