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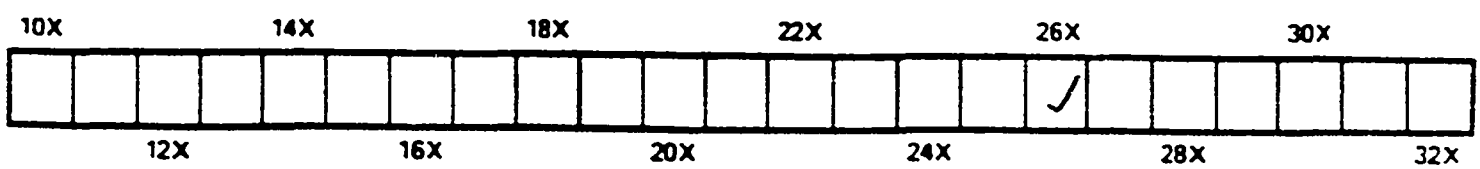

DIVISION COURTS.

OFFICERS AND SUITORS.

OFFICERS.—*Attachments: Custody of property seized.*—"The Common Law Procedure Act of 1856," which comes into force on the 21st of this month, has in several particulars a bearing on the Division Courts. In respect to Attachments against absconding debtors there is a very important provision with which it is necessary officers should be at once acquainted. We have therefore procured a copy of the Act; one of the changes referred to is in the words following:

Sec. LVI.—If any Sheriff to whom a writ of attachment is delivered for execution, shall find any property or effects, or the proceeds of any property or effects which have been sold as perishable, belonging to the absconding debtor named in such writ of attachment in the hands custody and keeping of any Constable or of any Bailiff or Clerk of a Division Court, by virtue of any warrant of attachment issued under the provisions of the Act of the Parliament of this Province, passed in the Session held in the thirteenth and fourteenth years of Her Majesty's reign, intituled *An Act to consolidate and amend the several Acts now in force regulating the practice of Division Courts in Upper Canada, and to extend the jurisdiction of the same*, it shall be the duty of such Sheriff to demand and to take from such Constable, Bailiff or Clerk all such property or effects, or the proceeds of any part thereof as aforesaid, and it shall be the duty of such Constable, Bailiff or Clerk on demand by such Sheriff and notice of the writ of attachment forthwith to deliver all such property, effects and proceeds as aforesaid to the Sheriff, upon penalty of forfeiting double the value or the amount thereof; to be recovered by such Sheriff with costs of suit, (which Sheriff shall, after deducting his own costs, hold and account for such penalty as part of the property and effects of the absconding debtor); Provided always that the creditor who has sued out such warrant of attachment may proceed to Judgment against the absconding debtor in the Division Court; and on obtaining Judgment and serving a memorandum of the amount thereof and of his costs to be certified under the hand of the Clerk of the Division Court, he shall be entitled to satisfaction in like manner as and in rateable proportion with the other creditors of the absconding debtors who shall obtain a Judgment as hereinafter mentioned.

The course that Sheriffs will probably take under this clause will be to serve on the Clerk or Bailiff a note in writing, demanding the property attached or the proceeds thereof—and with this notice the officer should at once comply, handing over the property to the Sheriff or his authorized agent on request. It may however be found convenient for the Sheriff to allow the property seized, particularly if difficult of carriage, to remain in the Clerk's hands, the latter holding it as his, the Sheriff's, agent; but that course will be purely discretional with both parties, for the Sheriff will be under no obligation to allow the property seized to remain with the Clerk, nor will the Clerk be bound to take charge of it for him.

The 57th sec. entitles a Division Court attaching creditor, on obtaining Judgment, to share proportionally with other creditors, when distribution of defendant's property is made. The section reads thus:

"When several persons shall sue out writs of attachment against any absconding debtor, the proceeds of the property and effects attached and in the Sheriff's hands, shall be rateably distributed among such of the plaintiffs in such writs as shall obtain judgments and issue execution, in proportion to the sums actually due upon such judgments, and the Court or a Judge may in their discretion, delay the distribution, in order to give reasonable time for the obtaining of judgment against such absconding debtor; and every creditor who shall produce a certified memorandum from the Clerk of any Division Court of his judgment as aforesaid, shall be considered a plaintiff in a writ of Attachment who has obtained judgment and issued execution, and shall be entitled to share accordingly. Provided always, that when the property and effects of the absconding debtor shall be insufficient to satisfy the sums due to such plaintiffs, none shall be allowed to share, unless their writs of attachment were issued and placed in the hands of the Sheriff for execution within six months from the date of the first writ of attachment, or in case of a warrant of attachment, unless the same was placed in the hands of the Constable or Bailiff before or within six months after the date of the first writ of attachment."

The "memorandum" referred to in this clause may be in part according to the form numbered 53 in the general forms; but the memorandum, or more properly certificate, should also show that the attachment was sued out in the case, and that certain property of the defendant's was seized thereunder and delivered over to the Sheriff. In case there is no writ of attachment issued in the Superior Courts against D. C. defendants, the proceedings in the Division Court in attachment cases will continue to be according to the present practice in these Courts. We should be glad to have some note furnished to us of the first proceedings under these clauses and the practice that may be adopted.

CLERKS—*Answers to queries by.*

I hereby take the liberty of asking your opinion of the 52nd Rule for the Practice of Division Courts, relative to an application for a new trial. A. B. has obtained a Judgment forthwith against C. D.; an order has been given the Clerk to issue an Execution; in the meantime C. D. makes an application for a new trial, in which application statements are made as matters of fact which require proof, but C. D. refuses to make affidavit to said facts, and insists upon the Clerk taking in the application by itself. Is the Clerk warranted in taking in the application, and staying further proceedings without an affidavit in support of the facts stated in the application?

The 52nd Rule of Practice provides that the "grounds" on which a new trial is sought for, "if matters of fact requiring proof shall be supported by affidavit." If the sole ground be a *pure* matter of fact, and one of which the Judge could not have had knowledge, and it is not supported by affidavit, the delivery to the Clerk will not operate as a stay to the proceedings. But if several grounds are mixed up, some requiring an affidavit in support

and some not, the Clerk should stay proceeding till he hears from the Judge, or if the matter be doubtful, it is the safer course for a Clerk to pursue.

In the case put, the order for immediate execution could only be superseded by the party's complying strictly with the requirements of the Rule.

SUITORS.

Evidence confined to the particulars.—As promised in the last number, we proceed to notice a few points respecting evidence. The parties should bear in remembrance that the evidence submitted must be confined to the particulars stated, in the plaintiff's case, in his claim, in the defendant's case, in his set-off, or other statutable defence whereof notice is required. Not that particulars need be strictly accurate in every point so as to tie down the parties to the very letter thereof for any slight error not calculated to mislead, is immaterial. The use of particulars is to apprise a defendant or plaintiff of what his adversary alleges against him; and if the particulars give sufficient information to the opposite party to guard him against surprise, it answers the purpose for which it was intended, and will be sufficient, though it may be in some respects inaccurate. If any objection should be made to the particulars, the Judge should be asked to amend it.

Admissions.—A very common mode of proving a demand is by giving admissions in evidence, for it is reasonably presumed that a party will not against his own interest admit anything as true which is in reality false; but confidential overtures to settle a case, "to buy peace" or admissions made "without prejudice," as it is termed, are not usually received to operate against the party making them. The old maxim, "silence gives consent," may be said to apply in this way to admissions by uncontradicted statements. Thus statements in the presence and hearing of the party against whom they are offered are evidence, if from his silence or conduct it may be presumed, he does not deny their correctness. A store bill, for example, is rendered to a defendant, who reads over the items, or they are read over to him, and he makes no objection—this goes a long way towards showing that there, in fact, lies no objection to the bill.

The evidence of admissions are rather *confirmatory* of the existence of facts than proof of a distinct fact; and therefore some evidence of the demand itself ought properly to be given: thus in a store bill the plaintiff should give some evidence of the account generally and then prove the admission, so as to enable the Judge to connect it with the original transaction, and not rest his whole case on the proof of admission, unless very pointed and distinct.

The promise to pay or actual part payment of an account *after bill rendered* is strong evidence of the defendant's assent to the correctness of the whole bill.

Written Evidence.—Where a contract or bargain has been set down in writing by the parties, in the shape of "articles of agreement" for example, the writing must be produced and proved according to the general rule before referred to, that the best evidence must be given that the nature of the case admits, and in general word of mouth evidence of a bargain is not allowed where there is written evidence, if it is in existence. But if the "writing" has been lost or is in the hands of the opposite party, a witness can be called to prove its contents; that is, in the latter case, if the party who has it will not after a notice to produce, bring it into Court at the time of the trial.

