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THE

UPPER CANADA LAW JOURNAL

AND

MUNICIPAL AND LOCAL COURTS' GAZETTE;

VOLUME V.

FROM JANUARY TO DECEMBER, 1859.

EDITED BY

W. D. ARDAGH ESQ., AND ROBERT A. HARRISON, ESQ., B.C.L.,
BARRISTERS-AT-LAW.

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

1859.

MACLEAR & CO., PRINTERS, 17 & 19 KING STREET EAST, TORONTO.

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DIARY FOR JANUARY.

1. Saturday... Circumcision. Taxes to be computed from this day.
2. SUNDAY... *2nd Sunday after Christmas.* [commence.
3. Monday..... Co. Court Term beg. Heir & Dev. Sittings com. Mun. Elections
6. Thursday... Epiphany. Toronto Winter Assizes begin. Univ. Coll. H. T. beg.
8. Saturday... County Court Term ends. Last day for Townships, Towns and Villages to make Government Returns.
9. SUNDAY... *1st Sunday after Epiphany.*
10. Monday..... Trinity College L. T. begins. Election of Police Trustees.
15. Saturday... Heir and Devisee Sittings end.
16. SUNDAY... *2nd Sunday after Epiphany.*
18. Tuesday.... Last day for notice of Ex. Chancery, Toronto and Cobourg
19. Wednesday Last day for notice of Ex. Chancery, Goderich.
22. Saturday... Articles, &c., to be left with Secretary Law Society.
23. SUNDAY... *3rd Sunday after Epiphany.*
25. Tuesday.... Last day for notice of Ex. Chancery, London and Belleville.
30. SUNDAY... *4th Sunday after Epiphany.*
31. Monday.... Last day for Counties and Cities to make returns to Government.

"TO CORRESPONDENTS."—*See Last Page.*

IMPORTANT BUSINESS NOTICE.

Persons indebted to the Proprietors of this Journal are requested to remember that all our past due accounts have been placed in the hands of Messrs. Patton & Ardagh, Attorneys, Barrie, for collection; and that only a prompt remittance to them will save costs.

It is with great reluctance that the Proprietors have adopted this course; but they have been compelled to do so in order to enable them to meet their current expenses, which are very heavy.

Now that the usefulness of the Journal is so generally admitted, it would not be unreasonable to expect that the Profession and Officers of the Courts would accord it a liberal support, instead of allowing themselves to be sued for their subscriptions.

The Upper Canada Law Journal.

JANUARY, 1859.

TO OUR READERS.

This is the first number of the fifth volume of the *Law Journal*, and we look for an increased support as a reward for our continued exertions to supply a first-class legal periodical for the wants of Upper Canada.

Our editorial staff is as good as the Province can produce, and is such, we are inclined to believe, as possesses the confidence of all classes who peruse our pages. Besides articles from the pens of the gentlemen whose names appear as conductors on the cover of the *Journal*, we receive contributions from leading members of the profession in different parts of Upper Canada.

In addition to the subjects which have hitherto received our attention, we intend for the future in some measure to direct our attention to Municipal and School law. The communications which we receive from persons interested in the administration of these laws, lead us to the conclusion that a reasonable regard to their interests will not be without a corresponding support.

Of course members of the profession, Division Court officers, Magistrates, Coroners and suitors, shall not in any manner suffer by the contemplated increase of the sphere of our usefulness. While extending the field of our operations, we shall not so far forget ourselves as to endanger the loss of ground which we have already acquired.

Exchanges in Upper Canada will oblige us by noticing these remarks, and the subject of them, so as to make known beyond the limits of our circulation our expressed intentions.

Subscribers, and those inclined to subscribe, are informed that the terms at which and on which the *Law Journal* has hitherto been published, are to remain unchanged, viz., $4 per annum if paid *before* the issue of the March number, and $5 per annum if afterwards. We hope with the March number to commence a new system of addressing subscribers, by means of which each issue shall convey to the person to whom it is directed, an exact account of his liability to the *Journal* at the time he receives it.

This system, while one of great convenience to the publishers, will not be of inconvenience to subscribers. It will not be much more public in effect than the rendering of an ordinary account. The account may be seen by the postmaster, and to this extent at least the amount due from the subscriber to the publishers may be seen by one who has no interest either to observe or to remember if he should observe. The annoyance, if any, of the system to subscribers will be trifling indeed, compared with the advantages which will be gained by the publishers. The system is one which has been adopted by several leading newspapers of the Province, and the annoyance, if any, may easily be avoided by prompt payment—a remedy always in the hands of subscribers, and one of which we hope they will very generally avail themselves.

With this number our usual Sheet Almanac is issued. It embraces practical information, of use to lawyers, Municipal officers, and others of whom our readers are composed. The testimony which was borne to the value of our Sheet Almanac for 1858, has induced us to make this renewed effort to be useful to our patrons.

THE LATE ROBERT BALDWIN.

The subject of this sketch, so lately passed from among us, is one of no common interest. As a politician and as a lawyer, his memory will long be cherished in Canada. Distinguished as he was as an able and honest politician, no less distinguished was he as an able and upright lawyer.

The history of such a man would be, if published, worth its weight in gold. In it the law student would learn that integrity in a lawyer is a breast-plate of triple brass; in it would be learnt that the upright lawyer, with moderate talents, may be more successful, and assuredly more respected, than the possessor of the most shining talents if wanting honesty.

The estimate in which a man is held by his fellow-men is no trifling testimony to his worth or his worthlessness. Were there any doubt of this, as applied to men generally, there is none, we are sure, as applied to legal men. In the profession of the law, amidst all its rivalry, there is no want

of appreciation of talent, and no withholding of admiration, though the subject of it be a fellow-competitor. This we have always regarded as a bright feature in the ethics of our profession.

The profession as a whole is well able to take the guage of one of its number. When it does so, and pronounces in favor of worth or ability, the public may well accept at their hands the judgment as correct. In this way, in the legal profession, both here and "at home," there are always some men who are conspicuous, and supported by the rest of the profession. The profession, as it were, feel proud to acknowledge the position which unusual worth or unusual ability commands, and glory in the success which the individual possessor of it reaps. Hence it is that when a vacancy on the bench—the highest reward of legal excellence—occurs, long before the Judge is gazetted the profession have appointed him. Public opinion, which in this respect at all events is based upon the opinion of the profession, generally indorses the testimony of the profession, and subsequent acknowledgment of it by the Executive.

The subject of this sketch, though never appointed to a seat on the bench, it is well known, might have attained that position, had he entertained the least desire to do so. He, instead of manifesting the desire, conferred upon his own Solicitor-General, Mr. Blake, the office of Chancellor of Upper Canada, and fell as a politician in defence of the Court to which the appointment was made. Subsequently, on the death of Mr. Justice Sullivan, he was offered a seat on the bench; and afterwards, upon the retirement of Chief Justice Macaulay from the Common Pleas, he was offered the high office thus made vacant. Both he declined. He was successively Queen's Counsel, Solicitor-General, and Attorney-General, and all with the hearty approbation of his brethren in the law.

He was not only a lawyer of great repute, but the son of a lawyer who held several of the offices to which the son was afterwards appointed. His father was William Warren Baldwin, a gentleman whose name was for a long time a household word in this Province. The family is of Irish extraction, and emigrated from the county of Cork to this country in the beginning of the present century. The father was a medical man, a graduate of Edinburgh, but shortly after his arrival in Canada embraced the profession of the law. In Easter term, 1803, he was admitted a student of the laws of Upper Canada, which was merely *pro forma* to enable him to be called to the bar; for in the same term he with five others, owing to the then scarcity of lawyers, received, under a special act of Parliament, a license from the Governor-General entitling him to practise law, and was thereupon at once called to the bar. His practice was, considering the scanty population of the time, a large one. In 1807 he was elected a Bencher of the Law Society, and four years afterwards Treasurer of the same Society,—positions in after years ably and honorably filled by his son, the subject of our sketch.

Robert Baldwin was born in this city (then called the town of York) on the 12th May, 1804. His education was the best that the colony could afford. When sixteen years of age, he was admitted a student of the laws, and so entered the profession of which afterwards he became so distinguished an ornament. He studied with his father. Having served the requisite period of pupillage, he was in Trinity term, 1825, called to the bar. He then entered into partnership with his father, under the name of "W. W. Baldwin & Son," a name which many of us remember as that borne by one of the most extensive law firms in the Province. For four years he applied himself with earnestness to the practise of the profession, and in time acquired a reputation as a pains-taking, laborious and reliable lawyer. On the 1st March, 1829, he entered into partnership with the late Mr. Justice Sullivan, under the name of Baldwin & Sullivan. In the same year, Sir John B. Robinson being then representative in the Assembly for the town of York (now Toronto), resigned his seat, and was appointed Chief Justice of Upper Canada. His successor in the Assembly, after a keen contest, was the subject of our sketch. In the year following he was elected a Bencher of the Law Society.

Having entered political life at the early age of twenty-five, he applied himself to the discharge of the duties involved in his new sphere of action with as much faithfulness as he had previously done in the legal profession. He soon was known as a promising and as a prominent member of the Assembly; but George the Fourth having died in 1830, Parliament was dissolved, and Mr. Baldwin again appealed to his constituents. On this occasion he was defeated, and remained out of Parliament until the Union of the Provinces.

In February 1836, at the age of thirty-two, he was appointed a member of the Executive Council. This honor he held for a short time only. With his acceptance of the office, or his resignation of it, we have nothing to do. Suffice it to say that after several hard struggles as a politician, he was in 1840, at the age of thirty-six, appointed Solicitor-General of Upper Canada, a position which he held during Lord Sydenham's administration, under the present Chief Justice of the Common Pleas as Attorney-General. In 1842 he was gazetted as a Queen's Counsel. He held the office of Attorney-General in 1843, at the time of the controversy with Sir Charles Metcalfe, the then

Governor-General, when he and others resigned. After his resignation—having in 1837 dissolved the partnership with Mr. Sullivan, and again formed a partnership with his father, W. W. Baldwin, and Adam Wilson, Esq., Q. C., under the style of Baldwin & Son—he once more applied himself to the practice of his profession, and held a foremost position in the front rank of the lawyers of the day.

In 1848, he was again induced to enter politics, and, in February of that year, once more accepted the office of Attorney General, Lord Elgin then being Governor-General. In July of the same year, after having been nearly a quarter of a century a practitioner of the law, he retired from the firm of which he had been for so many years a leading member; and in Michaelmas term, 1850, was elected Treasurer of the Law Society of Upper Canada. In July 1851 he resigned his office of Attorney-General, and retired to private life. His health had from different causes begun to fail him, and he sought in the bosom of his family that retirement which was not to be found either in the performance of the arduous duties of an arduous profession, or in the more exciting, if not more arduous profession of politics. From this time he seldom appeared in public. Between his own house and the precincts of Osgoode Hall he sacredly devoted the remaining years of his eventful life. Seldom a term passed that he was not to be found among his brothers of the law, unobtrusively and yet religiously engaged in the exercise of his functions as a Bencher and as Treasurer of the Law Society—offices which he held to the day of his death.

We can ill spare the appearance of that grave and yet good natured man, as he was wont to pass among the students or expectant members of the bar, at once their awe and their admiration. His word among the Benchers was law. Upon his word often depended the reception or rejection of the application of many an anxious aspirant to the glories of the profession. Respected as he was in public life, so respected was he among students and the junior as well as senior members of the bar. How serene and unostentatious did he appear when introducing to the Court some successful candidates for call to the bar. He would enter the Court, followed by the newly called barristers; and if an argument were pending, or the Court otherwise engaged, he would quietly take his seat and wait the opportunity to introduce his care to the Court. This he would do with his usual unobtrusiveness; and having done it, would bow and retire. No one could witness either the scene or the man without feeling that he was in the presence of a good if not a great man, as unpretending as he was good and great.

Distinguished as a politician and a lawyer, he was also distinguished as a legislator and a law reformer. Many of his measures will ever redound to his credit, and future generations derive blessings from his handiwork, when the hand itself is crumbled into dust. The Municipal Laws of Upper Canada will ever be a monument to his usefulness, as they are now the glory of our land. For months—nay, for years—he toiled more than twelve hours a day in the preparation of these laws. His mind conceived, his judgment matured, and his pen produced a system of Municipal law, of which no other country in the world can boast. And notwithstanding the amendments of late years, the law is in substance and in spirit, if not in word and letter, that which its originator made it. The task was Herculean, and such as, we honestly believe, no other man in Canada could have accomplished. In Mr. Baldwin was combined the deep thoughtfulness, the steady perseverance, and the indomitable will essential to the production of a work so great and so vital in its consequences for good or for bad. He, conscious of the goodness of his undertaking, from hour to hour and day to day, amidst heavy engagements of a public nature, applied his mind and his pen in the completion of it. Though short his life, he lived to witness some of the good effects of his industry and ability; but children yet unborn shall witness more than any of the present generation.

For the complete and satisfactory system of our Jury Laws, we are also indebted to this eminent man. Others may have been consulted—others may have contributed their mite of legislation,—but he it was who systematized the laws, and reduced them to a shape alike consistent with harmony and real usefulness. More than this: he himself framed many provisions of an entirely new and experimental character, necessary to the working of the law, most if not all of which have been found to give universal satisfaction. Great as was the labor he bestowed on the Municipal Laws, scarce less great was the labor he bestowed on this branch of the laws. And second only to the Municipal Laws stands the result, as a lasting monument of his industry and his wisdom. Had Mr. Baldwin never done more than enact our Municipal and Jury Laws, he would have done enough to entitle his memory to the lasting respect of the inhabitants of this Province. Neighboring provinces are adopting the one and the other almost intact, as an embodiment of wisdom united with practical usefulness, equally noted for simplicity and completeness of detail, not to be found elsewhere.

But his legislation did not rest with the production of the Municipal and Jury Laws. The same far-seeing mind, the same untiring industry, may be traced in the measures which constituted the Court of Common Pleas for Upper Canada—remodelled the constitution of the Court of Chancery, and made perfect the constitution of the Court of

Error and Appeal. For all these, and more too, which space will not permit us to mention, we are to a great extent indebted to the deceased. In the preparation of these measures he was however assisted by Mr. Blake, the present Chancellor of Upper Canada. Members of the profession, more than the public at large, are able to appreciate the worth of his legislation in amending the constitution of our Courts. His aim, however, in these, as in all other of his measures, was the public good—an aim so steadily kept in view, that he himself became in truth a public benefactor.

During the last period that he was Attorney General, not the least valuable service which he rendered to the country arose out of the rigid supervision which he exercised over bills brought before parliament. By so doing he not only secured harmony in the legislation of the province, but prevented the passage of measures of doubtful character. He admitted that the government was responsible for the general legislation of the country, and felt it his duty as chief law officer to watch it with care.

Now that the man no longer lives, his deeds live for him,—now that he is gone from among us, to that home into which all of us sooner or later must go, we begin to reflect on his career; and the more we reflect, the more we admire,—the more we investigate, the more we reflect. His conduct as a politician, as a lawyer, as a legislator, as a law reformer, was throughout the same—untiring and unimpeachable—modest and incomparable. Of his career as a politician we do not pretend to speak. That we leave to others better fitted than ourselves to do justice to his memory; but we cannot forbear mentioning that, whether in opposition or in power, his motives were equally pure and his actions equally above suspicion. He was in either position a tower of strength, at the base of which selfishness and malevolence lashed themselves into fury. Still he commanded universal respect, and still he was firm to the purpose of his life—the good of his fellow-men.

It may be expected of us, though delicate the task, that we should utter a few words as to the appearance and abilities of the late Mr. Baldwin. In height he was average—about five feet ten inches. In appearance he was stout built. In features he was heavy and grave. In manner he was retired and unassuming. In talents he was more than average. He lacked brilliancy, but possessed solidity. He lacked the fire of energy, but possessed its propulsive power. His assiduity was immense. He was, as might be expected from a person so constituted, pains-taking and sure-footed. He erred seldom in the correctness of his legal opinions, and was a more successful counsel than advocate. He wanted fluency and seldom soared in regions of eloquence; though he spoke at times, when excited, with feeling and effect. His style was the reflex of the man—plain, severe and modest. He tried more to convince than to captivate. He was more grave than gay; but was occasionally humorous, and has been known to use badinage and sarcasm as ready weapons. If his style had any one fault more than another, it was diffuseness at the expense of perspicuity; but want of perspicuity did not always result from his diffuseness. On the contrary, some of his written opinions, both as a barrister and as Attorney General, are models, not merely of industry, but of clearness. Draft opinions of his have been seen by the writer, wherein corrections abound, in great number, as so many evidences of his care and so many helps to his perspicuity. As a jury lawyer he was often successful when a more brilliant man would have failed. His candour in conducting a case and well known honesty always gave him great weight with jurors.

If Mr. Baldwin wanted some of the qualities of the great man, he possessed in a marked degree the qualities of the good man. In his life and conduct he exemplified in no small degree the leading characteristics of the christian, the patriot, and the gentleman—characteristics as much compatible with the practice of the law as with any other calling or profession among men—and which, when added to the attributes of a lawyer, make him so much the more a lawyer, and elevate him socially and morally among his fellow men.

A leading characteristic of Mr. Baldwin's mind was his attachment to Canada as his country, and his desire to elevate her people socially and politically. To this end he labored without ceasing, through good report and through evil report. If at times mistaken in his views, it was because of his frailty as finite man and not from badness of motive. He was noted for earnestness, coupled with unusual tenacity of purpose. Having considered a subject in all its bearings, he, when at the zenith of political power, would resolve and then become immoveable. In times of trial and difficulty, he would in spite of threats and violence pursue the even tenor of his way.

Although apparently stolid and the most undemonstrative of men, few possessed keener sensibilities or deeper feelings. No one grieved more than he at the loss of a relative or death of a friend. The death of his wife at an early period it is said gave him a shock, from the effects of which he never completely recovered.

He was a member of the Episcopalian Church, and was both earnest and regular in the performance of his religious duties. He was not only a moral, but a religious man—known to be such and respected as such.

He died on 9th December, 1858, aged 54 years 6 months and 27 days, and was buried on his own estate, Spadina,

near Toronto. A few years before his death, he had the honor to receive from his Sovereign a Companionship of the Bath—an honor as graceful in the giver as it was deserved in the recipient.

MUNICIPAL MALVERSATIONS.

Many things in themselves good when properly used, are injurious when abused. The remark is true as much of artificial systems as of nature's gifts.

The wisest system of laws may be perverted or abused by unscrupulous men so as to produce loss where gain was intended, and fraud where fair dealing was designed.

The success of Municipal administration in a great measure depends on the honesty of the men entrusted with office, either as councillors or their subordinates. The custody or use of large sums of money not belonging to one's self is a temptation to malversation. The law, foreseeing the temptation and the probability of men falling victims to it, has provided among other things for inquiry into the financial affairs of Municipal Corporations.

It is enacted that in case one-third of the members of any Council petition for a commission to issue under the great seal to inquire into the financial affairs of the corporation and things connected therewith, and if sufficient cause be shown, the Governor-in-Council may issue a commission accordingly, and the commissioner or commissioners, or such one or more of them as the commission empowers to act, shall have the same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence, as any Court has in civil cases (22 Vic., c. 99, s. 239).

In the reading of this enactment the following considerations present themselves. There must be a petition. It must emanate from one-third of the members of the Council. Its prayer must be for a commission to issue under the great seal. The object of the commission must be to inquire into the financial affairs of the corporation, and things connected therewith. The commission is only to be issued if sufficient cause be shown, and the issue of it is a matter left to the discretion of the Governor-in-Council. The commission, if issued, may be directed to one or more commissioners. The commissioner or commissioners appointed are to have the same power to summon witnesses, enforce their attendance, and compel them to produce documents and to give evidence as any Court has in civil cases.

Of all these points, by far the most important is that which involves the powers of the commissioner or commissioners when more than one is appointed.

The new law is made to differ from the law of 1849 in this, that while the commissioners are now for the purposes mentioned to have the same powers as any Court has in civil cases, formerly they had only the powers of commissioners appointed under Statute 9 Vic., cap. 98, to inquire into matters connected with the public business of the Province; and as such commissioners, have only such powers as are conferred in their commission, commissioners not expressly authorized to summon witnesses have no power to do so (*Municipality of East Nissouri v. Horsman*, 16 U. C. Q. B., 556). Now, however, the powers of commissioners appointed to inquire into the financial affairs, &c., of a Municipal Corporation, are not made to depend on the contents of their commission. If appointed commissioners for any such purpose the Statute comes to their aid, and the Statute and *not* the commission confers the power to summon witnesses, &c.

This is a change in the law deserving of attention, and the power is not only to summon witnesses but to *enforce* their attendance, and not only to ask for the production of document but to *compel* their production. The enforcing of the attendance in the one case, and the compulsion of the production of documents in the other, may be effected, it is presumed, by attachment for contempt, and in all probability fine and imprisonment. Such at least are the powers of a Superior Court in a civil case, and the Act gives to the commissioners the powers in respect of the subjects mentioned of "*any* Court," "in civil cases."

It is not said that persons summoned shall, like witnesses in civil cases, be tendered their expenses. On the contrary, as the attendance is required by commissioners acting not for their own benefit but in the discharge of a public duty, the analogy between their position and that of a private suitor fails; and the better opinion appears to be that in such a case the non-tender of expenses is *no excuse* for non-attendance as a witness when properly summoned (*Municipality of East Nissouri v. Horsman, ubi supra*), and that no councillor summoned as a witness has any right whatever to charge his expenses for attendance, &c., to the funds of the municipality (*Ib.* 576). But in other respects an analogy between the municipality as to which the investigation is being held and a suitor in a civil case, may be found. The suitor who summonses a witness that fails to attend, and in consequence causes the suitor to incur costs, has a remedy against such witness for the costs so incurred. So it would appear that under like circumstances a municipality into whose affairs an investigation is being held would have a remedy by action against a defaulting witness (*Mun. of E. Nissouri v. Horsman, p.* 568). And in this action if the non-production of a document be the gravamen of the charge, it would seem to be unnecessary either to allege or prove that the document was one material to the inquiry (*Ib.*).

The next subject for consideration is the expense of the

inquiry generally. For this provision is made. The amount of expense for *executing* the commission is to be *determined* by the Inspector General or his deputy, and when determined to be *certified*. If so determined and certified it becomes a debt due to the commissioner or commissioners by the corporation, and payable within three calendar months after demand made by the commissioner or commissioners at the office of the Treasurer of the Corporation. The determination of the account in the manner prescribed, apparently admits of no appeal. The Inspector-General is, as it were, the taxing officer in the matter; and when he has taxed the bill, the amount taxed becomes a debt due *to* the commissioner *from* the municipality, and, though due, only *payable* within three calendar months after demand. To ground an action for the amount, the demand must be made strictly as required, and that is at the office of the Treasurer of the Corporation (s. 240).

And here we desire to mention that the Council of a municipality is not in truth the Corporation. The Council is a changing, fleeting body, while the Corporation is a lasting, unchanging, never-dying body; and for this reason it would seem that the Corporation of a municipality may sue the members of the Council. (*Municipality of East Nissouri v. Horsman, Ib. p.* 576.) That it should be so is manifest on the least reflection. The Councillors are in truth the mere agents of the Corporation, having at their disposal large sums of money belonging to the Corporation, or, more correctly, the people, whom the Corporation represents. If on any such inquiry as that already mentioned, or in any other matter, it be ascertained that these agents or Councillors have misapplied the moneys over which they had a disposing power, it seems only consonant with reason and justice that at the suit of the Corporation they should be made to disgorge.

There is, however, difficulty in the matter. Theoretically a Corporation exists, but practically it is a myth. It is something which cannot be either seen or handled. It is a something—though supposed to be capable of acting—only put in motion by the members of the Council for a particular year. This being so, it is not likely that the Council would put the Corporation in motion to sue themselves, however merciless they might be upon their predecessors in office. But this is only an argument *in posse*—the allegation of a thing which *may* once happen, but need not always happen. It does not affect the correctness of the theory that a Corporation may sue the members of its Council. Of what does the Corporation consist? Not of the Council, but of *the inhabitants*. (22 Vic. c. 99, s. 2.) The case then is simply that of the inhabitants in the aggregate, using a corporate name, suing unfaithful servants, or those who had formerly been servants and acted unfaithfully.

In the present unsettled state of the law upon the points mentioned, of course our remarks are to be taken more as suggestions than as positive rules of law. While they serve to direct the attention of the profession to the technicalities of the law, they will, we believe, be of some service in showing to municipal councillors inclined to be unfaithful to their trusts, how few soever in number they may be, that for misconduct and malversation there are better remedies than mere rejection at the polls. Recently, municipal councillors guilty of breach of trust, were in a western county indicted and punished criminally for their misdeeds. On the present occasion, however, we do not deal with their criminal responsibilities.

THE STATUTE LAW.—CONSOLIDATION.

The public are indebted to the Editor of the *Leader* for an excellent article on Law English. The conductor of that Journal always does justice to any subject he examines, and speaks with that confidence which extensive reading, calm reflection, and ability to turn both to account, gives. His articles, therefore, are eminently calculated to fix public attention, and to lead to investigation and action in the matter discussed.

It is always satisfactory to find a layman leading the way in law reform. The subject is generally characterized as too dry, too uninteresting to occupy a place in the pages of a public Journal not devoted to the law, and is little noticed on its intrinsic merits. The true reason why it is ignored, we believe to lie in this, that the subject, difficult in itself, requires a man of more than ordinary knowledge and ability to deal with it, especially without devoting to it much more time and labor than the Editor of a daily paper can often spare from his routine duties.

The English in which our Statutes are written, says the writer in the article referred to, is neither JOHNSONIAN nor ADDISONIAN; it is not the English of HORNE TOOKE or Bishop LOUTH, nor always of LINDLAY MURRAY; it is Law English, in other words, jargon, and nothing more.

"This may seem a very sweeping denunciation; but the worst of it is that it is true to the letter. Were it possible by any catastrophe to destroy all traces of the English spoken or written in Canada, except what is contained in our laws, posterity, some five centuries hence, would conclude that we spoke not only a jargon, but that it was something very different from the language in which the Federal Legislature of the United States clothed its legal enactments. There is a sort of old fogydom which regards all this as a very sacred thing; a something from which it would be little short of rank impiety to deviate. The laws, according to these living antiquities, must be written in jargon. There is prescription in favor of it; and the vicious practice being sanctified by the hoary head of time must not be touched by profane fingers. Any approach towards simplicity, they tell us, would only end in doubt and confusion; there would be an end of all perspecuity, and certainty of construction would be seen no more in this mundane

sphere. We might ask these persons what certainty there is in the construction of statutes as they are now written, were the task not rendered needless by the notorious disagreement of the most eminent lawyers upon the meaning of almost every Statute that is framed."

We can honestly endorse all that is said. A great part of the litigation of the country arises from this very disagreement; and plain men must be at a loss to understand why laws cannot be "written in the plainest and most intelligible English and French," and be so constructed that a man of ordinary education can comprehend them.

Thinking people wonder why it is that mandates, which it concerns all to understand—for every one is presumed to know the meaning of the law—should be witten in an antiquated and unfamiliar style—why the Legislature should continue to speak in mysteries, instead of finding utterance in our mother tongue.

The wise men of Egypt were as secret as dummies.
And even when they condescended to teach,
They lapped up their meaning as they did the mummies,
In so many wrappers 'twas out of one's reach.

But our wise men have better examples for imitation. Hear the Editor of the *Leader* again:—

"The Americans certainly do not use a purer English than educated persons in Canada. There are so many equivocal words and doubtful terms in current use in the United States that one living there requires to be strictly on his guard against the unconscious adoption of such words and phrases. If then the simplicity of the Congressional laws does not arise from the circumstance of purer English being used by educated Americans than is used by educated Canadians—in which latter term we include many who are not Canadians by birth—it must arise from some other cause. Before we examine what the difference in the structure of the laws of the two countries arises from, let us assure ourselves that American statesmen have really attained that simplicity for which we have given them credit,"

The writer goes on to institute a comparison between the Acts of the American Congress and our Statutes, giving some examples, and declares that a certain Act of eight lines "under our tedious prolix system of detailed recitation and repetition would have spun out at the very least to two pages, and a very great disadvantage in point of perspicuity." "Why then," he says, "have we not adopted the simplicity of style so long used by Congress in framing its Statutes." The comparison of our Statutes with Acts of Congress may be odious, yet it is striking. But a model for reform of this character may be found without seeking for it in the United States. Ere another session passes, we trust a home model will be furnished to the Legislature. The government, some two years ago, determined on a consolidation of the statute law; and it is known that Chief Justice Macaulay, one of the most learned jurists of Canada, has long been engaged on the work—bringing down to the present session and perfecting a consolidation of the laws.

A first report was made a year ago; and ever since that time, Mr. Macaulay, we understand, has been a ceaseless and indefatigable laborer in reducing the whole body of the law into compact form, simplifying the language and improving the arrangement and classification of the statutes —a most arduous task, demanding immense patience and a peculiar aptitude for the work.

It is rare to find such qualities combined with profound legal knowledge and long practice in the administration of the law; but they exist in Chief Justice Macaulay, and, happily for the country, he has devoted himself with zeal to the great undertaking.

The task of consolidation is always a difficult one; and the language in which our statutes are written, the manner in which they are constructed, and the number of provisions on the same subject scattered we had almost said promiscuously over the statute book, makes the work not only one of difficulty but of great delicacy. The statutes having force of law in Upper Canada lie buried in some thirty volumes. The mere work of separating them from the statutes and parts of statutes which have been expressly repealed or become effete, and those which are virtually repealed or rendered nugatory by subsequent enactments, involves as much discrimination as labor.

The whole of these thirty volumes will probably be reduced to two, and the lawyer, instead of requiring a cart to carry his books to court, will be able to deposit them snugly enough in his circuit bag.

It would be impossible in a session of six months, devoted exclusively to the subject, to examine, much less to debate in detail, one-tenth part of the statutes of Upper Canada. The work of consolidation must therefore be taken to a great extent upon trust. Such a work must come accredited to the legislature, on the guarantee of one whose learning, experience and high character, gives assurance that it is well and faithfully done. That it contains the statute law as it is—the whole law, and nothing but the law.

Such a man is Chief Justice Macaulay. Whatever he vouches for will be received by all parties with perfect confidence.

When the consolidated bills on which he is engaged become law, they will be models after which future statutes may with advantage be fashioned; for, if we are rightly informed, the consolidated statutes are couched in the most simple language—all unnecessary verbiage is discarded—absurd finical preciseness and over specification avoided,—and grammatical rules respected, while at the same time the law is allowed to speak in the language of the day.

But apart from the advantages of correct models for imitation, there are incalculable advantages in a revision of

our statutes. The very ablest lawyers in the country find it a most difficult and tedious task to discover the whole law on any given subject; and when the disjointed fragments are discovered and brought together, it is frequently a puzzle to tell what the law really intends. The subject is so overlaid with verbiage, redundant of specification and idiomatic excessiveness, that even the trained mind becomes confused in the labyrinth of words. How then can it be expected that those for whom the law is framed can understand the rules laid down for their guidance? They do not—they cannot understand them.

This want of clearness of expression and completeness of structure in a law is a fruitful—indeed the most fruitful—source of litigation. Hundreds of thousands of dollars are yearly spent on litigation having its rise from this source, and the evil is on the increase. What a particular act or clause in an act means can be definitely settled only by the Courts; it belongs to the tribunals of the country to declare authoritatively the extent, scope and meaning of a law. The Courts cannot act unless on a case brought before them by individual litigants, and this although the law when decided in the particular case becomes a *general rule* for the determination of *all* the other cases. Thus it is that individual litigants are made to pay for construing acts of Parliament, and resolving doubts which, with proper care in constructing the law, might have been in a great measure avoided.