If there is an attesting witness to a writing he should in general be produced to prove it; but if there be no witness, any one acquainted with the parties' signature may prove it. A plaintiff or defendant may, under certain circumstances, be admitted by the Judge to prove a demand, but this species of evidence is objectionable, and there should be always some additional evidence to support a party's own statement—for if the opposite party should contradict it on oath, there would then be nothing on which the Judge might act.

Evidence in ordinary actions—Sale of goods, &c. The most common action in the Division Courts is for the sale of goods, and where the goods were supplied to the defendant, the plaintiff will merely have to prove that the goods were *delivered* and their *value*. The *delivery* is usually proved by the Clerk who served the party, or if the plaintiff kept no Clerk and the demand is small by proof that the defendant was in the habit of dealing with the plaintiff, and the production of the plaintiff's books in which the items are regularly charged, same being verified by his oath.

The *value* of goods is commonly fixed at the time of sale, and express proof thereof may be given; but where goods have been sold without any agreement as to price, proof of what was the selling price of such articles at the time will be sufficient, or proof that the defendant on former occasions paid the same price for similar goods, provided the articles are not of fluctuating value.

With regard to fixed price it may be observed that if a man agrees to sell an article (a waggon for example) at a certain price, and puts in materials superior to those agreed for, the purchaser is neither bound to pay a higher price nor return the waggon.

Wherever there is any express promise to pay lawful interest it may be enforced, like any other contract; and interest is commonly allowed on

accounts of a year's standing where it can be shown that, according to the course of dealing, interest has been before admitted, or that it was an understood thing that interest would be charged after a certain time.

ON THE DUTIES OF MAGISTRATES.

SKETCHES BY A J. P.

(*Continued from page* 123.)

HEARING UPON THE MERITS.

The information or complaint having been read, or the substance of it stated to the defendant, he is called upon to say why he should not be convicted, or why an order should not be made against him, according as the proceedings are by way of information or by way of complaint.

If the defendant, when so called upon, admits the truth of the information or complaint, and so pleads guilty to the charge as laid therein, and shows no cause why he should not be convicted or an order made against him, the Bench is of course relieved from the necessity of going into evidence, and may at once proceed to adjudicate; and even where the particular Statute, under which the information is laid, requires in terms that the offence be proved by the oath of one or more credible witnesses, it has been held that the defendant's confession is sufficient proof to satisfy the Statute.

If the defendant, however, in admitting the truth of the information or complaint should show any cause why he should not be convicted, as by pleading qualification, justification, or such like, although the admission dispenses with the necessity of proving the charge as contained in the information or complaint, yet the Magistrates should go into such evidence as may be necessary to prove or negative the qualification or justification; it being observed that the affirmative proof of any such matter which is relied upon in defence, is thrown upon the defendant. When the Magistrates have satisfied themselves of the true facts of the case, they can proceed to adjudicate (1)

If no preliminary objections be taken or they be overruled, and the defendant pleads not guilty to the information or complaint, the justices proceed forthwith to investigate the facts of the case.

Ordering Witnesses out of Court.—In the Superior Courts it is not unusual, when a case is called on, for the parties to make application to have the witnesses on both sides kept out of Court, until called upon respectively to give evidence; and although the Justices, on a hearing for summary conviction, are not bound to follow the practice of Superior Courts in this particular, yet on obvious grounds it seems most desirable that they should comply with such a request when made, and order the witnesses to remain outside the Court-room until called in to give evidence. Should, however, any of the witnesses, contrary to the orders given them, remain in Court and hear the evidence given by other witnesses, that will not justify the Justices in refusing their testimony; but such evidence will be naturally *weakened in the eyes of the Bench.*(2)

Course of proceedings.—The course of proceedings is distinctly laid down in the Act 16 Vic., cap. 178, sec. 13, as follows, viz.:

"The said Justice or Justices shall proceed to hear the prosecutor or complainant and such witnesses as he may examine, and such other evidence as he may adduce in support of his information or complaint respectively, and also to hear the defendant and such witnesses as he may examine, and such other evidence as he may adduce in his defence, and also to hear such witnesses as the prosecutor or complainant may examine in reply, if such defendant shall have examined any witnesses or given any evidence other than as to his, the defedant's, general character; but the prosecutor or complainant shall not be entitled to make any observations in reply upon the evidence given by the defendant, nor shall the defendant be entitled to make any observations in reply upon the evidence given by the prosecutor or complainant in reply as aforesaid."

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

(*For the Law Journal.*—By V.)

CONTINUED FROM PAGE 125.

SERVICE OF JURY SUMMONS.

In serving summonses on Jurors the Bailiff is simply to execute the process entrusted to him; and all the Jurors for whom he has summonses should be served, whether in reality they are liable to serve as Jurors or not. Nor should he omit to serve a party on a representation that such party is unable by reason of illness to attend: these are not questions on which he is to decide; he is merely an agent to serve the summons, handed to him according to the directions of the Statute. At the same time it will be proper for the Bailiff to make a note

(1) Stone 91.

(2) Cork v. Nethercote, 6 C. & P. 714; Chandler v. Horn, 2 Mo. & Rob. 423.

of any objection or any excuse for non-attendance that may be made by a party whom he serves, and state it at the proper time to the Judge.

The 35th section of the D. C. Act regulates the time and manner of service of Summons on Jurors. The *time* is three days at least before the Court day (that is three clear days) and the summons is served by delivering the same personally to the Juror or leaving it for him with a grown-up person at his residence; what has been before said of non-personal or "house-service" will apply here.

The Bailiff should note on a list prepared for the purpose, the time and mode of service on each Juror, and make return to the Clerk before the Court day.

Service of Notices.—Notices of defence and other notices may require to be served by the Bailiff; they are in general necessary to be served six days at least before the Court day, and may be served by delivering a copy to the opposite party or leaving the same for him at his usual place of abode, but as services of this kind are usually made by the parties, a brief reference seems sufficient.

Taking Confessions.—A Bailiff may accept a confession from any debtor desirous of executing the same according to the 54th section of the D.C. Act; and he is bound to take it whenever tendered to him. Bailiffs should therefore always carry with them a good supply of blank Confessions and pen and ink to take them, for materials for writing are not always to be had in the out of the way places to which officers have to go.(1) In taking a confession, the sum confessed should be inserted in words at length and not in figures: and the paper should be kept clean.

A confession may be given before any suit commenced as well as after action brought. The form of confession after action brought is given in the forms (No. 11); the form of confession *before* action need not be given, as it is for the party in whose favor it is, to have it correctly drawn; but the 31st Rule of Practice gives the necessary information on this head.

(1) The plan spoken of in an old number of the *Law Journal* is an excellent one:—"In some counties Bailiffs have a species of leather pocket-book with four divisions, one for summonses, one for confessions, one for executions, and one for subpœnas and other papers, thus seems a simple and easy plan for keeping the papers unmured and for avoiding mistake or confusion—but experience is the best teacher."

The Bailiff should read and explain a confession taken from an illiterate defendant, and should in all cases sign his name at once as a subscribing witness after the defendant has put his name or mark to the document. Bailiffs should bear in mind that every confession taken must be proved on oath, and in such oath the officer must be prepared to state "that he has not received and is not to receive anything from the plaintiff, defendant, or any other person, except his lawful fees for taking such acknowledgment, and that he has no interest in the demand sought to be recovered." Whenever a confession is taken on Foreign Summons, an affidavit of the execution thereof should always accompany the confession, when returned to the Clerk of the Court; otherwise, the Judge cannot treat it as a confession, and the officer will lose his fee.

U. C. REPORTS.

GENERAL AND MUNICIPAL LAW.

THE MUNICIPALITY OF BERLIN v. GRANGE.

(Trinity Term, 19 Vic.)

Assessment of unoccupied land of non-residents—Mode of collecting same, &c.

A non-resident owner of lands can only be rated on the assessment roll by name at his own request. The taxes due on lands of non-residents cannot be sued for as a debt until they have been five years in arrear, and cannot be realized by a sale of the land in manner provided for in the act. *Macaulay, C. J., dissentiente.*

[5 C. P. R., 211.]