It is a strange anomaly that the exposition of a general law wholly depends upon casual litigation, at the cost of individual litigants. This may be unavoidable; but it is certainly quite possible so to frame laws that fewer doubts and difficulties will arise in fixing their meaning.

The first step towards this is the consolidation spoken of, which will bring together all that is enacted on every particular branch of the law, assigning to each its appropriate place, and separating the grain from the chaff.

We have no hesitation in saying, that if a consolidation of the statute law of the country *cannot* be secured under an outlay cost of £100,000, the money would be well expended to secure it, and it would be a positive saving to the country in the end.

With comparatively trifling expense, the work, we have been told, is now nearly completed; and our children's children will reap the advantage of the learned and protracted labors of a man of whom Upper Canada may be justly proud, and whose highest reward must be the consciousness of being mainly instrumental in the consumation of a noble and mighty reform—a reform for which, in extent and completeness, few parallels will be found in the history of any country on the face of the globe.

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

Continued from p. 273, vol. IV.

Fall of Quebec—Population—Articles of Capitulation—Appointment of Provincial Officers—Military Courts—Criminal Law—Royal Proclamation—How construed—Court of Chancery—Court of Probate—Other Courts.

The entire population, exclusive of Indians, was, at the time the colony became a British colony, only 69,275.

In the 42nd article of the capitulation granted by Sir Jeffrey Amherst, at the surrender of the whole country in 1760, it was desired on behalf of the French and Canadian inhabitants of the province, that they should continue to be governed according to the custom of Paris, and the laws and usages then established in the country. To which it was answered, "They become subjects of the King." This was understood to mean that his Majesty's new subjects in the colony were put on the same footing as other British subjects in other dominions of the Crown of Great Britain, with respect to the laws by which they were to be governed and the power of legislation that was to be exercised over them for the time to come; and that the continuance or abolition of their former laws and customs was to depend entirely upon the future counsels which his Majesty should think fit to pursue.

Immediately after the conquest, General Amherst, the commander in chief, ordered that justice should be administered by military courts established for that purpose in the several governments. These courts were afterwards approved by the King of Great Britain, and directed to stand until the restoration of civil government.

Britain shortly afterwards adopted measures for the government of the large territory of which, in addition to other colonies in America, she now found herself the ruler. Even before the definitive treaty of peace was signed, Henry Ellis was appointed Secretary of the Province. His commission was dated 30th April, 1762. This appointment was quickly followed by that of Nicholas Turner, to be Provost Marshall of the Province. His commission was dated on 23rd September of the same year. On 10th February, 1763, the definitive treaty of peace was concluded at Paris, between the Kings of Great Britain and France, by which the King of France on his part did cede and guarantee to the King of Great Britain Canada, with all its dependencies, as well as the Islands of Cape Breton, and all the other islands and coasts in the Gulf and River of St. Lawrence; and the King of Great Britain, on his part, agreed to grant the liberty of the Catholic religion to the inhabitants of Canada, and to give the most effectual orders that his new Roman Catholic subjects might profess the worship of their religion according to the rites of the Romish Church, as far as the laws of Great Britain permit.

By this reference to the laws of Great Britain, it would seem to have been the intention of the parties that those laws should have been the fundamental rule of government in the province. The power of the King by his prerogative to introduce the laws of England into conquered countries, in the absence of other provision by treaty, was acknowledged on these occasions. But although a country conquered by British arms becomes a dominion of the Sovereign in right of the Crown, and therefore necessarily subject to the legislative power of the British Parliament, yet the laws of the conquered country, at least the civil laws, continue until altered by the conquerors.

It does not seem that the laws of Canada experienced much, if any, change for several years after its surrender. The criminal law of England was however considered as introduced by the conquest, it being said that this part of distributive and executive justice is so inherent in dominion and so much an emanation of every government, that the very instant a people fall under the protection and dominion of any other state, the criminal or crown law of that state *ipso facto* operates.

On 7th October, 1763, George the Third, with the view of securing the inhabitants of the country surrendered in the enjoyment of sound laws, and with the further view of encouraging colonization, issued a proclamation.

After reciting the great benefits that would accrue to the commerce, manufactures and navigation of his subjects, by reason of the acquisitions in America secured by the treaty of 10th February previous, he declared that he had granted letters patent under the great seal of Great Britain to erect within the ceded country four governments, including that of Quebec, which embraces the present Province of Canada. He also declared that, in the letters patent by which these governments were constituted, he had given express direction to the Governors, so soon as the state and circumstances of the colonies would admit thereof, with the advice and consent of his Majesty's Councils, to summon a general assembly within each government, in such manner and form as was used in the colonies and provinces in America then under his Majesty's immediate government. He then proceeded to show the extent of his design, by a full declaration of the nature and power of the assemblies when called, by reciting that he had given power to the Governors, with the consent of the Council and the representatives of the people, to make laws, statutes and ordinances, for the good government of the people, as near "as may be to the laws of England," and under such regulations and restrictions as were then in use in other colonies. As it might happen, owing to the then circumstances of the colonies, that no assemblies could for some time be called, he declared that, "in the mean time," all persons inhabiting or resorting to the colonies might confide in his royal protection for the enjoyment of the benefit of the laws of England. For this purpose he declared that he had given power to the Governors of the colonies, with the advice of Councils, to erect and constitute "courts of judicature and public justice, for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England."

Although George the Third did not in express terms declare that the law of England should be the law of Canada, yet, bearing in mind the 42nd article of the treaty of capitulation in 1760, and likewise remembering the terms of the definitive treaty of Paris, it was by many of the inhabitants understood that the English laws had been introduced. The commission of General Murray, governor-in-chief, dated 21st November, 1763, and the royal instructions accompanying the same, were predicated upon this understanding. Both the commission and instructions contained many references to the laws of England, on a variety of subjects, and neither contained a saving of any part of the French laws. It is only right however to observe that there was much difference of opinion upon the question, even among the highest legal authorities, and that among the people generally there was the greatest perplexity. Besides power to summon assemblies, and to constitute courts of justice recited in the proclamation, the commission contained an authority to appoint Judges, and, when necessary, commissioners of Oyer and Terminer, justices of the peace, and other necessary officers and ministers.

On 19th March, 1764, General Murray, in addition to his commission as governor, received a commission appointing him Vice Admiral in the province of Quebec, and territories thereon depending; a title which his successors, to the present time, have ever enjoyed.

One of the first acts of General Murray and his Council was to pass an ordinance confirming the decrees of the military courts established by General Amherst. The act which did so declared that from 8th September, 1760, the the date of the capitulation of Montreal, to the time civil government took place throughout the province, all orders, judgments and decrees of the military courts at Quebec, and of all other courts of justice in the government of Quebec, should be approved, ratified and confirmed. An exception was made as to cases in which the value in dispute exceeded £300 sterling, wherein an appeal within a limited time was given to the Governor in Council. Where the value exceeded £500 sterling, a still further appeal was given to the King in Council. This ordinance was passed on 20th September, 1764.

On Wednesday, the 9th April, 1766, a special council

was held at the Castle of St. Louis, in the city of Quebec, to take into consideration the necessity there existed for courts, and the best mode of creating them. At this council, besides the Governor-General Murray, there were Æmelius Irving, Walter Murray, Adam Mabane, Thomas Dunn, Francis Mounnier, and James Goldfrap.

The following entry was then made in the book of state, the original of which the writer has himself seen:

"In Chancery.—It being agreeable to his Majesty's instructions that the courts of justice in this Province should be as near as possible to the plan and mode of practise used in Halifax, in Nova Scotia; and whereas the Attorney-General has informed this Board that the Governor there sits as Chancellor, with the assistance of the Council, resolved, that from henceforth all bills in Chancery be addressed to the Governor in Council."

Such was, as may be said, the introduction of the Court of Chancery in this Province, though the generally received opinion is that the period of the introduction was much later —in fact as late as 1837, when a Court of Chancery was *in Upper Canada created by statute.*

In the same state book from which we make the above extract, there is also the following singular memorandum:

"Mr. Kneller having begged leave to resign his office of Register of this Court [Chancery], he being a practiser in the same, he is fearful it may open a road to censure, by his thus acting in a double capacity.

It is therefore resolved to admit his resignation for the reasons aforesaid, and that James Potts be appointed Register in Mr. Kneller's room."

In the same book, under date 10th April, 1766, there is the following entry:

"In Chancery.—Filed a bill for Moses Hagan, plaintiff, against Stephen Moore and Hugh Finlay, defendants.

Mr. Kneller, solicitor for plaintiff, moved the court that a subpœna might issue against the defendants, returnable immediately.

Granted on reading the common affidavit returnable on the 18th instant."

So we find the court, on another day (17th April), upon the application of a solicitor named Morrison, acting for the defendant in the above cause—the first probably instituted under British rule—grant "fourteen days to plead, answer or demur to the plaintiff's bill, not demurring alone."

Indeed a perusal of the successive entries in this book shows that the court not only exercised the general jurisdiction of a Court of Chancery, but very closely observed its practice. Motions to amend and to dismiss bills appear to have been frequent. Commissions to examine witnesses were issued; and when returned, opened and used in the ordinary manner. Injunctions were granted both absolute and conditional, and in certain cases dissolved. Contempts were punished by attachment and sequestration. Estates were administered, and creditors compelled to prove their claims before the Master, as at present. Masters were appointed in different parts of the Province, and discharged duties similar to the Deputy Masters of the court in Upper Canada at the present day. And what is still more strange, it would appear from an entry made on the 22nd August, 1766, that parties to a cause were allowed to give evidence as well for as against themselves.

It would also appear from the old books of state, that at this early period letters of administration to the estates of deceased persons were regularly issued. As early as the 26th August, 1769, an entry appears of letters of administration, granted by the Governor-General, Lord Dorchester, of the estate and effects of Peter Travers, deceased, to Richard Travers, Fanny Hodgson, Swete Woods and John Gordon. So in subsequent years, similar letters were issued. Of these, entries were made in a book different from that in which the proceedings of the Court of Chancery were recorded. *From this it is inferred that the proceedings* were not only distinct, but had in different courts, though composed of the same Judges, viz., the Governor and his Council. The one was a Court of Probate, as the other was a Court of Chancery.

Nothing, however, can with distinctness be gathered as to the jurisdiction, number or names of the courts at this time existing. The Governor-General seems to have been, either with or without his Council, court and jury in all matters of litigation. The administration of justice was then as rude as the wants of the people were few and simple. The first trace we have of a perfect establishment of courts, is to be found in the year 1776. In this year the Governor-General, by order in Council, constituted a series of courts of justice, concerning which we have ample information.

THE LATE ROBT. BALDWIN—MEETING OF THE BAR.

At a meeting of the members of the Bar, held on Saturday, Dec. 11th at 12 o'clock, in the Convention Room, at Osgoode Hall, for the purpose of paying such tribute to the memory of the Honorable Robert Baldwin, C. B., late treasurer of the Law Society of Upper Canada, as his high position and marked integrity deservedly entitled him to,—the following resolutions were passed;

Moved by Mr. Attorney General MACDONALD, and seconded by GEORGE RIDOUT, Esq.

"That the death of the Honorable Robert Baldwin, C. B., late treasurer of the Law Society of Upper Canada, is to this meeting, and to the whole profession, a cause of profound regret."

Moved by the Hon. JOHN SANDFIELD MACDONALD, Q.C., seconded by the Hon P. M. VANKOUGHNET, Q. C.,

"That the legal knowledge and ability of the late Robert Baldwin secured to him the high respect of the Bar, while his pure love of justice and the unaffected honesty of his character commanded the sincere admiration and esteem of all who knew him."

Moved by Dr. CONNOR, Q. C., seconded by the Hon. GEORGE SHERWOOD, Q. C.,

"That the members of the Bar do attend the funeral of the late Robert Baldwin, on Monday next, in their robes, and wear mourning thereafter for the period of one month."

Moved by SECKER BROUGH Esq., Q. C., seconded by JOHN HECTOR, Esq.,

"That a copy of these resolutions be communicated to the family of the late Robert Baldwin, by George Ridout, Adam Wilson, and John Hector, Esqs.

Moved by WM. A CAMPBELL, Esq. seconded by JOHN ROAF., Esq.,

"That a copy of these Resolutions be transmitted to the Benchers of the Law Society, at their meeting in Hilary Term next, with a request that such Resolutions may be entered upon the records of the Society."

It was then unanimously agreed to by all the members present, that a portrait of the late Hon. R. Baldwin be procured and be presented to the Law Society, to be placed in one of *there public* rooms at *Osgoode Hall.*

ADAM WILSON, Chairman.

LAW SOCIETY.

The attention of students and others interested, is directed to the advertisement of this Society in our columns for this month, and more particularly to that part of the advertisement which announces that for the future a thorough familiarity with the prescribed subjects and books will be required from candidates for admission as students.

IMPORTANT DECISIONS.

Through the courtesy of C. Robinson, Esq., Reporter to the Court of Queen's Bench, we are enabled to publish in this number the cases of *Martin* v. *Knowles* and *Hope* v. *Ferguson*, decided last term, on the law of arrest—and fees to Registrars.

It is always pleasing to us to acknowledge such courtesies from the Reporter of the Queen's Bench, particularly as we have seldom reason to do so with regard to his confrere of the Common Pleas.

ANOTHER IMPORTANT DECISION.

The case of *Powley v. Whitehead*, in other columns, will, we are sure, be read with interest by County Judges and others interested in the administration of justice in these courts. It decides that a plea putting title to land in question, if verified as required by statute, ousts a County Court of all jurisdiction; so that a nonsuit or any proceeding in that court subsequent to the plea, is *coram non judice.*

DIVISION COURTS.

OFFICERS AND SUITORS.

ANSWERS TO CORRESPONDENTS.

To the Editors of the Law Journal.

NIAGARA, 30*th Nov.*, 1858.

GENTLEMEN,—As no form was printed by the Commissioners in 1854 for a Summons to issue upon default, in compliance with an order to pay by instalments or otherwise on a Judgment Summons, clerks find themselves at a loss, and Judges are appealed to, to instruct them. The defaults are more numerous now, and I have more frequent applications from my own clerks and other Counties. I send a form used in our County in substance for some time past.

It may be liable to the objection of prolixity, in repeating the former terms of Judgment Summons; but inasmuch as the clause to show cause why the defendant has not complied with the Judge's order to pay by instalments or otherwise is added, the repetition cannot vitiate; and as new evidence may disclose the existence of facts not within the plaintiff's knowledge or reach at the return of the first or Judgment Summons, a further inquiry may be justified by this prolix form of Summons, to strengthen the Judge's action thereon.

I am aware that other Judges merely summon the defendant to know why he did not obey.

Some Judges, I believe, have fallen into the error of making an order to pay, or be committed, and of authorizing or countenancing a warrant of commitment in default of payment. This practice is of course illegal.

If an approved form of Summons, to meet the frequent occurring cases, were published in your Journal, I think it would be of very great service to the clerks at present, and be the means probably of establishing uniformity.

I am your most obedient,

A. CAMPBELL,
Judge of Lincoln.

Summons to Defendant after order on Judgment Summons for default in payment.

No. 50 of 1858, or No. 302 of 1857, or No. 192 of 1857.

Between JOHN BROWN, Plaintiff,
and
THOMAS JONES, Defendant.

WHEREAS at the sittings of this Court, (or of &c.) holden at the —— in the Town —— of —— in the County of —— on the —— day of —— 18—, the above named Plaintiff obtained a Judgment against you for the sum of —— Pounds and —— Shillings, (or dollars and cents) for debt, besides interest thereon and —— costs be paid ——, and which said Judgment remained unsatisfied.

And whereas by a Summons bearing date the —— day of ——, 18—, you were summoned to appear at the then next sittings of this Court, holden at the —— in the —— of —— in the County of ——, on the —— day of ——, 18—, at the hour of —— of the clock in the forenoon, to be then and there examined by the Judge of the said Court touching your estate and effects, and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said Judgment was obtained against you, and as to the means and expectations you then (at the time of contracting) had, and as to the property and means you still had (at the said last day aforesaid) of discharging the said debt, and as to the disposal you may have made of any of your property.

And whereas upon your appearing thereto, and upon examination and hearing of both parties, (or of you, and the

evidence, if any) it appeared to the satisfaction of the said Judge, that you then had (or had since the Judgment obtained against you, as the case may be) sufficient means and ability to pay the said debt and the interest thereon, and costs so recovered against you; and the said Judge did then and there order and direct that you should pay to the said Plaintiff the sum of —— debt, and interest then accrued, and —— costs, and also —— costs of the said last mentioned Summons, to be paid as follows, that is to say, the sum of —— to be paid on the —— day of ——, 18—, the further sum of —— to be paid on the —— day of ——, 18—, or forthwith (*as the case may be*).

And whereas the Plaintiff alleges that you have not paid the —— and —— instalments of —— each, (*or* the said sums) so ordered to be paid.

You are therefore hereby summoned to appear at the next sittings of this Court, to be holden at the —— in the town —— of —— in the County of —— on the —— day of ——, 18—, at the hour of —— of the clock in the forenoon, to be then and there examined by the Judge of the said Court touching your estate and effects, *and the manner and circumstances under which you contracted the said debt, which was the subject of the action in which the said Judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt, and as to the disposal you may have made of any of your property*, and as to the reasons why you have not paid to the Plaintiff the said —— and —— instalments of —— each of the said debt, so ordered to be paid by you, as last above mentioned and recited, pursuant to the said order of the Judge.

And take notice, that if you do not appear in obedience to this Summons, you may by order of this Court be committed to the common jail of the County.

Given under the seal of the Court, this —— day of ——, 18—.

By the Court.

—————— Clerk.

Amount of Judgment, £
" " Instalment, £
Cost of this Summons, £

NOTE.—The latter part in italics may be superfluous, but cannot vitiate. Clerks may omit or adopt, as the Judge of the County directs.

[Our best thanks are due to Judge Campbell for his communication and the form subjoined, and we are sure that the Judges and Officers of the Courts will duly appreciate it.

The subject is so well put by the learned Judge, that there is but little left for us to say.

The practice of issuing summonses without recitals is objectionable, if not illegal, and an order in the alternative to pay or to be committed is clearly bad.—*In re T. Kinning*, 4 C. B. 507.

A Judgment debtor having been ordered to pay the debt by instalments, under the 8 & 9 Vic., c. 107, s. 1, was committed to prison for default of payment of one instalment. The prisoner having been brought up on a habeas corpus, and the warrant not showing that the debtor had been summoned to show cause why he had made such default, it was held defective, and the prisoner was discharged.

And in *Kinning v. Buchanan*, 8 C. B. 271, it was held that an order to commit was invalid, because it did not show that a previous summons to show cause why he had made default in payment of the instalment, had been served.

The excellent form sanctioned by a Judge of Mr. Campbell's standing and experience, will assuredly be of great service to the clerks at present, and a means of establishing uniformity in the future.—EDS. L. J.]

To the Editors of the Law Journal.

PRESTON, 17*th December*, 1858.

GENTLEMEN,—In compliance with your request in your last July Number, page 157, soliciting communications on decisions made under the 8th Section of the D. C. E. Act of 1853, respecting the question, "Where the cause of action arose," I beg to send you one.

The case was as follows:—The proprietors of the Waterloo Nursery in this Division had an agent employed travelling through the country, taking orders for trees. These orders were given on a regular printed form, with instructions from the purchasers where to deliver the goods. The agent brought home those ordered; the goods were forwarded and delivered according to such instructions, and charged on account.

In the fall of the year the agent was again sent out, with orders to collect the accounts, after which the proprietors of the Waterloo Nursery sued the persons who had not paid their accounts on demand made by the agent; the suits were entered in this Division. At the trial several suits were defended on the plea that the cause of action arose in the Division where the order was given, and not in the Division in which Plaintiffs carried on their business.

His Honour the Judge ruled, that where a party had a regular agent employed taking orders, and such orders were given in a printed or written form, by which it appeared that the party ordering did request the proprietors of a certain establishment to forward certain goods to them, as in this instance was the case with the proprietors of the Waterloo Nursery, the debt was contracted at the establishment of the party to whom the order was addressed, and that, therefore, in this case the cause of action arose in this Division. Judgment accordingly for the Plaintiffs.

While referring to the 8th Section of the D. C. E. Act of 1853, permit me to ask what effect that Section has on Section 54 of the D. C. Act of 1850, in connection with Rule 31, or what effect that Rule has on the 8th Section?

By Section 54.—A debtor may make confession before suit commenced, before any Bailiff or Clerk of said Courts.

By Section 8.—A Creditor may sue either where the debt was contracted, or where the debtor resides.

By Rule 31.—Application for Judgment shall be made at a Court holden for the Division wherein the confession or acknowledgment was taken.

If now a debtor who has contracted a debt in a Division other than the one in which he resides, makes confession (according to Section 54 and Rule 31) in the Division in which he resides, and the creditor afterwards sues him in the Division in which the debt was contracted—which of the two suits will only be maintainable?

The debtor in confidence of the privilege granted by Section 54, makes that confession in order to save the fees for issuing a copy of summons, copy of demand, for service, mileage, return fee and affidavit, and also the unpleasantness of a bailiff's visit, and the calling of his name in open Court. If, however, the creditor's privilege, granted him by the 8th Section, supersedes that of the debtor above quoted, then the privilege of a debtor is at present only confined to debts contracted in the same Division in which the debtor resides. And also, if the middle portion of Rule 31 is to be understood, that it is optional for the creditor to apply for judgment on such confession, it may then be inferred that his non-application for such judgment within the limited time will make such confession void, and thereby also the debtor's privilege, conferred by Section 54, diminished. But if the meaning of the latter part of Rule 31 is, that if a creditor wishes to recover his claim, *he must apply for Judgment at the Court where such confession was given*, and that he has no right to sue in any other Division for the same claim, it would then appear that by that portion of Rule 31, the creditor's privilege, granted by Section 8, is impaired, and that in such case it would be neces-

sary for a creditor, before entering a suit, to make inquiry whether the debtor has not already made confession, and if this be requisite, the question which naturally would follow would be *where* to make such inquiry, since the 54th Section gives power to any Bailiff or Clerk of the Courts to accept and take confession from any debtor. Taking these words literally would give to creditors a rather wide field for obtaining information, while it would allow debtors to choose a Court which might be very inconvenient, if not also unsafe and unjust, in respect to distance and time of sittings for creditors, and would not be in the spirit of equity which generally appears in the Division Court Acts and Rules.

I also beg leave to inclose a form of "Bailiff's Return" on Summonses served. Under its different headings the Bailiff makes his statement. In the last column "Remarks" he states upon whom served, as "per" for personal, wife, daughter, son, or as the case may be; and if served out of Division, he marks O. D. Thus in taking costs I can at once, without being required to look at the Summons, arrive at the proper amount. I take his affidavit to the return, after having compared it with the Summonses returned, and also take on it his receipt for the money paid him for his services, and then file it. This method of making "Return" has saved me considerable labour, and I have no doubt has likewise obviated many misunderstandings between myself and the Bailiff, to which other Clerks and Bailiffs that do not follow this, or a similar plan, have been subject to.

In the meantime I beg to remain,

Respectfully yours,

OTTO KLOTZ.

[Mr. Klotz has our thanks for the case communicated.

We think our correspondent has misapprehended the meaning of Section 54 in connection with Rule 31. Section 54 of the D. C. Act has a double bearing,—it provides for taking confessions after suit commenced, with respect to which no difficulty is suggested; and also for taking acknowledgments before suit commenced.

This proceeding is analogous to the *Cognovit Actionem* and Warrant of Attorney, &c., in the Superior Courts; and there the instrument must be obtained through the intervention of an officer of the Court (an Attorney), to guard against fraud. In the proceeding in the Division Court the Clerk and Bailiff, officers of these Courts, are put in the place of an Attorney; but in neither Court is the officer to act *without instructions from the creditor*. No such difficulty as suggested can therefore occur. The Rule No. 31 is in furtherance of Section 54, and obviously designed to prevent judgments by confession being perverted to fraudulent ends, by requiring such confessions to show on their face the true grounds and considerations on which they are given, and requiring also promptness in the application to enter judgment.

Such particulars as are required must of course be given by the creditor to the officer; and neither Clerk nor Bailiff has authority to interfere in any man's business without instructions. A debtor may tender such a confession drawn up to an officer, but it is quite at the option of the creditor whether he will or will not accept it after being notified.

With regard to confessions before action, at the instance of the creditor, and in compliance with the provisions of the 54th Section and the 31st Rule, any Court to which the debtor choses to give jurisdiction, by signing a confession in such Court, and before one of the officers thereof, may entertain it; but in no case will the Court order judgment to be entered unless on application of the creditor.

We subjoin the form of the Bailiff's Return spoken of by Mr. Klotz. We know that a similar one is used in Counties wherein we have acquaintance with the practice, and with much convenience and satisfaction to all concerned.—EDS.L.J.]

BAILIFF'S RETURN.

Return of A. W., Bailiff of the Second Division Court for the County of Waterloo, of all Summonses delivered to him for service, and returnable pursuant to the 11th Rule, ensuing sittings of the Court, the —— 18—.

No.	Plaintiff.	Defendant.	Date of Service.	Miles Travelled	Amount of Fees.	Remarks.

To the Editors of the Law Journal.

Southampton, Dec. 14th, 1858.

GENTLEMEN,—Your known readiness to answer queries respecting Division Court Law and practice, will, I feel assured, excuse the liberty I am taking in asking a solution of the following questions:

1. A obtains a judgment against B in say the third Division County of Waterloo, and B obtains a judgment against A in the ninth Division Huron and Bruce,—Can one of these judgments be set off against the other? I infer from Sec. 51 of the Division Courts Act of 1850, that they can. If I am right, what is the process of effecting the set off?

2. C obtains a judgment against M, and M applies for a new trial, which is granted. Can M *demand* a Jury for the second hearing?

3. When original is not produced, is it the duty of the Clerk of a Division Court to issue an Alias Summons, without the Plaintiff's orders? If not, can he withdraw the suit, and charge the costs to plaintiff, or in case of a deposit being made can he apply it in payment of the costs, and withdraw the suit?

4. A assigns his debts and effects to B in trust for the benefit of his creditors, B sues a number of Book Accounts, in A's name, on which the money is recovered. Can the Judge order any of the money so recovered to be paid to any of A's Judgment creditors? I am in this case presuming that the money cannot be levied as in Court.

5. Can a Magistrate who has made an assignment of all his property, legally act in that capacity? If not, by what process can he be prevented in the event of his persisting to do so?

6. Does the 75th section of the Act 22nd Victoria, cap. 99, entitle a *non-resident* freeholder to vote at a Municipal Election?

An answer to the foregoing will oblige,

Yours &c.,

J. E.

[1. We apprehend that the Judge would not make the order unless both judgments were within his jurisdiction. It is probable, however, he might direct a stay of the execution on a judgment under his own cognizance, if satisfied that another judgment elsewhere ought to be allowed to be set off against it, so as to enable the last mentioned judgment to be transferred for that purpose. The practice would be in the case put, to remove the judgment (under 18 Vic. ch. 125, sec. 3,) from the Counties of H. & B. to the County of W., or vice versa, and then solicit the action of the Judge under the 51st sec. of the D. C. Act.

2. We think not—the 32nd section of the D. C. Act makes it *a condition precedent* to the trial by Jury that the Plaintiff shall give notice at the time of entering his suit to the Defendant within five days after the service of the summons upon him.

3. Not unless instructions to that effect have been expressly given, or may be implied.

4. We think not.

5. The point is by no means clear, but our opinion is that he cannot legally continue to act. The legal remedy would be by action under the Statute or application to the Court. The Government would probably entertain it also as a ground for superseding it.

6. We believe that such is the meaning of the section and the intention of the Legislature in passing it. *See* "General Correspondence."—EDS. L. J.]

THE MAGISTRATES' MANUAL.

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

Continued from page 277, Vol. IV.

VI.—BAILING OR COMMITTING FOR TRIAL.

Power of two Justices.—When any person appears before any magistrate *charged with a felony or suspicion of felony*, and the evidence adduced is, in the opinion of the magistrate, sufficient to put the accused on his trial, but does not furnish such a strong presumption of guilt as to warrant his committal for trial, such magistrate, jointly with some other magistrate, may admit the accused to bail, upon his procuring and producing such surety or sureties as in the opinion of the *two* magistrates is sufficient to ensure his appearance at the time and place when and where he is to be tried for the offence of which he is accused.*

Form of recognizance.—When it is in such case decided to admit to bail, the two magistrates should take the recognizance of the accused, and his surety or sureties, conditioned for his appearance at the time and place of trial, and that he will there surrender and take his trial, and not depart the Court without leave.

The recognizance may be in this form :†

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

Be it remembered, that on the —— day of ——, in the year of our Lord ——, A. B. of —— (*laborer,*) L. M. of ——, (*grocer,*) and N. O. of ——, (*butcher,*) personally came before (*us*) the undersigned, two of Her Majesty's Justices of the Peace for the said (*County or United Counties, or as the case may be,*) and severally acknowledged themselves to owe to our Lady the Queen the several sums following, that is to say: the said A. B. the sum of ——, and the said L. M. and N. O. the sum of ——, each, of good and lawful current money of this Province, to be made and levied of their several goods and chattels, lands and tenements respectively, to the use of our said Lady the Queen, Her Heirs and Successors, if he, the said A. B., fail in the condition endorsed.

Taken and acknowledged the day and year first above mentioned at —— before us.

J. S.
J. N.

CONDITION.

The condition of the within written Recognizance is such, that whereas the said A. B. was this day charged before (*us,*) the Justices within mentioned for that (*&c. as in the Warrant*); If therefore the said A. B. will appear at the next Court of Oyer and Terminer *or* General Gaol Delivery (*or* Court of General Quarter Sessions of the Peace, &c.,) to be holden in and for the (*County* or *United Counties, or as the case may be*) of ——, and there surrender himself into the custody of the Keeper of the (*Common Gaol* or *Lock-up House*) there, and plead to such Indictment as may be found against him by the Grand Jury, for and in respect to the charge aforesaid, and take his trial upon the same, and not depart the said Court without leave, then the said Recognizance to be void, or else to stand in full force and virtue.

Notice thereof.—The accused giving the bail is in this, as in other cases of bail, entitled to receive from the magistrates a notice in this form :*

Take notice that you A. B., of ——, are bound in the sum of ——, and your sureties (*L. M.* and *N. O.*) in the sum of ——, each, that you A. B. appear (*&c. as in the condition of the Recognizance,*) and not depart the said Court without leave; and unless you, the said A. B., personally appear and plead, and take your trial accordingly, the Recognizance entered into by you and your sureties, shall be forthwith levied on you and them.

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

J. S.

Power of one Justice.—When the offence committed, or suspected to have been committed, is a *misdemeanor*, any one Justice may admit to bail in the manner last mentioned. In such case, the magistrate may in his discretion require the bail to justify upon oath as to their sufficiency; which oath the magistrate is himself authorized to administer; and in default of the accused procuring sufficient bail, the magistrate may commit him to prison, there to be kept until delivered according to law. †

Power of County Judge.—In all cases of felony where the accused is finally committed, any County Judge, who is also a Justice of the Peace for the County within the limits of which the accused is confined, in his discretion, on application made to him for the purpose, may order the accused to be admitted to bail on entering into recognizance, with sufficient sureties for such an amount, before two magistrates, as the Judge directs.‡

Duty of Justices in such case.—It is thereupon made the duty of the magistrates to issue a warrant of deliverance, and attach thereto the order of the Judge.

Form of Warrant of Deliverance.—The warrant of deliverance may be in this form :§

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

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

Whereas A. B., late of ——, (*laborer*), hath before (*us,*) (*two*) of Her Majesty's Justices of the Peace in and for the said (*County* or *United Counties, or as the case may be*) of ——, entered into his own Recognizance, and found sufficient sureties for his appearance at the next Court of Oyer and Terminer *or* General Gaol Delivery (or Court of General Quarter Sessions of the Peace, &c.) to be holden in and for the (*County* or *United Counties, or as the case may be*) of ——, to answer our Sovereign Lady the Queen, for that (*&c. as in the Commitment*), for which he was taken and committed to your said Common Gaol; These are therefore to command you in Her said Majesty's name, that if the said A. B. do remain in your custody in the said Common Gaol for the said cause, and for no other, you shall forthwith suffer him to go at large.