Writ issued the 14th February, 1855. Declaration in debt for £383 16s. 1d., recites that in and during the year 1854, the defendant then being resident without the limits of the village of Berlin, to wit, at the town of Guelph, in the county of Wellington, was the freehold owner of certain unoccupied lands, tenements, and hereditaments within the limits of the said village (comprising village and park lots, known and designated by certain numbers); and also of certain other lands, &c., within the limits of the said village, all of which consist of part of lots three and four, and lot sixteen, old survey, township of Waterloo; in respect of which said lands the defendant was, according to the provisions of the statute in that behalf, liable to be rated and assessed for the said year 1854, in and for divers taxes or rates for public, county, village, and other purposes, chargeable upon, and payable out of the said lands, &c; and the said defendant being so liable, the said lands, &c., were in the said year 1854 duly assessed and valued, and in respect thereof, the defendant being then resident without the limits of the said Municipality, was rated as a non-resident by the duly appointed assessors of the said Municipality, &c., for the said year 1854, at certain sums for the actual and annual value of the said lands; which said lands, according to their numbers and designations, and the said several sums at which the same were assessed and valued as aforesaid, were duly entered by the assessors for the said year in the assessment roll of the whole ratable property of the said village for the year, the value of such lands in the aggregate being £1,110 9s., of all which premises due notice was afterwards given by the said assessors to the defendant, according to the statute in that behalf; and which valuation had not been appealed from or varied; and

the plaintiffs say that by a by-law passed, in the year of our Lord 1852, by the Municipality of the County of Waterloo, £51 12s. 9½d. was imposed and directed to be raised out of the actual or annual value of the whole real and personal ratable property of the said village for the year 1854 next ensuing, for the purposes of the said County of Waterloo, and that by two other by-laws of the said county, passed in 1853 and 1854, the sum of £17 19s. 2½d. and £78 11s. 7½d. were imposed and directed to be raised as aforesaid, amounting together to £148 3s. 7½.; and that afterwards, to wit, on the 1st of July 1854, it was notified to the clerk of the said village, &c., that the said sum of £148 3s. 7½d. was to be raised, &c., as aforesaid: and the plaintiffs also say that by a by-law of the said village, passed the 17th of August, 1854, it was enacted that two shillings in the pound should be raised and levied out of the whole ratable property within the said village, over and above the rate in the pound also leviable for county purposes aforesaid; and that the clerk, as aforesaid, afterwards, according to the statute, &c., made out the collectors' roll from the assessment roll of the said village in the said year 1854, and therein the several sums at which the defendant was assessed by the said assessors of the said Municipality for the said year 1854, in respect of the said lots &c. whereof the defendant was such owner as aforesaid, and the actual value of such lands, and the sum payable in respect of such lands, &c., as well for the aforesaid rate of two shillings in the pound as for the sums required for county purposes aforesaid, being five-pence in the pound upon such property as for and in respect of a certain public rate of one penny in the pound for the Lunatic Asylum, were entered and do appear; the whole amounting together to £110 10d. for the said village of Berlin, and £23 2s. 9½d. for the said county of Waterloo; and £4 12s. 5½d. for the Lunatic Asylum—in the whole £138 16s. 1d., payable by the defendant for the said year 1854 in respect of such lands owned by him as aforesaid; and that such roll so made out as aforesaid, was afterwards, to wit, on the 30th day of September 1854, by the aforesaid clerk, delivered to Henry Eby, collector of the said Municipality of Berlin for the said year 1854, to be enforced by due course of law; and that afterwards, to wit, on the 10th day of December 1854, the said Eby, while being such collector as aforesaid, gave notice to the defendant, who was and is resident without the limits of the said village, of the said several rates and sums of money so leviable out of and in respect of the said lands, &c., of the said defendant, and demanded payment of the defendant thereof, according to the provisions of the statute in that behalf; yet that the defendant hath not paid the same, or any part thereof, to the said collector, but wholly refused so to do. And the plaintiffs say that there was not any goods upon the said lots, &c., or any of them, whereby the said collector could by distress have made the said several rates, or any of them, according to the statute in that behalf provided, and the said rates have not since been paid, nor any part thereof, either to the plaintiffs or to the treasurer of the county of Waterloo, but the same remain wholly due, &c.; by reason, &c., and by force of the statute in that behalf, an action hath accrued to said plaintiffs to demand &c.

Second count—For interest and account stated; judgment by *nil dicit*, and damages assessed at £14 18s. 10d.

In Easter Term, 18 Vic., *Wilson, Q.C.*, for the defendant, obtained a rule upon the plaintiffs to show cause why judgment should not be arrested, on the following grounds, viz., 1st, that the by-laws were not sufficiently set out in the declaration; 2ndly, that the plaintiffs cannot maintain the action; and 3rdly, that no action at all lies against the defendant; referring to Provincial statute 16 Vic., cap. 182, secs. 8, 17, 22, 23, 40, 43, 45, 46, 48, 49, 50, 54, 55, 68, 72 & 75.

Gwynne, Q. C., showed cause.

MACAULAY, C.J.—The statute 13 & 14 Vic., cap. 67, sec. 7, enacted that all lands should be assessed in the township, village, or ward, in which they lie, in the name of and against the owner *if known*, and if he resides or has a legal domicile when the assessment is made within such township, village, or ward, or town or city in which it is included. But if the owner be not so resident or be unknown, then against the occupant, if occupied. Sec. 8: Unoccupied lands not known to be owned by any party resident in the township, town or city, &c., shall be denominated, "lands of non-residents"—see sec. 20. Sec. 11: Taxes how enforced. Sec. 17: Form and contents of assessment rolls, and schedule B. Sec. 20: Lands of non-residents to be designated in a part separate headed "non-residents' land assessments." Sec. 37: When the party shall not be resident within the Municipality, or shall have removed out of the same; and see also statute 16 Vic. cap. 182, sec. 45.

It is said, as a reason against an action like the present, that if it lies after the time has elapsed for the return of the collector's roll, it may happen that at the end of four or five years, when the rates have been increased ten per cent each successive year, the rates so increased may be levied by the county treasurer by distress of goods, should sufficient be found upon the lands, or if not, that a warrant may be issued to the sheriff to sell the lands for such arrears, while the plaintiffs were inconsistently prosecuting an action of debt to enforce the same principal rates or taxes with six per cent interest instead of ten, and thereby causing a clashing of remedies which could not have been intended. But it does not follow necessarily that there must be such clashing, or that the remedy in *personam* by action, and against the land in *rem* may not be concurrent until the arrears are recovered by one mode or the other. The special remedies against the party would fail, if he was non-resident and had no distrainable goods within the county; the remedies against the land would continue, so that any goods afterwards found thereon might be distrained, or if not, the land might be sold; the only personal remedy that would remain against the party or his goods would be through the medium of an action.

Upon and after the 1st of January, 1854, the assessment was regulated by the Provincial statute 16 Vic., cap. 182; sec. 1, enacted that all lands, to whomsoever belonging, shall be assessed in the township, village, &c., in which they lie, and in the name of and against the owner thereof, if known, or if resident, or having a legal domicile or a place of business when the assessment shall be made, within such township, village, &c., in which it is included, or if such lands be occupied by such owner, or wholly unoccupied: but if the owner be not so resident, unknown, or the land be occupied, it shall be assessed in the name of and against the occupant; and occupied land, owned by a party known or residing or having a legal domicile or place of business in the township, village, &c., where the same is situate, but occupied by another party, shall be assessed in the name of and against both the owner and occupant, &c.

Section 8—That unoccupied lands not known to be owned by any party resident or having a legal domicile or place of business in the township, village, &c., where the same are situate, or belonging to any party whose residence or domicile or place of business, upon diligent enquiry by any assessor, &c. shall not be found therein, or who, being resident out of the Municipality, shall not have signified to the assessors personally or in writing that he owns such lands and desires to be assessed therefor, shall be denominated "lands of non-residents," and shall be assessed as thereinafter provided.

Section 17.—The assessors shall prepare an assessment roll, in which, after diligent enquiry, shall be set down in different columns, &c., the names, &c., of all taxable parties resident in the township village, &c., and of all non-resident freeholders, who shall either in person or in writing have required such assessor to enter their names, and the lands owned by them, in the roll, together with the description and extent or amount of property assessable against each, and containing the particulars in the schedule marked A., &c.; provided always, that whenever any assessor shall enter upon his roll the name of any freeholder who shall have required his name so

to be entered, he shall write opposite to it "non-resident," together with the address of such freeholder, &c.

Section 22—That the lands of non-residents who have not required their names to be entered by the assessor shall be designated in the same assessment roll, but in a part separate from the other assessments, headed "non-resident lands assessments," in manner therein provided.

Section 23—That the assessor shall give notice to residents, and transmit by post to non-residents named in the roll, a notice, as therein directed.

Section 24—Rolls to be completed between the 1st of February and 15th of April.

Section 25—And the same to be delivered to the clerk of the municipality.

Section 26—Provides for an appeal by any person deeming himself wrongfully inserted on the roll, or overcharged, &c., by the assessor, &c., within 14 days after the time fixed for the return of the assessor's roll, &c. And the roll as finally passed by the court of appeal, &c., shall be valid, and shall bind all parties concerned, notwithstanding any defect or error committed in or with respect to such roll. Notices to non-residents of the meeting of the court to be addressed to such party through the postoffice.