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

J. S. [L. S.]

Certain offences not within their jurisdiction.—No magistrate or magistrates, or County Judge, is empowered to admit to bail any person accused of treason or murder. No such person can be legally bailed except by order of Her Majesty's Court of Queen's Bench or Common Pleas, or one of the Judges thereof in vacation, who are empowered to admit to bail as well any person accused of misdemeanor or felony.||

* 16 Vic. c. 179, s. 15. † Ib. Sch. S. 1.

* Ib. Sch. S. 2. † Ib. s. 15. ‡ Ib. § Ib. Sch. S. 3. || Ib. s. 15

Duty of Justices when admitting to bail.—In all cases where a magistrate or magistrates admit to bail any person in prison charged with the offence for which he is so admitted to bail, it is the duty of the magistrate or magistrates to send the keeper of the prison a warrant of deliverance, in the form above given, under his or their hand and seal, or hands and seals, requiring the keeper to discharge the person admitted to bail, if detained for no other offence.*

Duty of Keeper of Prison.—Upon the warrant of deliverance being delivered to or lodged with the keeper, it is his duty forthwith to obey it.†

Inspectors and Superintendents of Police, &c.—Any inspector and superintendent of police, police magistrate, or stipendiary magistrate appointed for any territorial division, has power to do alone whatever is hereinbefore authorized to be done by any two or more magistrates. In such case the forms may be varied so far as necessary to render them applicable.‡

* Ib. s. 16. † Ib. ‡ Ib. s. 21.

U. C. REPORTS.

QUEEN'S BENCH.

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

TRINITY TERM, 1858.

Powley v. Whitehead.

County court—Title to land in question—Practice.

In an action of trespass in a county court defendant pleaded pleas bringing the title to land in question, accompanying them with the affidavit required by 8 Vic, ch 13. sec. 13. A nonsuit having been ordered,—

Held, upon appeal, that the effect of the pleas was to oust the jurisdiction of the court altogether: that the judge should therefore have refused to entertain the case; and that the judgment of nonsuit must be reversed.

Appeal from the county court of the County of Perth.

The first count of the declaration charged that the defendant, being engaged in constructing the Buffalo and Lake Huron Railway across the plaintiff's lands, and in making a certain bridge and embankment across a stream near to his close, intending to injure the plaintiff, so carelessly and improperly executed the work that the waters of the stream were thereby dammed back, and overflowed the plaintiff's land.

The second count was for breaking and entering the plaintiff's close, and encumbering the same with stones and other materials &c.,

Defendant for a fourth plea, pleaded to the first count, that the land was the soil and freehold of the Buffalo and Lake Huron Railway Company, and that he committed the alleged trespass as their servant, and by their command; and fifthly, a similar plea to the second count. These pleas were accompanied by an affidavit of defendant, as required by the 8 Vic., ch. 13, sec. 13, that they were not pleaded vexatiously, or for the mere purpose of excluding the court from having jurisdiction, but contained matter which the defendant believed was necessary to enable him to go into the merits of the case.

At the trial it was objected by defendant's counsel that the pleadings put in issue title to land, and that the plaintiff, should be nonsuited. The learned judge took the evidence, reserving leave to move to enter a nonsuit, and a verdict was found for the plaintiff, with £8 15s. damages.

A rule *nisi* having been obtained to enter a nonsuit pursuant to leave reserved, after hearing the parties the following judgment was delivered in the court below:

"Burrit, J. — The defendant's third and fourth pleas are pleaded under the 13th section of 8 Vic. ch. 13, and the 20th section of the County Courts Procedure Acts of 1856, with the necessary affidavits therein prescribed, which I take to be my guide in determining whether this court has jurisdiction. See *Latham* v. *Spedding* (17 Q. B. 440, 20 L. J. Q. B. 302), where, under a plea of not possessed, Lord Campbell intimated an opinion that a county court would try, and it was on the ground that the jurisdiction of the county court was not ousted because the defendant had so pleaded that the title might possibly come in question, though it would be if the question actually came on at the trial, and was really and *bona fide* in issue I take the pleadings and affidavit for my guide as to whether the jurisdiction of this court is ousted or not in this cause. There may however be instances where the pleadings would be no guide, such as not possessed, and then the court would go on until title was *bona fide* in issue.—See *Trainor* v. *Holcombe* (7 U. C. R. 549), *Lilley* v. *Harvey* (11 Law Times Rep. 273). In this last case the court said, where there are special pleadings, and the question is raised upon them as to the title to land, the judge can go no further; and this seems to be precisely the case in the matter upon this motion. It is true the defendant offered no proof of title, but I apprehend it was not attempted from the fact that I told counsel I would hear no more. I took the facts under a very strong apprehension that I had no jurisdiction, which I then intimated. On further investigation I think I did wrong, and assumed an unwarrantable stretch of jurisdiction. The verdict rendered must be set aside, and a nonsuit entered, with costs."

From this judgment the plaintiff appealed.

C. Robinson, for the appellant, cited *Wheeler* v. *Sime*, 3 U.C. Q.B. 266; *Hamilton* v. *Clarke*, 2 U.C.P.R. 189; *Lilley* v. *Harvey*, 5 D. & L. 648; *Trainor* v. *Holcombe*. 7 U. C. Q. B. 548.

J. Duggan, contra, cited *Sewell* v. *Jones*, 1 L. M. & P, 525.

Robinson, C. J,—The statute which defines the jurisdiction of the county court, 19 Vic, ch. 90, has these words: "Provided always, that the said county courts shall not have cognizance of any action where the title to land *shall be brought in question*," &c.; and the 13th section of the 8 Vic., ch. 13 provides, that no plea whereby the title to land shall be brought in question shall be received without an affidavit thereto annexed that such plea is not pleaded vexatiously, *or for the mere purpose of excluding such court from having* jurisdiction, but that the same does contain matter which the defendant believes is necessary for the party pleading to enable him to go into the merits of his case.

This shews that, in the understanding of the Legislature, the pleading a plea which brings the title to land in question (I do not say which *may* bring it in question, but which absolutely and in direct terms does so) necessarily puts an end to the jurisdiction of the county court; for if it did not, the requiring an affidavit would be an unnecessary provision against abuse, since it might be left to the judge to go on and try the cause, in order to see whether the title did really come in question, or whether the putting in that plea was not a mere contrivance to oust jurisdiction.

The fourth and fifth pleas pleaded in this case in the strictest sense brought the title to land in question, and nothing else. The judge could not try a part of the issues: he could not dispose of the issues on these pleas, and therefore was bound to stop. The case of *Latham* v. *Spedding* (17 Q. B. 444), cited for the plaintiff in the argument, is not in point, nor any of those which regard certificates for costs as between the superior courts and the county courts, because there is no pleading in the courts referred to in those cases, and the judge is to say, after hearing the evidence, whether anything has been shewn which should take away his jurisdiction; and they hold that either party merely saying that he claims the land, or has a right to possession, is not enough, unless the course of evidence in the cause raises such a question. But here a plea is pleaded, and issue is joined upon it, setting up as a defence a matter of which the statute disables the court from holding plea, and that necessarily takes away the jurisdiction of the court. After the defendant has sworn that his pleas are not pleaded vexatiously, the judge is not at liberty to entertain the surmise that they mean nothing. The defendant has pleaded them at his peril, and the inferior court has no jurisdiction to enquire into the truth of them.

In the case of *Lilley* v. *Harvey* (5 D. & L. 653) *Wightman*, J., rests upon this distinction, "When there are special pleadings," he says "and the question is raised upon them, the judge can go no further; but where the question is not raised upon the pleadings

but is merely suggested, by the defendant, the judge must enquire into the circumstances before he can be satisfied that title does come in question." In *Tinniswood* v. *Pattison* (3 C. B. 248), a case of replevin commenced in the county court, in which the proceedings were reviewed in error upon a writ of false imprisonment, the court held clearly that the jurisdiction of the county court was at an end the moment the title to the freehold was pleaded.

In my opinion there was an end of the case legally speaking, in the county court when these pleas were put in, for then there was an issue raised which the court could not try, and as a consequence I conclude that what was done afterwards was *coram non judice*. We have not a judgment of the court before us that we can examine into for the purpose of reviewing the correctness of that judgment in itself; but under the power given to us by the statute 8 Vic., ch. 13, sec, 57, we reverse the judgment of nonsuit, because that was a proceeding which we think it was not competent to the court to adopt in a case in which they had no jurisdiction; and then the case will rest in that court, and nothing further can be done in it.

If the plaintiff should again bring it forward in that court a prohibition might be applied for, or the judge, when the record is again brought before him, should refuse to entertain it. It may be considered whether a *certiorari* would not be an expedient course.

McLEAN, J.—When the issue on the record related wholly to trespass or injury to land, and was sworn to as material to the merits, I think the learned judge should at once have declined to proceed in the suit; but when the evidence on behalf of the plaintiff was called and he interrogated as to the trespass complained of in the declaration, with respect to which issue was joined, he surely should have stayed all further proceeding in a matter over which he could exercise no jurisdiction whatever. It appears to me that all the orders made, and the rules granted, are wholly nugatory and invalid, and that the judge has no power to enforce any of them. I concur fully in the judgment, that the order for, and taxation of, costs as upon a nonsuit must be reversed, and the case dismissed.

BURNS, J.—It is very unfortunate for these parties that so much expense has been incurred uselessly, for the plaintiff will have to retrace his steps, and take the course now that he should have done when the defendant put in the two pleas, the 4th and 5th, to the 1st and 2nd counts of the declaration. These pleas are not pleas to the jurisdiction of the court, but they are pleas in bar to the merits of the action, though they involve an issue—namely, the title to the land—a point which the legislature has declared shall not be investigated in the county court. The 13th section of 8 Vic., ch. 13, enacts, that when such a plea shall be put in, it shall be accompanied by an affidavit that the plea is not pleaded vexatiously, or for the mere purpose of excluding the court from having jurisdiction, but that the same contains matter which the deponent believes is necessary to enable the party to go into the merits of the case. The judge was quite right when he finally came to the conclusion that he had no jurisdiction. I take the meaning of the legislature to be this—that when a plea is put in, involving the title to land, accompanied by the affidavit prescribed, immediately the jurisdiction of the court ceases.

If the plea were not accompanied by such an affidavit, the court would order it to be taken off the file because of its irregularity, but when the defendant swears that it is necessary for his defence upon the merits to have the title brought in question, then the jurisdiction ceases. The judgment ordered by the judge of the county court of nonsuit cannot be sustained. He had no jurisdiction to do that, and therefore his judgment must be reversed. Upon a plea to the jurisdiction of the court there can be no judgment which involves the question of costs in the defendant's favour. If the judgment be in the defendant's favor, then it should be that the defendant go thereof without day, &c.—See *Dempster* v. *Purnell* (3 M. & Gr. 375). In this case no judgment whatever can be given. A nonsuit cannot be ordered, for it cannot be told whether the plaintiff may not sustain his case in the proof, and the defendant cannot go into evidence, because it brings the title in question, and he has sworn that it is necessary to the merits of his defence that he should bring the title in question. In this case it appears the plaintiff did sustain his case *prima facie*, for the jury found in his favor, but the defendant offered no evidence to sustain his pleas, for the judge told him he would not receive it. The judge ultimately ordered a nonsuit to be entered, for that he had no jurisdiction. This course was wrong, for the effect of that is to give the defendant costs, and that because he has pleaded a defence which the court cannot dispose of, or say whether it affords a defence or not. The judge of the court should have said to the parties that the whole proceedings from the plea down were *coram non judice*, and he should have refused to proceed with the case, and should not have given any judgment whatever. The course which the plaintiff should have pursued was, upon the plea in bar being put in, the trial of which could not take place in the superior court, to have removed the cause into the superior court by *certiorari*, and have proceeded with the case there; and if he had succeeded he would have been entitled to the costs of the superior court, as far as the case had proceeded in that court. We should pronounce now the opinion which the judge of the court should have expressed to the parties as soon as he saw the state of the record—namely, that all the proceedings upon the pleas were *coram non judice*.

Appeal confirmed.

MICHAELMAS TERM, 1858.

MARTIN V. KNOWLES.

Arrest—22 Vic ch. 96.—Construction of.

Defendant, against whom a Ca. Sa. had issued, was surrendered by his bail on the 1st. of September, 1858.

Held, what he was not entitled to his discharge by the provisions of the 22 Vic. ch. 96, for abolishing arrest in civil actions

Phillpotts, obtained a rule upon the plaintiff, to shew cause why an order made by the Chief Justice of the Common Pleas, discharging a summons which had been granted, calling on the plaintiff to shew cause why the defendant Knowles should not be discharged from the custody of the Sheriff of the United Counties of Lanark and Renfrew, or why the arrest of Knowles should not be set aside, on the grounds that he was not liable to be arrested or detained, under the statute for the abolishing of imprisonment for debt, and on the ground that the debt for which he was arrested, did not exceed £25. and because the said act repeals the clauses of the Common Law Procedure Act authorising the issuing of a *Ca. Sa.*

On the 19th of December, 1857, the plaintiff made an affidavit of debt for the arrest of defendant Knowles for £14 6s. On the 27th of August 1858, a *Ca. Sa.* signed against Knowles on the judgment obtained in that action, and was on the same day filed in the office of the sheriff of Lanark and Renfrew, as notice to the bail of Knowles.

The *Ca. Sa.* was for £21 19s. 10, damages and costs, the costs being £7 13s. 10.

On the 1*st of September*, 1858, Knowles was surrendered in discharge of his bail to the sheriff of Lanark and Renfrew, and in close custody.

The defendant relied on the 22nd clause of the statute abolishing imprisonment for debt, 22 Vic. ch. 96, repealing the sections of the Common Law Procedure Act, under which the affidavit of debt was made, and the *Ca. Sa.* in this case issued, upon which Knowles was in custody.

The Chief Justice of the Common Pleas considered that Knowles being on the 1st of September, 1858, surrendered by his bail to the sheriff of Lanark and Renfrew, who had then the *Ca. Sa.* in his hand, was from the time of his render a prisoner under the writ; that the *Ca. Sa.* was warranted by the 48th section of the Common Law Procedure Act 1856, and that it could not be taken to be meant by the statute 22 Vic. ch. 96, to make that illegal which was legally done before it passed. It was contended before him that the 2nd and 6th sections of the act evinced a clear intention that no person should be held to bail or taken on a *Ca. Sa.* for a less sum than £25. exclusive of costs, and that the defendant should, on that account be discharged. But he considered that a retrospective effect should not be given to the 22nd Victoria in that respect. The *Ca. Sa.* when it was delivered to the sheriff was legal and regular. The provisions of the act came into effect on the 1*st of September*, 1858, and the first section enacted that *after* the 1st of September 1858, no person should be arrested except as provided for in that act, but Knowles being legally in custody on the *Ca. Sa. on the* 1*st of September*, could not be said to

have been arrested or taken upon the suit *after that day*. He merely continued in a custody which had before commenced, and which was legal. So he thought that the provisions of the new act, which were relied upon, did not apply to the case, and discharged the summons.

Crombie, shewed cause, citing *Williams* v. *Burgess* 12 A. & E. 635.

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

We fully agree in the view taken of this matter in Chambers, and think the defendant's summons was rightly discharged by the Chief Justice of the Common Pleas. The *Ca. Sa.* was no doubt legally issued on the 27th of August. There was nothing then to affect the old practice, which dispensed with a new affidavit of debt and the case was one in which the plaintiff was entitled at that time to arrest.

Then, when the whole of the Statute, of the 22 Vic. ch. 96, is looked at, and not merely the 22nd clause, we see that the Legislature desired to guard against the injustice of allowing the statute to interfere with the legality of proceedings which should have taken place before the act came into force.

The first clause clearly shews that, and the 22nd clause can never be taken to make void a *Ca. Sa.* issued on the 27th of August, for want of a formality which at that time was unnecessary.

Rule discharged.

HOPE V. FERGUSON.

Registrar's Fees.

Where a township lot has been originally granted by the Crown in halves, and the title to each has been continued separate, the Registrar must on application furnish an extract of conveyances relating to either half. He cannot furnish and charge for extracts of conveyances relating to the other part

He is entitled to charge only 1s. 3d for the first hundred words, and 9d. for each additional hundred words contained in the whole extract and certificate. Not 1s. 3d. for each numerical, treating it as a separate abstract and certificate.

This was a case stated for the opinion of the Court under the Common Law Procedure Act, 1856.

The defendant is the registrar of the County of Middlesex. The plaintiff being interested in the title to the west half of the east half of lot 23 in the first concession north of the Egremont Road in the township of Adelaide, required from the defendant as such registrar a certificate of the state of the title of the west half of the east half of the lot.

The Crown had granted said lot 23 originally in half lots, that is to say, the west half and the east half to different persons, and so far they were distinct and separate, and by no conveyance had been intermingled with each other. The lots in the township are 200 acre lots, and the plan of the Township made by the Government, does not show a sub-division of the lots into halves. The custom has always been in the Registry office to keep the index in this manner, viz: A page is taken for all the lots in a concession, then a space allotted for each lot in that concession, and the conveyances affecting each lot are there inserted by numbers, beginning with the first after the Patent as No. 1; and these numbers then enable the person searching to refer to the books containing the transcript of the memorials. In the present case all the conveyances, whether of the west half or east half of the lot, are entered as of that lot, but the index in no way gives information whether the number *One*, for instance, or any other particular number, affects the east or the west half of the lot.

In making the search and giving the certificate in this case, the defendant certifies that his first search shews that the Crown had granted this lot in halves, and then he makes sixteen further searches of numbers of the index, which refer him to transcripts of memorials as well of half of the lot not inquired for as of that sought after, and then the Defendant charged for eighteen searches and certificates, instead of eighteen searches and one certificate, which was all that was done or certified.

The questions stated for the opinion of the Court were these:—

First,—Has the Registrar the right to insist upon furnishing extracts of all conveyances relating to a whole lot of 200 acres, when an abstract of the title to a portion of the lot is required, or is the Registrar limited in making his extracts to the conveyances relating to the part of the lot asked for, the lot being originally granted in half lots?

Secondly,—Has the Registrar a right to charge 1s. 3d. for each abstract as stated, or is he only entitled to 1s. 3d. for the first one hundred words, and the sum of 9d. for each additional one hundred words?

BURNS, J., delivered the judgment of the Court.

There appears to us no difficulty in either of the questions submitted to the Court. As to the first, we do not think the Registrar is bound in any way to give extracts or certificates of such portions of the lot as are not asked for, nor can he compel a person to pay for such. The Registrar might make search to see whether the Crown had granted it in halves, but as soon as he discovered that it was granted in halves, his search and his extracts then should be confined to that part which was asked for; and his abstracts for which he would have a right to charge should be confined to that part. There is nothing in any of the Registry Acts requiring the Registrar to keep an index in any particular form. The index is kept for the purpose of facilitating searches, and if the Registrar finds that it enables him to make his searches more easily, to insert all the conveyances affecting a particular lot in one part of the page, he may do so, though the Crown may have granted it in half lots, yet that will not enable him to charge for searches and abstracts for the whole when not wanted. When a person subdivides a lot himself, and does not furnish the Registrar with a plan, the Registrar has no other mode than to put all conveyances in the one index affecting that lot. This case is not of that description, however, for the Crown originally granted it in half lots, thereby making them just as distinct as if the two had been separate lots. If the Registrar by his index cannot tell without search which half of the lot the particular number of conveyance refers to in the index, but must look at the book, and then finds that it is the other half of the lot than the one sought for, then it is his index which is at fault, and that search must go for nothing, If he had subdivided his index, as the Crown subdivided the lot, and followed the subdivision which the Crown had made, there would have been no such difficulty as presented in this case, and we see no reason why the Registrar should not, even for the purpose of convenience to himself in searching, adopt the division made by the Crown. The custom of the office, however, in making and keeping an index to render the searches more easy, will not sanction his making a charge like the present.

With regard to the second, what was required of the defendant was that he should furnish a certificate of title of the west half of the east half of lot No. 23 in the 1st concession north of the Egremont Road Township of Adelaide, with judgments. The defendant to complete this, has looked at a number of memorials, and he considers that each memorial is to be considered as a separate and distinct extract and certificate, though upon his own document furnished he has put but one certificate for the whole. According to his own showing he had made but one extract and one certificate, though to do that he required to look at several memorials. He should have charged only 1s. 3d. for the first one hundred words, counting each figure as a word, and then 9d. for each one hundred additional words contained in the extract and certificate counted together.

It may be that in some instances extracts of memorials may be required to be certified separately; but this case is not of that description, for the Registrar merely states the name of each grantor and grantee and the date, the date of registry, and what description of instrument, whether Bargain and Sale or Mortgage.

Judgment should be entered for the plaintiff.

COMMON LAW.—CHAMBERS.

Reported by A. MCNAB, Esq, M.A.

BROWN *vs.* JOHNSON.

Double execution—Poundage, &c.

Where writs of *fi fa.* are issued to two Counties, and both Sheriffs seize goods sufficient to satisfy the execution, and Plaintiff and Defendant afterwards settle and Sheriff is ordered to withdraw, both are not entitled to poundage.

Summons on Sheriff of the County of Wellington to refund poundage exacted by him upon a writ of *fi. fa.*

The Plaintiff sued out a writ of *fi. fa.* on the 8th of June, 1858, directed to the Sheriff of the United Counties of York and Peel,

which was placed in the hands of the Sheriff on the 10th of June, and the Defendant's goods in the Counties of York and Peel were seized sufficient to satisfy the *fi. fa.* On the 6th August, 1858, a *fi. fa.* was issued by the Plaintiff to the Sheriff of the County of Wellington, and upon that writ the Sheriff seized goods sufficient to satisfy the writ. In October the Plaintiff and Defendant came to an arrangement between themselves with respect to the demand, and the Sheriff of York and Peel was directed to withdraw, which he did, but exacted his fees as also his poundage. On the 5th October a written notice was given to the Sheriff of Wellington as follows:

"Toronto Township, October 5th, 1858.

To George J. Grange, Esq., Sheriff of the County of Wellington.

SIR,—You may liberate the goods and chattels of Robert Johnson, you have seized in my suit, as I have given time to his brothers, Hugh and Horatio Johnson till January, 1859.

James Brown, Plaintiff, and Hugh Johnson, Defendant." JAMES BROWN, Plaintiff.

The Sheriff of the County of Wellington did withdraw from the possession, but also exacted his fees and poundage. The Deputy Sheriff swore that no notice was ever given to the Sheriff of Wellington, that the *fi. fa.* to that County was a second or double execution. And the Defendant's agent, when paying the amount, demanded, as appeared from his affidavit, did not—though he says he protested against the payment of the poundage—place it upon the footing of a double execution, and therefore not entitled to poundage; but put it upon the footing that because no money was made, neither Sheriff was entitled to any poundage. It seems a summons was obtained before the present one, calling on both Sheriffs to show cause why the poundage should not be refunded. The matter upon that summons was arranged in some way between the Defendant and the Sheriff of York and Peel as far as respects his claim; and was the question upon the present summons as between the defendant and the Sheriff of Wellington.

BURNS, J.—The defendant has based his whole proceedings upon the proposition, that because no money was made by either Sheriff, therefore neither of them is entitled to poundage, and he relies upon the recent case in the Common Pleas, *Walker* v. *Fairfield*, 8, U.C. C.P. 95,—to support him. That case does not decide that of necessity, the word *made* in the new Tariff of fees is to be interpreted as meaning, that the money must go through the Sheriff's hands, for if that were so it would always be in the power of the Defendant after his goods were levied upon, to avoid payment of the Sheriff's poundage, by paying over the money to the Plaintiff. In the case cited, no money was made by the Sheriff and none ever obtained, or money's worth obtained by the Plaintiff, for the writ was set aside as irregular, and the plaintiff did not obtain the fruit of it. In this case the plaintiff has obtained the fruit of the execution in some way that he is satisfied, and therefore, so far as the Sheriff is concerned or affected, the amount has been made, and in this sense it must be understood the demand is satisfied. I think that when satisfaction is forced by means of the execution, the Sheriff is entitled to his poundage. The 3rd section of 9 Vic. cap. 56, shews that the Sheriff is entitled to poundage not to the amount of the debt, in case no sufficient property to pay it, but to the value of the property actually seized.

This case, however, is one coming under the second section of that Act, being the case of writs of execution into second counties.

Again it is contended that under that section neither Sheriff is entitled to poundage, because no money was actually levied.—The section is obscurely worded and it seems difficult to construe it properly. I can scarcely imagine the Legislature intended, where two Sheriffs were set in motion, they should each be in a worse position than if only one writ of *fi. fa.* was issued. I need, not, however, discuss the abstract question, for here there is such a priority in point of time between the different writs of *fi. fa.* in the hands of the two Sheriffs, that I should say if one of them be entitled to the poundage upon the principle before stated in case of one execution, only the Sheriff of York and Peel is the person who would be entitled to the poundage, for it seems by the facts admitted, that it was upon his writ the compromise took place.—Then the Plaintiff being satisfied, and the matter as respects the Sheriff of York and Peel being arranged, and not being called upon to express any opinion whatever, whether he could legally or not exact the poundage, the simple question is, whether the Sheriff of Wellington is entitled to poundage. I think he is not. He is entitled to the other fees and for any services that a Judge may think reasonable.

The parties do not dispute any of the charges as I understand, except the charge for poundage—and the order will be that the amount so taken shall be refunded.

CHANCERY.

(IN BANC.)

(Reported by THOMAS HODGINS, Esq., LL.B., Barrister-at-Law.)

HARRIS v. BEATTY.

Costs—Assignment for benefit of creditors—Release—Legal rights

An assignment was made for the benefit of creditors; some of the creditors signed it; others sued out attachments and placed them in the Sheriff's hands: others obtained executions and sought to enforce them against the signing and attaching creditors. The assignment was submitted to a legal tribunal and declared invalid. The signing creditors applied to have the deed upheld and the other creditors to pay their own costs

Held, that the Deed should be upheld and that the attaching creditors having sought to enforce their legal rights should have their costs, but not the execution creditors—they having sought to enforce their priority.

(20th October, 1858.)

This was a bill to declare valid certain assignments made by one G. H. Cheney to one Clarkson, for the benefit of creditors; also to declare the release to said Cheney void, by reason of his fraud in carrying away with him moneys and notes intended to be vested in the assignee; and to restrain certain of the creditors from issuing executions for the amount of their claims. Two assignments had been executed, one dated 18th September, 1857, and the other 23rd Sept., 1857—the latter the more effectually to declare the trusts, &c. Some informality had occurred in regard to the delivery of the first deed, and the matter was by consent referred to the Chief Justice of Upper Canada, who decided against the validity of the first deed. Afterwards this bill was filed, and the Court upheld the first deed by granting an injunction against the attaching and execution creditors, who then came in and executed the assignments.

G. Morphy, for plaintiffs, (representing those creditors who had not issued executions) moved in accordance with the prayer of the bill, and that the defendants, the attaching creditors, should be ordered to pay their own costs. The whole difficulty had been caused by them; and at the hearing the motion was opposed by defendants Beatty and the Bank of Upper Canada—which latter had now come in and supported the assignments.

D. B. Read, Strong, A. Crooks, Fitzgerald, Blake, and Hodgins, for several defendants.

THE CHANCELLOR.—The decree will be for carrying out the trusts of the deeds; but as to the release, that is only a question of law, for fraud may be set up against Cheney should he seek to enforce the release against his creditors. As to costs, the subsequent execution creditors were driven to their remedy at law by the conduct of the first execution creditors. It was altogether a legal question, and having sued out attachments they opposed a legal right against a legal right. The question at law it appears was submitted to a legal tribunal and was decided in favor of the attaching creditors; but other creditors come to equity to restrain them pursuing what is declared they had a right to do. The attaching creditors, except two, also come and say that the legal decision is right, but submit to the motion for an injunction. I think, therefore, the costs of these creditors should be paid out of the estate, except those of Beatty and the Bank of Upper Canada, who had obtained execution, appeared on the motion here and opposed it.

SPRAGGE, V. C., agreed with the Chancellor. If Beatty and the Bank have their costs they will have them for endeavoring to place themselves in a preferential position by reason of their executions, when others were satisfied by signing the assignment, and then coming here to uphold them—in which they have not succeeded.

CHANCERY—CHAMBERS.

HOWLAND v. GRIERSON.

Service on Corporations.

If the head office of the Corporation be situated within Upper Canada service must be effected at same; if without, at any agency.

6th October, 1858.

A corporation whose head office was in Lower Canada, was served at its agency in Toronto with an office copy of a bill. No answer was put in, and *Fitzgerald*, for plaintiff, moved to take the bill *pro confesso* under the orders of 19th March, 1857.

ESTEN, V. C.—Under these orders, service must be made on the proper officer, at the head office of the Corporation, if such office be within Upper Canada; or at any agency if the head office be without.

IN QUARTER SESSIONS.

CAMPBELL, Co. J., Chairman, County of Lincoln, December, 1858.

REGINA v. F. J. L.

Assault—Sheriff's Officer—Bond to produce goods—Refusal, &c.

Where a Sheriff's officer acting under a warrant of the Sheriff, grounded on a *fi. fa.*, goods in the hands of the Sheriff, made a levy on the goods of a debtor in possession of defendant, accepted a bond to have the goods forthcoming when required, withdrew from possession and afterwards the Sheriff, having received a *ven. ex*, proceeded to sell the goods, and in so doing was obstructed by the defendant, who closed his door on the Bailiff.

Held, that under the facts, the Sheriff could not at pleasure retake the goods, but if not produced should have had recourse to the bond, and that the Sheriff and his officers were under the circumstances trespassers, and defendant, if guilty of no excess, justified in closing his door against them.

On the trial of this defendant under an indictment for an assault upon a Sheriff's officer in the execution of his duty, it appeared that in June, 1858, the Sheriff of Lincoln received a writ of *fi. fa.* goods, &c., against a debtor whose personal property was in the possession of F. J. L., that the Sheriff's officer seized the goods, took an inventory with the assistance of F. J. L., accepted the bond of F. J. L to have the goods forthcoming when required for sale, and withdrew from the possession of the goods and from the dwelling.

That several days for sale were fixed from time to time, but none was attempted, whereupon the writ was returned in August to the proper office, "goods on hand for want of buyers;" and thereupon a *ven. ex.* was duly issued and delivered to the Sheriff; that a sale was advertised for the 26th of August, and upon that day that an auctioneer was sent by the Sheriff's Bailiff to take possession of the goods in the dwelling house of F. J. L. to sell them and remove; that he did dispose of a great portion at the dwelling house, and did remove a quantity in the absence of the Sheriff's officer, and of F. J. L.

That on the appearance of the Sheriff's officer and F. J. L. together, the latter was excited and annoyed at the exposure of the goods to the rain, and for that cause probably, hastily walked into his house and proceeded to close the front door. Thereupon the Sheriff's officer thrust his hand and foot in to resist, and being injured thereby was forced to withdraw, and the door became effectually closed against him. For this act of resistance and injury the indictment was preferred.

It appeared further by the evidence of the officer that he acted under the warrant of the Sheriff upon the *fi. fa.*, but it had been lost or mislaid. No evidence of consent on the part of F. J. L. was shewn, that the Sheriff or his officers might return to the possession of the goods or house, nor did F. J. L. expressly assent to the acts of the officer nor did he object in any manner until the closing of the door, but had been endeavouring to raise the money claimed, and was apparently submitting up to that time.