Section 28 gives a final appeal to the judge of the Co. Court. Sections 31 to 37 provide for the municipal rates.

Section 39—The clerk of the municipality to make out collectors' rolls containing the names of the parties assessed, &c., with amounts, under distributive heads, as therein provided, including public taxes under 13 & 14 Vic., cap. 68, &c.

Section 40—The clerk to make out a roll of the lots, &c., assessed against non-residents whose names have not been set down in the assessors' roll, &c., and shall transmit the same to the treasurer of the county, &c.

Section 41—The collector, on receiving the rolls, shall collect the taxes, calling upon residents, &c., and if any person whose name appears on his roll shall not be resident within the municipality he shall transmit to him by post a statement and demand of the taxes charged against him in the roll, and the collector shall not receive any money on account of any lands not set down on his roll.

Section 42—If taxes are not paid after notice, &c., the collector may levy the same by distress and sale of the goods, &c., of the party liable, wheresoever found within the township, village, &c. So after one month he may distrain any goods upon the lands of non-residents on which the taxes inserted against the same on his roll have not been paid.

Section 45—If any party against whom any tax now is, or hereafter shall be assessed, in any township, village, &c., shall not be resident within the municipality, or shall have removed out of the same after such assessment and before such tax shall have been collected, or if any party shall neglect or refuse to pay any tax, &c., assessed in any township, village, &c., within the county in which he shall reside, &c., it shall be lawful for the collector, &c., to levy and collect such tax, &c., by distress and sale of the goods, &c., of the party assessed in any township, village, &c., which for judicial purposes shall be within the same county, and to which such party shall have removed, or in which he shall reside, or of any goods, &c., in his possession therein; and if in every case the taxes payable by any party cannot be recovered in any special manner provided by this act, they may be recovered with interest and costs, as a debt due to the township, village, &c., in a competent court in this province, and the production of a certified copy of the collector's roll, &c., shall be *prima facie* evidence of such debt, and the taxes, &c., shall be a special lien on such lands, &c.

Section 46—The collector to return his roll to the treasurer of the township, village, &c., on or before the 14th of December in each year, or on such other day in each year as the municipal council of the county shall have appointed, not later than the 1st of March following, and pay over amounts collected, &c.

Section 47—If any taxes mentioned in the collector's roll shall remain unpaid, and the collector shall not be able to collect the same, he shall deliver to the township, village, &c., treasurer, an account of all taxes remaining due on the said roll, showing the reason why not collected, as a "non-resident" "no property to distrain," &c.

Section 48—Commissioner of Crown Lands to return to the county treasurer yearly, in January, a list of lands granted, &c., during the previous year, and of all ungranted lands, &c.

Section 49—The treasurer of each municipality shall, within fourteen days after the time determined, as before provided, for the return and final settlement of the collector's roll furnish the treasurer of the county with a copy thereof, so far as the same relates to all the lands of the municipality, with the sums paid and in arrear, &c.

Section 50—After the time when the collector's roll has been returned to the township, village, &c., treasurer, no more money shall be received on account of the arrears, then due by any officer of the municipality to which such roll relates, but the collection of such arrears shall belong to the treasurer of the county alone, who shall receive payment of such arrears, and of all taxes on lands of non-residents theretofore required to be returned, and certified to him by the clerk of the municipality, &c. Section 51—The treasurer of the county to enter in books kept for the purpose the lands on which the taxes remain unpaid; such books to be balanced yearly on the 1st of May, &c. Section 53—Arrears to be increased ten per cent, &c. Section 54—If any distress shall be upon the lands of non-residents in arrears for the taxes, the county treasurer may issue a warrant to the sheriff to levy the amount of any goods, &c., found on such lands, &c., in the same manner as provided in sections 42, 43 and 44.

Section 55—Whenever a portion of the tax on any land has been due for five years, the treasurer of the court is to issue a warrant to the sheriff.

Section 57—Who shall proceed to sell such lands, &c., as therein provided. Section 58—If no distress, &c.

Section 68—All moneys received by the county treasurer on account of taxes on non-resident lands in any municipality in the county, whether the same be paid to him directly or levied by the sheriff, shall constitute a separate fund, called "The non-resident land fund," and an account shall be opened with each municipality with the said fund.

Section 69—All arrears to form one general fund, &c.

Section 84—Monies collected by the township, village, &c., collector for county purposes, &c., are to be by him paid to the treasurer of the municipality, and by him to the county treasurer, &c.

18 Vic., cap. 21—When a collector of any municipality may have heretofore failed or omitted to collect the taxes mentioned in his collection roll, or any portion thereof, by the 14th of December (or by such other day in the year for which he may have been, or may hereafter be collector, or as may have been, or may hereafter be appointed by the municipal council of the county) it shall and may be lawful for the council of such municipality to authorize and empower by resolution the said collector, or any other person in his stead, to continue the levy and collection of such unpaid taxes, in the manner and with the powers provided by law for the general levy and collection of taxes, provided nothing therein contained shall be held to affect the duty of the collector to return his collection roll, or to invalidate or otherwise affect the liability of the collector or his securities in any manner whatever.

I do not see that any remedy except by action remains to enforce payment of taxes imposed upon persons assessed in respect of personal property only, who may have left the county, or against whom no distress of goods can be legally

levied, and such action is vested in the municipality by the 45th section of the act 16 Vic., cap. 182.

Then, as to rates due upon lands of non-residents: I see no good reason why an action is not maintainable by the treasurer of the county in the name of the village municipality, after the collector's return has been made, or by the collector in the same name during the existence of his authority, if the non-resident party requested his name to be inserted on the assessors' roll. In the present case the action may have been instituted by the collector before his authority ceased—that is, if it was extended to the 1st of March, or continued under the statute 18 Vic., cap. 21, or by the county treasurer afterwards; but in either event the proceeds would, I suppose, go to the county "non-resident land owners' fund," and be paid to the county treasurer; but that is a question not necessarily calling for discussion at present. But it is not alleged that the defendant's name was inserted on the collector's roll at his request; if a non-resident, and he did not request it, a question arises whether he could be assessed personally at all. That his name was entered in the assessors' and collector's roll is averred, and it must be intended that it was so entered either at his request or because he was known to be the owner, and therefore entered as a non-resident; and if he was such owner, and his name appears to have been legally entered, I think the taxes became a debt under the 45th section, and that a right of action vested in the plaintiffs whenever it turned out that the rates could not be realized by any of the special modes pointed out in the statute in that behalf; the special modes were, I think, prompt remedies by distress and sale of goods, &c., if found within the municipality, in some cases, as of non-residents, or within the county in others. That special manner in the 45th section is equivalent to a summary manner, and that the power to the county treasurer and sheriff to sell the lands at the end of five years is not included; if it were so, no action could be brought during the collector's time for taxes rated against lands, nor afterwards, until the land had been sold, and a deficiency still remained. It is contended no action like the present can be brought in the plaintiff's name after the collector's roll has been returned or his powers have ceased; and if not, it proves that a sale five years afterwards is not included in the special manner provided by the act; but the statute shows that the taxes as a debt might accrue against the owner of lands whenever the special manner failed. A remedy by distress would not necessarily fail during the collector's time—see sec. 54; and a lien upon the lands is expressly declared at the end of the 45th section. The language of that portion creating the debt is very comprehensive; it says, if in any case the taxes payable by any party cannot be recovered in any special manner provided by the act, they may be recovered, with interest and costs, as a debt due to the township, &c., in a competent court in this province. It seems to me reduced then to the consideration whether it sufficiently appears that the defendant was by name duly rated for these lands as a non-resident; section 7 authorizes such entry if the owner is known, or (secs. 8, 17 & 38) required by him in person or in writing. If it could be intended that the entry was at defendant's request, there would be an end of all question on this head; still, if known to the assessor, and entered and notified accordingly, and the roll containing such entry became final in the absence of an appeal (and none appears to have been made) under sections 26 and 28. There is a want of consistency in the statute unless the word *or* in section 7 be read *and*; one section speaking of owners known, and others of non-residents requesting the insertion of their names, and in some instances it is said the word *or* may be read *and*, to fulfil the obvious intention of the Legislature.