The Chairman, CAMPBELL, Co. J., held that the Sheriff having levied on the goods, having accepted the bond of F. J. L., and having withdrawn from the possession, could not at pleasure retake the goods, but should have had recourse to the bond if not produced: that the Sheriff and his officers were trespassers upon J. F. L., and that the latter under the evidence was justified in closing his door if he saw fit, if no excessive violence were used in the act. He also held that the enquiry as to excess was one for the jury. He referred to *McMartin* v. *Powell*, Easter Term 3 Vic., R. & H. Dig. 391: *McMartin* v. *McPherson*, Mich. Term 3 Vic. R. & H. Dig. 391.

Jury Law of 1858—Selection of Jurors.

The Chairman, a Deputy Reeve, and Clerk of the Peace appeared as selectors of Jurors under the 49th section of the Act 22 Victoriæ, chap, 100, and in the absence of the Sheriff his deputy claimed to act for him.

The Chairman, CAMPBELL, Co. J., ruled that the Sheriff being specially named in a judicial capacity, the duties of selector did not in his absence devolve upon his deputy.

Ruled also, that the Deputy Reeve was a legal selector under the terms, "the Reeves then present."

The sections preceding vest in the Court powers to do certain acts preceding the selection of Jurors, and the names of the members of the Court are required to be entered in the minutes of the Court.

The Court is composed of Justices of the Peace, Mayors, Wardens, Reeves and Deputy Reeves all of whom have votes without distinction and are members, and when the 49th section provides that the Chairmon of the Court of Quarter Sessions, the Clerk of the Peace, the Warden, the Treasurer, the Reeves, *then present*, and the Sheriff of the County, or any three of them, shall be *ex officio* selectors of Jurors from the Jurors' Rolls within their respective Counties, a Deputy Reeve is authorized to act.

GENERAL CORRESPONDENCE.

To the Editors of the Law Journal.

SARNIA, C.W. 25th Nov., 1858.

GENTLEMEN,—As editors of the only legal periodical in Upper Canada, one professing to give a fair and impartial hearing to all subjects brought under its notice, I request you to give the following insertion in the Journal.

At the last sittings of the First Division Court for the County of Middlesex, I was requested to attend a judgment summons on behalf of a defendant whose solicitor I was, and went from this place to London on his behalf, as the matter being of importance to him he was anxious to have it gone into as fully as possible and on my arrival, found the manner in which the Court there is conducted to be as follows:

THURSDAY, *28th October*, 1858.—Court commenced sittings nominally at 10 A.M. Judge arrived at about half-past ten, adjourned at half-past twelve till two, returning between that hour and three staid on the bench till four, then adjourned till ten next day.

FRIDAY, *29th October*. 1858.—No Judge. Deputy arrived at eleven o'clock, adjourned at one, returned at three in the after noon and adjourned forthwith till next day.

SATURDAY, *30th October*, 1858.—His Honor made his appearance a few moments before 10 A.M.; after hearing one or two cases gave notice that he had to be at the Grand Trunk Railway Station at 11.45 A.M., stopped one cause in the middle of the evidence, informed the parties that he would hear the balance of it at the City Hall the following Monday morning at ten o'clock, and on being informed that the City Hall could not be obtained, concluded to hear it at his Chambers.

The judgment summonses however, to which I have special reference here were disposed of in a manner as novel as illegal—the Judge refusing to hear a single case on its merits, but telling the Clerk to make one general order payable in a month, which order was never even endorsed by his Honor on the summonses in open Court. Against such a sweeping order, as solicitor for one of the defendants affected by it I protested, and contended that each case should be heard and

determined on its individual merits, but the only reply I got was, "can't help it, why don't people pay their debts, I want to be at the Grand Trunk station at 11.45 and won't hear it." If this were the first time perhaps it might and would be overlooked, but really Court after Court in that County the same thing occurs, sittings protracted, ten o'clock one morning turns out to be two in the afternoon three days later, causes are refused trial on their merits, and sweeping orders are made on Judgment summonses. I would be one of the very first to uphold so far as I could the County Judge of Middlesex in anything reasonable, but as a member of the legal profession of Upper Canada, I distinctly deny his right to assume any such arbitrary powers, and set alike the interests of suitors and the rights of their solicitors at defiance.

I remain Gentlemen, your obedient servant,

W. D. MACKINTOSH.

[The *Law Journal* was never intended as a medium of appeal for disappointed suitors or others, against the decisions of Judges, as it is neither the province nor the wish of the editors to examine cases of the sort. But when a professional man over his own signature makes a statement such as the above, we would be wanting in what is due to the profession, if we refused to open our columns to the writer.

Of the facts, of course we know nothing personally, they rest on the authority of Mr. Mackintosh.

The complaint of want of punctuality, &c., we regard as quite secondary. Few know the many engagements of a County Judge, and with multitudinous duties thrown upon him, it is not to be wondered if occasional delays do occur in the business of his Courts, and probably enough such may be the case with the Judge of Middlesex.

The other ground referred to by the writer,—making a general order without reference to the means and ability of the judgment debtor to pay, we confess our utter inability to understand or to reconcile with the true principles of the administration of justice. This is all we feel ourselves at liberty to say just now.

We may add, however, that Mr. Mackintosh seems to be in error as to an endorsement being necessary by the Judge. The non-endorsement of the order is neither a defect nor an irregularity. The duty of the Clerk is to note the *viva voce* decisions and orders of the Judge. And although the practice in some Counties is for the Judge to make a short note of the decision on the back of the summons for the guidance of the Clerk, in other Counties it is otherwise, and in no case is the Judge required to do so.—EDS. L. J.]

To the Editors of the LAW JOURNAL.

THOROLD, *Dec.*, 1858.

GENTLEMEN,—Could I so far trespass upon your kindness, as to give me your opinion on the following case, in the next issue of your Journal? I would not trouble you, but it is a matter that affects myself to a pretty considerable extent, having acted in the case on behalf of the defendant. The facts are these:—

Elias Fitch was the owner of, and in the occupation of, a tavern stand in this place. In January, 1858, he sold the premises to a Frederick T. Hutt, under a properly executed conveyance. In February, 1858, Hutt leased the premises in question to a David Fitch, for three years, but David Fitch never took possession. Elias Fitch purchased the interest of David Fitch in the lease; then Elias Fitch sold his interest in the lease to one Reuben Morrison, who took possession—(but previous to and at the time of the sale of the premises from Elias Fitch to Hutt, in January, 1858, there was a beer pump in the house, screwed to the bar, and the bar was nailed down to the floor.) Morrison finding that if he kept the tavern until the expiration of his lease, it would be a losing operation, agreed with Hutt, that if he (Hutt) would make an abatement in the rent then due, that he (Morrison) would give up the premises, and relinquish all right and title under the lease. Hutt did make an abatement in the rent, and Morrison gave up possession to Hutt. Morrison, after being out of possession for some time, came to Hutt and demanded the beer pump from Hutt, claiming it under a sale of the bar-room furniture, at the time of sale of the lease from Elias Fitch to Morrison. Hutt refused to give it up. Morrison brought an action in the Division Court to recover the value of the pump.

At the trial I contended, on behalf of Hutt, that the pump passed, with sale of the premises, from Elias Fitch to Hutt, in January, 1858; and secondly, that at all events, Morrison being tenant to Hutt, that under and by virtue of the agreement between Hutt and Morrison, and after relinquishing possession, that he was not entitled to it, or that he should have removed it at the time he went out of possession. The Judge gave a verdict for the Plaintiff for the amount claimed, on the ground that there was an absolute sale of the pump from Elias Fitch to Morrison.

Not being satisfied with the judgment, I moved for and obtained a new trial. Upon the second trial the Judge stuck to his first decision.

Now, Messrs. Editors, I have given you a true statement of the facts, and would like to have your opinion on the case.

Yours,

C. P. MCGIVERN.

[Did the facts above mentioned disclose a case of general interest, we should only be too happy to oblige our correspondent by doing as he requests; but because the question put is one of interest only to the writer and to his client, we must do as we have always done in such cases—decline to give the opinion sought. His letter is published in full, that others may see the nature of cases in which we decline to give opinions to correspondents.—EDS. L. J.]

To the Editors of the LAW JOURNAL.

December, 1858.

GENTLEMEN,—I would trouble you for your opinion respecting Chattel Mortgages, as some parties, and even officials, say that a chattel mortgage is good for nothing since the 1st day of September last, or since that the Abolition

Imprisonment Act for Debt is in force. True, the Abolition Act specifies that if any person make or cause to be made any gift, conveyance, assignment, or transfer of any of his goods, chattels, or effects, or deliver or make over any such goods, &c.—that every such gift, &c., shall be void as against the creditors of such person. And in the 21st section of the said Act, that any person making any gift, conveyance, assignment, sale, transfer, or deliver any of his lands, &c., goods or chattels, &c., or dispose of any of his goods, chattels, property, or effects of any description, with intent to defraud his creditors, &c., he shall be liable to imprisonment and fined. But I cannot see that there is anything mentioned in the Act about chattel mortgages being good for nothing, or anything as to repealing the same; so that I think the chattel mortgage is still good, provided that it is made in good faith. Now, as I am just naming chattel mortgages, a case respecting a chattel mortgage comes up in my mind, which I would put for your information and opinion on the following, that is:—A took a chattel mortgage from B for $500, on the 14th of September last. B was sued by C in court held 21st September last, when C obtained judgment against B for $59. Can C sell the goods and chattels mortgaged from B to A, or not, under his judgment against B?

You will oblige by answering the above queries in your next issue of the LAW JOURNAL.

I am, respectfully yours,

A SUBSCRIBER.

[1.—It is a common but erroneous belief, that since "the Act for the Abolition of the Imprisonment for Debt," bills of sale or chattel mortgages are, as expressed by our correspondent, "good for nothing." His opinion, however, in opposition to this common belief, is the correct one. A bill of sale or chattel mortgage is, by the recent alteration of the law, made void, and then only against the creditors of the person giving it, when such person is at the time of giving it "in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency," executes the instrument "with intent to defeat or delay his creditors," or "with intent of giving one or more of the creditors a preference over his other creditors."

2.—If the chattel mortgage from B to A, executed on 14th September, was executed in good faith, and registered as required by law, C can only sell "the interest or equity of redemption" of B in the goods and chattels mortgaged. On this point our correspondent is referred to sec. 11 of Statute 20 Vic., cap. 3.—EDS. L. J.]

To tha Editors of the LAW JOURNAL.

BADEN, *2nd December*, 1858.

GENTLEMEN,—I have been looking over the "Municipal Institutions Act of Upper Canada," wherefore I wish to solicit your opinion in a few cases or instances, that is to say:—I see in Section No. 75 in the said Act, that "the electors' or voters' qualification for townships" are, without any amount, limited more than what is set forth in said section;—although it says, "and such of the householders thereof as have been resident therein for one month next before the election." Will these last-mentioned words apply to parties living out of the ward, or in an adjoining ward, or non-resident land owners living in an adjoining township or ward, and be entitled to vote in any ward, or only in the ward where they reside, or where the land lies? Your opinion on the above will be most thankfully received before the next election in January next.

And again, the .8th Section of said Act says: "When a municipality is divided into wards, &c., no elector shall vote in more than one ward, &c.; and if entitled to vote in the ward in which he resides, he shall not be entitled to vote in any other ward or electoral division." Here, for instance, we might suggest, that the elector or voter might vote in any ward, whether he live in the ward or not; but not in more than in one ward. Supposing he had real property in both wards, that is—I might live in one ward, and have land lying in another ward, I might then go in the ward where my land lies, and claim a right to vote, although I live in the other ward. Whether this is the meaning of the Section last quoted, is for information.

And also Section 79 following:—"In case both the owner and occupant of any real property are rated therefor, both shall be deemed rated within this Act." Does this apply to Councillors, or not. or to voters also? I should think Councillors only. And also, the 80th Section, where joint owners are rated together, (as is therein mentioned.) I suppose that this does apply to Councillors likewise. And as the above named Sections are all under the head of the Electors' Clauses, some parties may think that they might be applied to voters, which I presume they do in some cases.

What I want to know from you, Gentlemen, is your opinion on the above-cited Sections, especially the *two first ones*, so that I may legally hold the forthcoming elections. If in case this communication is too late for the Journal, will you be pleased to answer the question by letter in short "words."

In the meantime, I remain, Gentlemen,

Respectfully yours,

MICHAEL MYERS,

Town Clerk.

[Finding that our January number would not be issued in time for the January elections, we, as requested, answered our correspondent by letter. Our doing so, however, is not to be taken by others as a precedent. In future we shall decline to answer such communications otherwise than in the pages of the LAW JOURNAL, and this is a rule which we now promulgate, and wish to be thoroughly understood.

As the questions submitted by our correspondent are not only very important, but of very general application, we append the substance of our replies to his queries:—

1.—Under the Municipal Act of last session, electors are of two classes, viz., freeholders and householders. In the case of the former, residence does not appear to be required; but in the case of the latter, it is expressly so required, (s. 75 and s. 97, sub s. 9.) All non-residents possessing property in a mu-

nicipality are not, however, in our opinion, entitled to vote, but only those whose names appear upon the assessment rolls, (16 Vic., c. 182, s. 17. See Harrison's New Municipal Manual, p. 34, note *q*.)

2.—As to wards, a resident ought to vote in the ward in which he resides, but it would seem that a non-resident may vote in any ward. Such an one, however, had better vote in the ward wherein lies the property it respect of which he votes. An elector who votes in any one ward of a Municipatity, is, of course, not entitled at the same election to vote in any other ward (s. 78).

3.—SS. 79 and 80 apply to electors, and to electors only. The qualifications of Councillors are described in ss. 70, 71 & 72 of the Act.—EDS. L. J.]

MONTHLY REPERTORY.

CHANCERY.

L. C. AUSTEN v. BOYD. *May* 31. *June* 2, 9, 12, 23.

Solicitor—Partnership—Dissolution of—" Goodwill."

Difference between the "goodwill" of a trade, and of a professional practice.

The goodwill of a trade is the amount which a person is willing to give for the chance of his being able to keep the business connected with the place where it is carried on; but goodwill is distinct from the profits of a business.

The term "goodwill" is inapplicable to a professional practice which has no local existence, but is purely personal.

An agreement to sell the goodwill of a professional practice, without any further stipulation or fixing the price, is not capable of specific performance.

F. H., and B. were solicitors in partnership. In 1838, F. retired from, and A. joined the partnership; and it was agreed that F. should be at liberty at any future time to introduce T. The term was to expire on 1st of September, 1846, up to which time T. was not introduced; but on 24th July, 1846, fresh articles were entered into; for seven years from 1st September then next, by which a retiring partner was to receive for his interest and share and goodwill in the business, the fair marketable value; and these articles were declared subject to the article of the then existing agreement as to the admission of T. In 1849 F. exercised his power of introducing T., when there was a memorandum arranging a new partnership which was to last until 1860, which, however was not to affect the agreement of 1846, except as far as T's. interest was concerned. On the 29th of August, 1853, two days before the term of partnership under the agreement of 1846, would have terminated, A. gave notice to dissolve on the following day. On bill filed by A. to have the value of his share and the goodwill ascertained under the articles of 1846.

Held, by the Master of the Rolls, and affirmed on appeal that A. was not entitled to claim the value of his share of the partnership or the goodwill, reckoning the business as continuing, and not as terminating in 1853; and that his rights only extended to the two days unexpired, which were of no marketable value.

V. C. W. BAKER v. DEAN. *June* 12, *July* 7.

Practice—Pro-confesso.

For the purpose of taking bill *pro-confesso* against a defendant whom it is impossible to serve and for whom an appearance had been entered interrogatories were directed to be filed and advertised in the Gazette, with notice to the defendant pursuant to the 79th order of May 1845.

V. C. W. BARROW v. BARROW. *June* 5, 23.

Jurisdiction—Married Woman—Real Estate.

A., a married woman, by her next friend, filed a bill to enforce the performance by her husband of his covenant to surrender certain copyholds (her property) upon trusts for her benefit, contained in the settlement made upon her marriage during her infancy. She obtained a decree, directing the surrender and the admission of the trustees, who were ordered to pay the balance of the rents to her, to her separate use. Shortly after the decree the the husband died, and the usual order to revive was obtained by A., who had received the balance of the rents pursuant to the decree.