When a rule is moved to arrest judgment after a judgment by default, the intendments are not made as after verdict, but as upon general demurrer; but the declaration states, and the default admits, that the defendant was in fact entered on the roll and rated for the lands mentioned, and according to the maxim, *omnia præsumuntur, rite et solenniter esse acta, donec probetur in contrarium*—everything is presumed to be right and duly performed until the contrary is shown. It is clear, on the face of the declaration, that the defendant was not resident within the village of Berlin, and it is alleged under a videlicet that he was resident in Guelph in another county; as a non-resident he may have in fact resided in the county of Waterloo, or elsewhere in Canada, or in any other part of the world, than Guelph; the substance of the averment is, that he was not resident within the Municipality of Berlin, in which the lands in question are situate, but being known to be the freehold owner, he was entered and rated therefor, as such non-resident, either at his own request or because known; whichever way it was, I think that after notice of being so rated by the assessor, and demand of rates by the collector, his acquiescence, if not his previous request, must be presumed, else the roll is not final in the absence of any appeal. According to sec. 26, if defendant was improperly assessed, he ought to have appealed, and not silently acquiesced therein until this action was brought, and then to suffer judgment by *nil dicit* to be entered against him. In my opinion the action well lies, and the money when recovered should be paid by the plaintiff to the county treasurer, or if paid to the plaintiffs, they can only recover it to the use of the county, and will be bound to pay it over to such treasurer, or to account to the county accordingly. The plaintiffs' name is only used to enforce payment for the benefit of the county treasury, which in its turn is bound to account to the village municipality, (see secs. 68, 69, 81) unless the late statute 18 Vic., cap. 21, varies the effect of the former statutes on this head, which is not at present material to be considered. The objection that the by-laws referred to in the declaration were not sufficiently stated or set out, was not supported by authority; and the collector's roll being made *prima facie* evidence of the debt by sec. 45, I do not suppose any objection on that head can be sustained.

McLean, J.—By the 16th Vic., cap. 182, the former acts, 13 & 14 Vic., cap. 67, and 14 & 15 Vic. cap. 110, are repealed, except in so far as the same may affect any rates or taxes of the then present year, or any rates or taxes which had accrued and were then actually due, or any remedy for the enforcement or recovery of such rates or taxes not otherwise provided for by that act. And it provides that all taxes of the then present year and all arrears of other taxes remaining due after that act shall come into force, (1st January, 1854) shall be collected and recovered according to the provisions of that act.

The rates for which this action is brought were for the year 1854, some of them payable under by-laws of previous years, and some for municipal purposes of the county of Waterloo, or the village of Berlin, under by-laws of that year. The remedy for the collection of such rates must be under the act 16 Vic., cap. 182; and unless the 45th section of that act confers upon the plaintiffs the right to sue the defendant for such rates, this action on the first count cannot be sustained. By the 7th section of that act it is provided that all lands, to whomsoever belonging, shall be assessed in the township, village or ward in which they lie, *and in the name of and against the owner thereof if known*, or if resident or having a legal domicile or place of business when the assessment shall be made, within such township, village or ward, or if such lands be occupied by such owner, or wholly unoccupied, but if the owner *be not so resident* or *be unknown*, or the lands be occupied, it shall be assessed in the name of and against the occupant; and *occupied land owned by a party known or residing or having a* legal domicile or place of business in the township, &c., where the same is situate, but occupied by another party, shall be assessed in the name of both the owner and the occupant, and the taxes thereon may be recovered from either.

From the terms used in this section, it is contended that lands may in all cases be assessed against the owner if known, and his *name* may be on the assessment roll as the owner; but it is clear to me that the clause was not intended to give that authority to an assessor. Such a construction is wholly at variance with the provisions of the eighth section and all the other provisions of the statute; and, according to my view, the true interpretation of the clause is to limit it in its operation to persons known to the assessors *within* the *township* or municipality. It cannot have been intended by the legislature to allow an assessor to put down upon his roll, perhaps with enquiring, and generally without the means of knowing unless by hearsay, who the owners of the property are, the names of individuals as owners to whom common rumour may have assigned the ownership of land. It is not to be imagined, contrary to the express provisions of the very next section of the act, that it was intended by the legislature to give to the assessors the right, upon their own view of the ownership of lands, to put them down upon their roll as the property of an individual, resident in another and perhaps a distant part of the province, and thus throw upon such individuals the costs of an appeal or perhaps of an action like the present, in which the production of a copy of the roll is declared to be evidence of the debt.

By the 8th section it is enacted that unoccupied lands not known to be owned by any party resident or having a legal domicile or place of business in the township, &c., where the same are situate, or belonging to any party whose residence or domicile, or place of business, on diligent enquiry, should not be found *therein*; or who, being resident out of the municipality, shall not have signified to the assessors personally or in writing that he owns such lands and desires to be assessed therefor, shall be denominated "lands of non-residents," and shall be assessed in manner thereinafter provided. Then by the 22nd section of the same act it is enacted that the lands of non-residents who have not required their names to be entered by the assessors shall be designated on the *same* assessment roll, but in a part separate from the other assessments, headed, "non-residents' land assessments," &c.; it prescribes the mode of proceeding in entering such lands on the roll. The plain intention of these provisions appears to me to be that the name of any resident owner of land, or of any owner who may have required his land to be assessed, may be entered on the assessment roll; but that in all other cases the lands shall be entered and rated as the "lands of non-residents"; in which latter case the land only, and not the owner personally, would be liable for the amount of rates, if the amount did not exceed the value of the lands.

By the 46th section every collector is bound to return his collection roll to the treasurer of the municipality, and to pay over the amount by the fourteenth of December in each year, or such other day, not later than the 1st of March next following, as the municipal council of the county shall have appointed. The power of extending the time for the return of the collectors' rolls and the payment of monies collected is not given to the municipal council of each township or village, but belongs exclusively to the municipal council of the several *counties*; so that, without such authority expressly derived from the County Council of Waterloo, the collector for the Municipality of Berlin could not move in making any collection on his roll after the 14th of December, 1854, and it is not alleged in the declaration that any such authority was at any time given. We must then assume that the collector's roll was duly returned on or before the 14th of December, 1854, and that, in pursuance of the 47th section, the collector put down opposite to each separate assessment the amount of which was not collected the reason why he could not collect the same, by inserting in each case the words "non-residents," or "no property to distrain." And we must also assume that, in order to obtain credit for the amount of uncollected rates, the collector made oath as required by that section of the sums remaining unpaid, and that no distress could be found from which the same could be collected. All this having been done, then the 50th section declares that "no *more money shall be received* on account of the arrears then due by *any officer* of the *municipality to which such roll relates*, but the collection of such arrears shall belong to *the treasurer of the county alone*, and he shall receive payment of any such arrears, and of all the taxes on lands of non-residents required to be returned to him by the clerk of each municipality. By the 53rd section, a sum of ten per cent is to be added yearly to any arrear of tax due upon any parcel of land by the county treasurer. And if at any time within five years sufficient distress can be found on the lands of non-residents, the county treasurer may authorize the sheriff to levy therefrom the amount of arrears. But if not so collected, and remaining due for five years, the same may be levied by a sale of the lands. All these provisions must be nugatory, and the express prohibition contained in the 50th clause against any officer of a township or village municipality receiving money after the return of the collector's roll must, as it appears to me, be wholly disregarded, if it be held that the plaintiffs can maintain this action and thus oust the county treasurer from the exercise of a power which the statute gives to him alone. If the plaintiffs can maintain this action against the defendant, admitted to be, not only non-resident within the village of Berlin, but admitted not to be resident in the county, then the treasurer of Berlin, an officer of the municipality "to which the collector's roll which was given in evidence relates," must be entitled to receive the money from the sheriff when collected, though expressly prohibited by the 50th section from receiving any money whatever after the return of the roll. It cannot be argued that no return of the roll has been made; without such return it could not be known that any taxes were in arrear; but under any circumstances it does not rest with the plaintiffs to deny such return: they allege that the rates were demanded: that there was no distress on the premises; that the rates *were not paid* to the collectors, and that they *remain due*; from all which facts, and from the time for the return of the roll having long passed before this action was brought, it must be taken that the collector and the Municipality of Berlin have become *functus officio* and incapable of acting in the further proceedings for the collection of the arrears of the rates. On these grounds, I am of opinion that the first count of the declaration in this case does not show a sufficient or any ground of action, and that if no other cause of action were stated in the declaration, the judgment must be arrested. But, as the second count does set out a good cause of action, and the assessment of damages is on that count as well as on the insufficient count, judgment cannot be arrested, but a *venire de novo* must be ordered. It is manifest to me that the plaintiffs are proceeding for arrears of rates only, and are attempting to exercise a power which in my judgment does not belong to them. I think therefore the defendant is entitled to be relieved from an action to which he clearly is not liable.

Richards, J.—There can, I apprehend, be no doubt that *primâ facie* if defendant's name appears on the collector's roll of the municipality, charged with the rates on certain lands, he is liable to pay those rates. If he was not satisfied with his name appearing there, he could apply to the Court of Revision to correct it. We must assume that his name was inserted on the roll at his own request; and this having been done, he is, as to the collection of the taxes rated against him, to be treated very much as a party who was resident at the time of the assessment, and had removed from the county before the taxes were paid. The question arising in the case which seems to me to create the greatest difficulty is, whether the plaintiffs can sue the defendant for these taxes as a debt due to the village, "without first endeavoring to recover the same by sale of the lands—or in other words, if that is *a special manner* intended by the act, which must be resorted to

for the collection of the taxes before they can be sued for as a debt." It is in effect admitted from the statement in the declaration, that these taxes could not have been recovered by distress of the defendant's goods before this action was brought, there not having been any goods on the lands on which the taxes were due from which a distress could have been made.

I do not think it is the intention of the act to give to the county treasurer any power to collect or receive any taxes but those due on *lands*—whatever taxes are due from personal property or income may, I think, after the special remedy provided by the act for their collection (that is, want of personal property out of which to make a distress) has failed, be sued for as a debt due the municipality, and collected with interest. The section provides that all taxes accrued or to accrue on *any land*, shall be a special lien on such land. It does not say that taxes due on personal property shall create such a lien. The ten per cent annually to be added to the arrears of taxes on each piece of land, seems to be in lieu of interest, and to cover the expenses attendant on keeping the accounts and other charges incident to managing these matters, which seem to relate only to taxes due *on land* throughout the whole statute; and section 69, which relates to all arrears of rates chargeable on lands, requires each municipality, in paying over any school or local rate, or its share of the Lunatic Asylum tax, or of any county rate, to supply any deficiency arising *from the non-payment of any tax on land* out of the general funds of the municipality; and it is further provided that the several municipalities shall not be answerable for any deficiency arising from abatements or inability to collect any tax on personal property. After going carefully through the statute and considering its scope and tendency, I come to the conclusion that with regard to taxes on lands they cannot be collected by action, until it is ascertained that the amount cannot be recovered by sale of the land, which I conceive to be *a special manner* pointed out by the act for such recovery. On the whole, then I think—1st. That a non-resident owner of land can only be properly rated on the assessment roll of the municipality in his own name, when he requests to have his name entered on the roll: 2nd. That when the name of a non-resident appears on the roll, it must be presumed that it has been entered there at his request; 3rd. That having failed to recover the tax as to personal property of any person rated on the roll for want of property to distrain, the amount of such tax may be recovered, with interest, as debt due to the municipality; 4th. As to taxes due on any *lands*, that they cannot be sued for as a debt due to the municipality until after they have been five years in arrear; and on a sale of the lands, the amount of the taxes cannot be recovered in that special manner provided by the act. It is scarcely probable that five years of arrears of taxes, with the expenses, &c., on land in this country, would fail to be recovered by a sale of the land itself. It is provided by section 70 that the whole of the debentures to be issued on the credit of the non-resident land fund shall not exceed two-thirds of all the arrears then due upon the lands in the county and other sums at the credit of the fund. At the end of four years 40 per cent at least would be added to the amount of the taxes, and debentures might be issued based on that data. At that time, if, instead of pursuing the remedy against the land whereby the increased amount above the interest could be collected, the party named on the roll could be sued, then all that would be recovered from him would be the taxes with 6 per cent thereon, and the non-resident land fund would be diminished by at least 16 per cent of the amount due by such party. If it be admitted that the municipality of a village or township may at any time sue for taxes as a debt due the municipality, then this anomaly may take place—the sheriff may be required to seize the property of the defendant in the suit under an execution in favor of the municipality, and at the same time the county treasurer, under the 54th section of the act, may issue his warrant to levy the arrears, (including the 10 per cent annual increase) by distress on the land; these two remedies may be pursued at the same time. If the amount is levied under the executions (and that is to be considered as satisfying the claim) then the municipal loan fund loses the additional 4 per cent per annum above the 6 per cent interest. Then how is the sheriff of the county where the land lies to know if the amount has been made under an execution against the owner of the land, or how is he to know that the taxes have been sued for? In whatever light it is presented, taking this view of the matter, it seems to me we are involved in difficulties from which we cannot escape. But, taking the statute as I have already said I thought it should be construed, we avoid all these difficulties and make the different sections of the act and the remedies thereunder given, harmonize.

Per Cur.—Rule absolute.

REGINA EX RELATIONE DILLON v. MCNEIL.

(Easter Term, 18 Vic.)

Elector—Refusal to take oath.

The refusal of an elector to take the oaths required by the returning officer is a good ground for setting aside an election, if the relator would otherwise have had the majority.

[5 C. P. R., 127.]

This is an application to reverse the decision of the Judge of the County Court of Kent, on the grounds that the votes on which the defendant was elected were duly qualified votes; that the returning officer should have been made a party, or that defendant should be relieved from the costs, &c.

It appeared that at the last election for ward No. 3, township of Raleigh, fifty-two votes were polled for the defendant, and seventeen for the relator. Of the defendant's voters thirty-eight were objected to as being aliens, and who had either refused to take the oath of qualification according to the statute, or to, or from whom, the returning officer had declined to administer, or exact it.

The relator in his affidavit states that the returning officer received and recorded the votes of certain aliens (not saying for whom) against the remonstrances of the relator—that he required the returning officer to administer to the said parties, as aliens as aforesaid, the oath or oaths required by law, and that the returning officer, in some instances, requested the said parties, as aliens, to take the requisite oath, and in others he did not so request the said parties to take such oath or oaths.

That the said aliens refused to take such oath or oaths; but the returning officer, nevertheless, received and recorded the votes of the said parties, aliens as aforesaid, contrary to law and against the protest, &c., of the relator; that by receiving such votes, some thirty in number, the defendant was made to appear with the greater number of votes, while in fact the relator had the larger number of legal votes, and ought to have been returned.

It was agreed by the counsel on both sides, in writing, that the poll-book should be produced, and the votes objected to be indicated by a note opposite the names thus—"refused to take the oath," except in two additional instances; and that the production of such book should decide finally the question as to whether the parties whose names so appeared as objected to refused to take the oaths, and thereby became disqualified as voters.

The Judge decided in the relator's favor, not on the ground of alienage, but because thirty-eight of defendant's voters had refused to take the oath of being natural-born or naturalized subjects of her Majesty; and, striking off the votes of those who so refused, there was a majority of three in the relator's favor. Reference was made to the statutes 12 Vic., cap. 81, secs. 121, 122, 124, 151, 152; 16 Vic., cap. 181.

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

It would seem thirty-eight of defendant's voters refused to take the oath, and were not all, or a portion of them, merely excused or exempted therefrom by the returning officer accepting them as, in his opinion, duly qualified to vote—that is, as being natural-born or naturalized subjects of her Majesty. It appears to me such votes must be struck out, and that the onus is not on the relator to prove them aliens,—the objection is, not that they are aliens, but that they refused to be sworn as to their being subjects; and the objection seems sustained and valid, and the decision of the county judge therefore right.

As to the returning officer being made a party, that rested with the county judge; and this returning officer not being made a party is no sufficient ground for reversing his decision. The defendant not having disclaimed, but having accepted and defended the suit, incurs a liability to the costs in consequence.

McLEAN, J., and RICHARDS, J., concurred.

Per Cur.—Rule discharged with costs.

TIERNAN v. SCHOOL TRUSTEES of N[illegible]AN.

(Hilary Term, 19 Vic.)

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

No action can be sustained by a school teacher for his salary: arbitration is the only remedy.

(14 Q.B.R., 15.)

The plaintiff sued for his wages as a school teacher. At the trial at Ottawa, before *Macaulay, C.J.*, several objections were taken to his action, twelve issues having been joined on the record. The main objection, however, was, that no action could be sustained in a court of law upon such a demand, and that the only remedy was by arbitration. A verdict was rendered for the plaintiff, and £25 15s. damages.

Stephen Richards moved for a new trial on the law and evidence, and for misdirection, or to arrest the judgment.

Hagarty, Q.C., showed cause, citing Avery v. Scott, 8 Ex. 487; Livingston v. Ralli, 25 L.T. Rep. 243, Q.B.

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

The statutes 12 & 14 Vic. cap. 48, sec. 17, and 16 Vic. cap. 185, sec. 15, must govern the question, and we are of opinion that the defendant is entitled to prevail on the exception.

The statute 16 Vic., cap. 185, sec. 15, referring to 13 & 14 Vic., cap. 48, enacts "that no action shall be brought in any court of law or equity, to enforce any claim or demand which, by the said seventeenth section of the said act in part recited, may be referred to arbitration."