Held, that A., who by instituting the suit had elected to adopt the settlement made of her real estate, was bound by such election, and that the Court had jurisdiction to compel her to carry the decree into effect.

M. R. COLE v. WILLARD. *June* 24, 25.

Will—Satisfaction of debt by legacy.

Bond to secure £2000 to be paid to trustees within three months after obligors decease for benefit of A. for life, and over. The obligor, by his will after directing payment of his debts, gave to A. an annuity of £200.—*Held*, not a satisfaction of A's. interest under the bond.

V. C. S. THE COLLINS COMPANY v. REEVES *June* 28, 29.

Trade-mark—Custom of trade—Foreign Company—Injunction.

An American Company, established for the manufacture of Edge-tools and employing a particular trade-mark, filed their bill against a manufacturer in Birmingham, alleging that he had been for some time past in the habit of making and selling tools bearing a fraudulent imitation of their trade mark. The defendant, by his answer, admitted having affixed the mark in question to goods at the order of his customers: and stated that it was the ordinary practice in Birmingham to employ any mark ordered by respectable parties, without further inquiry. He had already submitted to an injunction. The injunction was ordered to be continued; the bill to be retained for a year, with liberty to the plaintiffs to establish their right at law in the meantime: the bill in default, to be dismissed with costs; otherwise further consideration of all matters reserved.

An alien may sue in England to restrain the fraudulent appropriation of his trade mark, although the goods to which such trade mark applies are not usually sold by him in England.

V. C. S. CRADOCK v. CRADOCK. *June* 21, 22.

Will—Construction—Successive limitations.

A testator devised real estate to J. C. for life, with remainder to J. C.'s second son W. for life, remainder to the first and other sons of W. successively in tail male, and for default of such issue "to the third, and all and every other son and sons of the body of the said J. C. and the heirs mail of such son and sons," and in default to his, the testator's, own right heirs male for ever. W. died without leaving issue male. J. C. had several sons.

Held, that his "third and other sons" did not take as tenants in common, but successively as tenants in tail male.

V. C. K. PARR v. LOVEGROVE. *June* 23.

Specific performance—Decree—Title when first shewn.

When under a decree, in a suit for specific performance, there is a reference as to "whether the vendor can make a good title, and if so, when such title was first shown," the making and showing a good title are intentionally distinct matters. A vendor can make a good title where a good title appears on the face of the abstract, and where he is able and willing to prove the deeds and facts alleged in the abstract. The showing a good title is the delivery of the abstract, when the vendor is in a condition to prove everything necessary to establish his title, appearing on the face of the abstract.

A contest as to what species of evidence is necessary, and the non-production in the first instance of the evidence ultimately required is not such a refusal to produce evidence, as that until such evidence is produced a vendor can be said not to have shown a good title.

Whatever a vendor puts upon his abstract he is bound to prove and verify.

Where in the contract, the word "produce" a good title is used the vendor is only entitled to interest from the day on which he has verified the title.

A summons to vary the chief clerk's certificate, finding that a letter alleging a fact creating a good title; and offering to prove it in a short time, was the period of which a good title was first shewn, dismissed with costs.

V. C. K. PARSONS v. COKE. *June* 29.

Will—Construction—Gift pointing out a mode of disposal—Ademption.

Where a testator devises property and *inter alia* certain mines, and all debts due at his decease in respect of such works, subject to pay all rents, royalties and debts, due from the concern, and the better to enable the devisee to carry on the works, bequeathes to him £10,000, the disposal by the testator in his lifetime of such property operates as an ademption of the gift of the debts, but not of the £10,000.

Semble, where there is a gift by a testator of debts due to him subject to the payment of debts due by him, it is impossible to impose upon the legatee the obligation of payment, supposing the payment would exceed the receipt.

V. C. K. ROBINSON v. WOOD. *July* 1.

Will—Construction—Vested interest subject to be devised—Gift over to a charity.

A testator gives all his property to trustees upon trust to pay and apply the rents of certain estates for the maintenance, &c , of A. until 21, and when she attains 21, upon trust to convey such estates to the use of A. her heirs and assigns for ever. In case she should die under 21, leaving lawful issue, in trust for such issue as tenants in common in fee; but in case she should die under 21, without leaving lawful issue, then over with an ultimate gift to a charity. A. survived those in remainder, and died under 21, without issue, the charitable gift being void under the statute of Mortmain.

Held, on the authority of *Doe* v. *Eyre*, 5 C. B. 746, that the gift to A. was divested by the charitable gift over, although that gift was for all other purposes void.

REVIEW.

THE NEW MUNICIPAL MANUAL FOR UPPER CANADA, containing Notes of Decided Cases, and a full Analytical Index. Edited by ROBERT A. HARRISON, B.C.L., Barrister at Law, Toronto. MACLEAR & Co., Publishers.

We have received from the publishers a copy of this most useful work, issued at the close of the year, and in excellent time to act as a guide for those to whom it is inscribed, "The Municipal Councils of Upper Canada," and their several members, in the performance of the duties which at the commencement of a new year devolve upon them.

We regret that our reference to the work cannot now be as full as its great and general importance would call for, our time being very limited. Mr. Harrison's well known character as an annotator is, however, of itself a guarantee that no labor has been spared in making it a desideratum for every lawyer and member or officer of a Municipal Council in the Province.

It contains the new Municipal Act, 22 Vic. cap. 99, carefully and extensively annotated, together with all the Acts and parts of Acts, taken in chronological order, in any way relating to municipal matters, which are to be found scattered through the twenty-two volumes of the Provincial Statutes.

It also contains the Rules of Court governing contested Municipal Elections, and a short but excellent Form of By-Law to contract a debt by borrowing money under sec. 222 of the new Act.

The Editor, in his preface, refers to what he has justly remarked in a prospectus to the work, that "the municipal laws of Upper Canada are in importance second to none of the laws of the Province; that every municipal council is a small parliament, possessed of extensive yet limited powers; and that to ascertain in every case the existence or non-existence of a power, the nature of it, its precise limit, and the mode in which it should be exercised, is the object of all who are in any manner concerned in the administration of municipal affairs." This being admitted, it must also be conceded that it is the plain duty of every member and officer of such a corporation to make himself acquainted with the nature of the laws by which his duties are specified and regulated.

The object of the MANUAL is to make this task comparatively easy, which, without it, the Councillor could not probably accomplish within his term of office. He will there find the whole law relating to his various and important duties and powers, compressed in a single and very portable volume, instead of having to search for it through two-and-twenty large volumes of the General Statutes, with nothing to guide him by way of note or comment.

It is unnecessary to point out its usefulness to the profession. We are satisfied that no lawyer's table (the book is almost too constantly referred to for his *shelves*) will be many days without a copy.

It contains 800 pages, including the Index, and is announced at the ridiculously low price of $2—after the 1st March next, it will be raised to $3 per copy.—(*Senior Editor, L. J.*)

THE GREAT REPUBLIC MONTHLY. New York: Oaksmith & Co. 112 and 114, William Street.

The first number of this illustrated Magazine is received. As its name indicates, it is intensely American, but as literature belongs to no nation, and as its literature appears to be of a high order, the Magazine will be found acceptable to Canadians as well as Americans. In our number for November were stated the terms of subscription, and similar information will be found to-day in our advertising columns.

A TREATISE ON THE LAW OF SUITS BY ATTACHMENT IN THE UNITED STATES, by C. D. Drake of St. Louis, Mis. Second Edition, revised and enlarged, with an Appendix containing the leading Statutory Provisions of the several states and territories of the United States, in relation to Suits by Attachment, and a treatise on Foreign Attachment in the Lord Mayor's Court of London, by John Locke. Boston: Little, Brown & Co. Toronto: A. H. Armour & Co.

This work by an American or an American subject is one of peculiar value to the Canadian Lawyer, inasmuch as it covers a branch of Jurisprudence common to both countries, and as yet untouched by any legal writer of ability at the English bar. Certain provisions of the Common Law Procedure Act of 1854 in England, and of our own Act of 1856, which are copied verbatim from them, opened out a new remedy to creditors somewhat similar to the remedies given in the Lord Mayor's Court of London, and enabled a creditor to attach debts due to his debtor and to recover the amount from the Garnishee, as he is called. Very few cases on the subject are to

be met with in the English books, with the exception of those decided under the Common Law Procedure Act, and to these and the cases decided in our own Courts research is necessarily limited.

The law of Upper Canada in relation to attachment is peculiar. No similar general system of attachment prevails in England, but it is otherwise in the United States. We regard, therefore, the book before us as one calculated to be of tachment having long been in force in parts of the United States eminent assistance to the Canadian practitioner; the law of at- and furnishing a great body of adjudged cases on the subject.

Mr. Drake's work is essentially American—his materials are almost wholly drawn from home sources, for as he truly remarks the system is or rather was *peculiarly* their own—but he has appended a valuable little Treatise on Foreign Attachments in the Lord Mayor's Court of London.

Doubtless in any future edition of the work the author will not fail to embody the English decisions on the Common Law Procedure Act, and the decisions in the Upper Canada Courts, which are more numerous and occupy a larger field, he would find of great assistance in elucidating his subject.

Of the merits of the work we cannot speak too highly—the author has gone over an unbeaten track in a very masterly manner, and has given the whole law on a very difficult subject in a clear and methodical shape; to both the practitioner and the Jurist it will be alike acceptable.

We can without hesitation recommend it to the Bar of Upper Canada. The following is a summary of the contents—The origin, nature and objects of the remedy by Attachment—For what cause of action an Attachment may issue—Of absent, absconding, concealed, and non Resident Debtors, and debtors removing or fraudulently disposing of their property—Of the liability of Corporations and Representative persons to be sued by Attachment—Of the affidavit for obtaining an Attachment—Of Attachment bonds—Execution and Return of an Attachment—Effect and Office of an Attachment—Attachment of Real Estate—Attachment of Personal Property—Of simultaneous, successive, conflicting and fraudulent Attachments—Custody of Attached Property—Of Bail and Delivery Bonds—Bailment of Attached Property—Of Attachments improvidently issued—Of the Dissolution of an Attachment—Of Notice to absent Defendants—Of Garnishment generally Who may be subjected to Garnishment—What personal property in Garnishee's hands will make him liable—What possession of Personal property by a Garnishee will make him liable—What Garnishee's Liability as affected by the capacity in which he holds the Defendant's property—The Garnishee's liability as affected by previous Contracts, &c.—The Garnishee's liability as affected by a previous Assignment, &c.—The Garnishee's liability as a Debtor of the Defendant, &c.—The Garnishee's liability as affected by time, &c.—The Garnishee's liability as affected by his having Co-debtors, &c.—The Garnishee's liability as a party to a promissory note—The Garnishee's liability as affected by pre-existing contracts, &c.—The Garnishee's liability as affected by Fraud of Defendant, &c.—The Garnishee's liability as affected by Equitable Assignment of the debt—The Garnishee's liability as affected by proceedings against him by Defendant—Of the answer of the Garnishee—Extent of the Garnishee's liability as to amount, time, &c.—Of Garnishee's right of defence—Of Garnishee's relation to the main action—Where Attachment is a Defence, &c.—Of action for Malicious Attachment.

The style in which the book is got up does great credit to those eminent Law Publishers, Messrs. Little, Brown & Co. of Boston. Indeed in typographic execution the book (which contains over 700 pages) is equal to any English work of the kind. The book may be had of Messrs. Armour & Co., Toronto.

THE REPORT OF THE CHIEF SUPERINTENDENT OF SCHOOLS for 1857 received, and will be reviewed in our next.

REPRINTS OF THE BRITISH REVIEWS. By Leonard Scott & Co., New York.

It is only necessary to name the British Reviews—the *London Quarterly*, the *Edinburgh*, the *North British*, and the *Westminster Review*, and *Blackwood's Magazine*—to explain to the reader the treasures which may be cheaply had upon application to Leonard Scott & Co. These Reviews, without which no man with any pretence to learning will remain, may be had of the New York publishers at less than one half the cost of the English editions. In appearance the American reprints are, if anything, superior to the English editions; and, owing to an arrangement for advance sheets, entered into by Leonard Scott & Co. with the English publishers, are to be obtained quite as soon if not sooner than the English copies. For further information attention is directed to our advertising columns.

APPOINTMENTS TO OFFICE, &c.

JUDGES.

GEORGE ALEXANDER PHILLPOTTS, of Osgoode Hall, Esquire, Barrister-at-Law, to be Junior Judge of the United Counties of York and Peel.—(December 21, 1858.)

RECORDERS.

JOHN EDWARD START, of Osgoode Hall, Esquire, Barrister-at-Law, to be Recorder of the city of Hamilton.—(Gazetted December 4, 1858.)

ARCHIBALD J. MACDONELL, of Osgoode Hall, Esquire, Barrister-at-Law, to be Recorder of the city of Kingston.—(Gazetted December 11, 1858.)

QUEEN'S COUNSEL.

JOHN DUGGAN, of Osgoode Hall, Esquire, Barrister-at-Law, to be one of Her Majesty's Counsel Learned in the Law, in Upper Canada.

STEPHEN BUELL RICHARDS, the Younger, of Osgoode Hall, to be one of Her Majesty's Counsel Learned in the Law, in Upper Canada.

THOMAS GALT, Esquire, of Osgoode Hall, to be one of Her Majesty's Counsel Learned in the Law, in Upper Canada.

DAVID BREAKENRIDGE READ, Esquire, of Osgoode Hall, to be one of Her Majesty's Counsel Learned in the Law, in Upper Canada.—(Gazetted December 24, 1858.)

NOTARIES PUBLIC.

JOHN EDWARD McKENNA, of the city of Hamilton, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada.

ROBERT BALMER, of Oakville, Esquire, to be a Notary Public in Upper Canada.—(Gazetted December 4, 1858.)

JOHN F. McCUAIG, of the city of Hamilton, Esquire, to be a Notary Public in Upper Canada.

WILLIAM LIVINGSTON, of Delaware, Esquire, to be a Notary Public in Upper Canada.—(Gazetted December 11, 1858.)

RICHARD B. BERNARD, of Barrie, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada.—(Gazetted December 24, 1858.)

SHERIFFS.

GEORGE CRAWFORD McKINDSEY, Esquire, to be Sheriff of the County of Halton.—(Gazetted December 24, 1858.)

CORONERS.

COLIN McDONALD, Esquire, M.D., Associate Coroner for the United Counties of Stormont, Dundas and Glengarry.

JOHN SWEETLAND, Esquire, M.D., Associate Coroner for the United Counties of Lanark and Renfrew.

CHARLES W. JENKINS, Esquire, Associate Coroner for the United Counties of Lennox and Addington.—Gazetted December 11, 1858.)

WILLIAM PECK, Esquire, Associate Coroner for the County of Prince Edward.—(Gazetted December 24, 1858.)

SPECIAL COMMISIONERS.

WILLIAM HENRY MORGAN, Esquire, to be a Commissioner, under the several Acts for the protection of Indian Lands in Upper Canada, from trespass and injury.—(Gazetted December 4, 1858.)

REGISTRARS.

MARSHALL PERRY ROBLIN, Esquire, to be Registrar of the United Counties of Lennox and Addington.—(Gazetted December 4, 1858.)

EDWIN LARWILL, Esquire, to be Registrar of the County of Kent, in the room and stead of Alexander Askin, Esquire, resigned.

WILLIAM CHARLES LYON GILL, Esquire, to be Registrar for the city of London.—(Gazetted December 11, 1858.)

The Honorable JOSEPH CURRAN MORRISON, to be Registrar of the City of Toronto.—(Gazetted December 24, 1858.)

TO CORRESPONDENTS.

His Honor JUDGE CAMPBELL—OTTO KLOTZ—and J. EASTWOOD—under "Division Courts."

W. D. MACKINTOSH — C. P. McGIVERN — A SUBSCRIBER — and MICHAEL MYERS — under "General Correspondence."

Letter on Division matter, from a writer—name forgotten—mislaid—writer requested to send copy.