The 17th section of 13 & 14 Vic., cap. 48, thus referred to, without expressly excluding, as the 16 Vic., cap. 185 does, the jurisdiction of the common law courts, makes provision for settling by arbitration all such disputes as may arise between school trustees and a teacher, in regard to his salary, the sum due to him, or any other matter in dispute between them, having first provided in the same clause "that any teacher shall be entitled to be paid at the same rate mentioned in his agreement with the trustees, even after the expiration of the period of his agreement, until the trustees shall have paid him the whole of his salary as teacher of the school, according to their engagement with him."

It is quite evident, in our opinion, that it is the effect of that clause, and was the intention of the legislature, that if a person who has been a common school teacher should, after the cessation of his engagement, differ with the trustees upon any matter growing out of his engagement or employment as teacher, he might refer it to arbitration under this provision; and if so, then it follows, that under the enactment in the latter act he is confined to that remedy

Rule absolute.

McLARREN v. BLACKLOCK.

(Hilary Term, 19 Vic.)

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

Malicious arrest—Evidence.

Where an action for malicious arrest is brought against the agent of the plaintiff in the suit, it is not sufficient to produce an affidavit purporting to be made by him. It must be proved to have been made by him, and that he was the plaintiff's agent.

(14 Q.B.R., 24.)

Case for malicious arrest of the plaintiff, in the County Court of Hastings, upon a *Ca. Sa.*, at the suit of J. W. D. Moodie against the plaintiff.

The declaration charged that the defendant, on the 1st of August, 1855, not having any reason to believe that the plaintiff had parted with his property, or made any secret or fraudulent conveyance thereof, in order to prevent its being taken in execution, but wrongfully intending, &c., "maliciously made a certain affidavit, whereby he deposed and made oath that he had reason to believe that the now plaintiff, one William Martin, and one Samuel Stevens, had parted with their property, or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution." And the declaration further charged the defendant with maliciously causing, by virtue of the said affidavit, a *Ca. Sa.* to be sued out against this plaintiff, and Martin and Stevens, to satisfy the judgment of the said Moodie, &c.; also, with causing the writ to be endorsed and delivered to the coroner (the plaintiff in the writ being the sheriff, &c.) and with causing the now plaintiff to be arrested thereon.

The defendant pleaded—1. Not guilty; 2. That he did not cause the plaintiff to be arrested by virtue of the said writ, in manner and form, &c.; 3. That at the time of the making of the affidavit in the declaration mentioned he had reason to believe, &c.

The plaintiff joined issue.

At the trial, at Belleville, before *Draper, J.*, the plaintiff produced a paper purporting to be an affidavit made in this cause in the County Court of the County of Hastings, and to be signed "James Blacklock,"—and authenticated by C. L. Coleman, a Commissioner B.R.C.H., and sworn by him on the 1st of August, 1855.

It ran thus—"James Blacklock, of the town of Belleville, in the County of Hastings, merchant, agent for the plaintiff in this cause, maketh oath and saith, that he hath reason to believe that William Martin, Samuel Stevens and John McLarren, the above named defendants, have parted with their property, or made some secret or fraudulent conveyance thereof, in order to prevent its being taken in execution."

The affidavit was produced on the trial by the clerk of the County Court, who was called as a witness.

There was no proof given that the defendant Blacklock made the affidavit produced, or that he had any hand in suing out the writ, or any concern in its being delivered or executed; and it was not shown that the defendant was agent for Moodie, the plaintiff in the process, or had received any instructions from him respecting it, or for making the affidavit; and there was no proof to identify the defendant as the person who made the affidavit or took any step in the matter.

The learned judge considered that as against a party not in any way connected with the original cause, such proof was indispensable, and intimated this to the plaintiff's counsel before he closed his case. After taking time to consider, the plaintiff's counsel offered no further evidence, and the learned judge directed the jury that the defendant was not sufficiently connected with the arrest to make him liable,—whereupon they found for the defendant.

Richards obtained a rule *Nisi* for a new trial, on the law and evidence, and for misdirection. He cited Spafford v. Buchanan, 3 O.S. 391; Hennell v. Lyon, 1 B. & Al. 182.

O'Hare showed cause, and cited Bromage v. Prosser, 4 B. & C. 247, S. C., 6 D. & R. 296; Davis v. Fortune, Ib. 597; Arundell v. White, 14 East. 224; Bul. N.P. 13-14; 1 H. Bl. 282; Purcell v. Macnamara, 9 East. 361, S.C., 1 Camp. 199; Rees dem. Howell v. Bowen, 1 McLel. & Y. 383; Chambers v. Bernasconi, 1 Tyr. 335, 397; Tay. Ev., 1284, 1419, 1421, 1422.

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

We are of opinion that there was not sufficient evidence to charge the defendant. All that was pretended to be in any manner proved was, that he made the affidavit upon which the writ was sued out. No other agency whatever in causing the arrest of the plaintiff was attempted to be proved against him. This being so, it was necessary to give legal evidence that he made the affidavit produced; that such an affidavit was sworn to by him. Now there was not only no evidence, beyond the production of the document, that such an affidavit was sworn to by any person, but there was no evidence that there was a person of the name of this defendant who was either a general agent of Moodie, the plaintiff in the writ, or who was specially authorized to act for him in this particular matter.

The entire want of apparent connection between this defendant and the record in the original action distinguishes this case from that cited, of Hennell v. Lyon (1 B. & Al. 182); and the judgments delivered in that case show that the very ground on which identity was *primâ facie* assumed in that case was wanting in this. The same remark applies, we think, to the case cited of Spafford v. Buchanan (3 O.S. 2[illegible]) in which case, as in Hennell v. Lyon, there was the fact that the affidavit produced purported to be the affidavit of the person who, as a party to the cause, must, in the ordinary course of things, have made the affidavit produced, in order to warrant the proceeding which had taken place; and the only question was whether the court ought not, in a civil proceeding, to assume in the first instance, and until the contrary was proved, that the affidavit was genuine.

Now in this case, until it was proved that the defendant Blacklock was an agent of Moodie, the plaintiff in the writ, there was no foundation for the presumption that an affidavit had been made by him, and no reason for assuming that the person by the name of Blacklock, whose name was signed to that paper, was such agent.

To hold that upon the evidence given at this trial there was a case established against this defendant, would be to go much beyond what was determined in Spafford v. Buchanan,—in which case, moreover, the judgment of the court was not unanimous.

Rule discharged.

BROCKVILLE AND NORTH AUGUSTA PLANK ROAD COMPANY v. CROZIER.

(Hilary Term, 19 Vic.)

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

16 *Vic., cap.* 190, *sec.* 2—*Tolls—Too high grade—Estoppel.*

Where the defendant, a stage proprietor, made use of a road constructed under the General Road Act, 16 Vic., cap. 190, with his vehicles, for months, without objection, and the Company had allowed the tolls to stand over for settlement periodically.

Held, that he could not object to pay on the ground that the grade of the road was in some places above that fixed by the statute.

Held, also, that the tolls in this case had been imposed, by resolution, with sufficient formality and certainty.

[14 Q.B.R. 27.]

Assumpsit, for tolls. The declaration alleged that the defendant, on the 14th of March, 1855, was indebted to the plaintiffs in £100 for tolls payable by the defendant for horses, cattle, carriages, &c., of the defendant, which before that time had travelled upon a certain plank road of the plaintiffs in the United Counties of Leeds & Grenville, and through a certain gate of the plaintiffs erected upon the said plank road; and for divers other tolls and fees before that time of right due by the defendant to the plaintiffs for divers other horses, cattle, carriages, &c., of the defendant, which had before that time travelled upon and passed along a certain other road of the plaintiffs, and through certain other toll-gates of the said plaintiffs, erected upon the said road; and that afterwards, in consideration of the premises, to wit, on, &c., the defendant promised the plaintiffs to pay them the said sum of money on request. Yet, &c., (stating breach of the defendant's promise.)

The defendant pleaded—1st. Non-assumpsit, and four special pleas, which were demurred to.

At the trial at Brockville, before *Macaulay, C. J.*, it appeared that the road was made by a joint stock company, associated under the provisions of the statute 12 Vic. cap. 84. The articles of association were entered into on the 22nd of February, 1851, and five directors were then chosen, the declared object of the company being to construct a plank or macadamized road from the main road leading from Brockville to Prescott, at the division line between lots eight and nine in the first concession of Elizabethtown, to North Augusta, the capital stock to be £3000, to be held in shares of £5 each. The road was partly in the County of Leeds and partly in Grenville.

The tolls were fixed on the 1st of November, 1852, by a minute, of which the following is a copy:—

"Brockville, Nov. 1, 1852.

"The directors of the Brockville and North Augusta Plank Road Company met this day. Present—Dr. Edmonson, President; Samuel J. Bellamy, James Crawford.

"*Resolved*—That the tolls to be charged at the gates on the Brockville and North Augusta Plank Road, after this date, be as follows, viz.:

"For any team, double or single, passing gate No. 1, 1½d.

"Gate No. 2—For every double team, 2d.; and for every single team, 1½d.

"Gate No. 3—For every double team, 2d.; for every single team, 1½d.; for every horse and rider, 1d.;" (with other charges for cattle, &c.")

To this resolution was attached the corporate seal of the plaintiffs.

Afterwards the following resolution was passed at a meeting of five directors, holden on the 12th of December, 1853:

"*Resolved*—That the secretary do advertise for tenders for a lease of the gates on the Brockville and North Augusta Plank Road for one year, from the 2nd of January, 1854, and that the tolls to be charged at each gate shall not exceed the following rates, viz.:

"Gate No. 1—2d. in winter and 3d. in summer.

"Gate No. 2—(Same.)

"Gate No. 3—(Same.)

"Single teams, 1½d. in winter, and 2½d. in summer.

"Winter months to commence on 1st December and end on 28th February.

"Summer months to commence on 1st March and end on 30th November."

The defendant was proprietor of a public stage running from Brockville to Merrickville, over the whole of the road in question, conveying the mail and making a daily trip, (except on Sundays)—that is, going the one day and returning the next.

The plaintiffs claimed for tolls on the defendant's two-horse stage, through all the gates, from the 1st of August, 1851, to the 1st of February, 1855.

In regard to the road the following statement of facts was agreed to upon the trial: That the toll-road commences at Brockville; at the distance of one-and-a-half mile on the road is toll-gate No. 1, and coming into Brockville from No. 1 toll-gate there is a hill about half way between the two points, the grade of which exceeds one foot in twenty, the whole rise of the hill being 13 feet and 1 inch and 75-100, which exceeds

one foot in 20 by 3 feet 11 inches and 5-100; and beyond gate No. 2 there is another hill, on which, going out from Brockville, the ascent in the whole distance of 484 feet exceeds 1 foot in 20 by 20 inches and 5-10.

From the last mentioned hill to the end of the toll-road (at Brockville) is five miles, within which space gates Nos. 1 and 2 are placed. Beyond the five miles there was a portion of the road not yet finished when this action was brought.

The distance from gate No. 1 to gate No. 2 is two-and-a-quarter miles. Between 2 and 3 two miles of road were not finished when this action was brought. The tolls charged on the whole road, (that is, taken at the three gates) was 9d.; the whole length of the road (if it had been completed) would be about 13½ miles.

After the plaintiffs' case was closed, it was objected that they could not support their action: 1st. Because at one or more points on the road the grade exceeded that which is by statute fixed as the maximum, viz.: a rise of one foot in twenty.

2nd. Because no by-law had been passed establishing tolls.

3rd. Because, if a resolution of the board, which the plaintiffs relied upon as equivalent to a by-law, could be accepted as sufficient, yet it is defective in not appointing the gates at which tolls are to be received.

On these grounds, the defendant applied for a non-suit. The learned Chief Justice overruled the objections, reserving leave to him to move in *banc*, and a verdict was rendered for the plaintiff of £28 15s.

George Sherwood obtained a rule *nisi* to enter a non-suit, pursuant to the leave reserved. He cited Niagara Falls Road Company v. Benson, 8 U.C.R. 307.

Albert Richards showed cause, and cited Regina v. Great North of England R.W. Co., 9 Q.B. 315; Reg. v. Birmingham R.W. Co., 3 Q.B. 223; Macdonald v. Hamilton and Port Dover Road Co., 3 C.P. 402; Chilton v. London R.W. Co., 16 M. & W. 228; Grant on Corporations, 76, 162, 164.

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

The grounds on which the non-suit was moved were precisely and clearly stated by the defendant's counsel on the argument of this rule.

In our opinion the statute 16 Vic., cap. 190, sec. 2, though it does direct that no road shall be made by any company incorporated under that or former acts of a steeper grade than one foot in twenty, does not apply so stringently as to disable the corporation from suing for tolls on a road which a party has been content for a long period to use, by reason of its being shown that at some one or more points in the road the ascent is greater than the statute directs.

It might admit of more doubt, if a party, when asked for toll at a gate, at the time of passing, should object to pay it, because some hill which he had passed within the distance for which such toll was demanded was steeper than the statute prescribes. But in such a case even, there would be room to argue that the company might insist upon the toll established being paid by the party who had used their road, and that, if they did not comply with the terms of their legislative charter, the proper course would be by a proceeding of *quo warranto*.

But here, by an indulgence of the company, a party has been allowed to let the tolls stand over to be settled periodically, and after using the road with public vehicles for months, and for all that appears without remonstrance or objection, he finds, on an accurate measurement, that in two places along the grade is a few inches above what the statute allows, and he thereupon claims not to be liable for any toll along the whole road, for all the time that he has been using it.

We think the plaintiffs could not be properly non-suited on that objection.

And as to the other grounds, we are of opinion that the tolls appear to have been imposed with sufficient formality, and that the gates having been previously erected and in use, and no doubt well known by their numbers, the regulations shown to us make it plain and certain what tolls were authorised, and where.

The regulations establishing the tolls do make mention of certain gates by the designations of numbers one, two, and three, referring to what we assume to have been well understood and known, and they appoint the toll to be paid at each one of such gates.

Rule discharged.

THE BROCKVILLE AND NORTH AUGUSTA PLANK ROAD COMPANY V. CROZIER.

(Hilary Term, 19th Vic.)

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

Road company—Action for tolls—Grade of road—Pleading.

Assumpsit for tolls by a road company incorporated under 16 Vic. cap. 190. The defendants pleaded that in a portion of the road the grade exceeded that fixed by the statute, not alleging that it was so made without the consent of the engineer.

Held, insufficient. (14 Q.B.R. 22.)

Assumpsit for tolls. The declaration will be found set out in the report of the motion for non-suit in this case (*ante* page 151.) The defendants, in their 2nd, 3rd, 4th and 5th pleas, set up as a defence one of the grounds on which the non-suit was moved for, namely, that a portion of the road was of a higher grade than that prescribed by the statute. The plaintiff demurred to these pleas.

Albert Richards for the demurrer.

George Sherwood contra.

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

We are of opinion that all the pleas are bad, for several of the reasons assigned. It is true the statute 16 Vic., cap. 190, sec. 2, enacts that no road made under that act shall "be made of a higher grade than one foot elevation to twenty feet along the road, without the sanction of the county engineer for the time being, if there be such officer in the county where the road is situate or to be constructed, and if there be no such officer, then by some competent engineer to be appointed by such county council for that purpose;" but a plea must show what is a good defence, admitting its statements to be true. It would not be sufficient under the statute 16 Vic., cap. 190, sec. 2, to show as an objection against imposing toll on this road that the grade at some point is steeper than in the ratio of one foot to twenty, unless it were so made without the sanction of the county engineer. It is all one sentence in which the direction is given, and the direction is not absolute but qualified. It is often necessary, both in civil and criminal pleadings, to negative something which is peculiarly within the knowledge of the opposite party, though the principles of evidence may relieve the party asserting the negative from the onus of proving it, or may take very slight evidence as sufficient to put the other party upon proof of his qualification.

But besides this, for the reasons given on the motion for non-suit in this same case, we do not think the pleas set up a bar to the action; for, if the company have forfeited their charter by abuse or non-user, there is another remedy by a proceeding upon the prosecution of the Crown.

Judgment for plaintiffs on demurrer.

TO CORRESPONDENTS.

A.C.—We quite agree with you in all points. The new Law will bring new questions. The aggregate value would be incalculable. Pray let us hear from you at all events.

D.J.H.—Wrote you in reply. We cannot procure the Tariff.

D.—Could only find space for one, the other will appear next month: gratified for the valuable assistance.

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THE LAW JOURNAL.

AUGUST, 1856.

LAW REFORM.—QUESTION OF CONSTRUCTION.

The Acts of last Session regulating and simplifying the practice and proceedings of the Courts of Law are by far the most important Statutes on the subject of Procedure ever passed by the Canadian Legislature. A mighty change has been effected, a great revolution brought about, and amidst the noise of a noisy Session, these Statutes have almost without discussion been ushered into life. The Student will no longer require to wade through a mass of complicated intricacies; to read the many thousand cases, often conflicting, seldom clear, that formed a clue to the subtle labyrinth of Practice. A practice venerable indeed, but bearing all the marks of senility upon it—refined truly in its dogmatic elaborations, but in its artificial and vermicular details confounding the means with the end, the forms of Justice with Justice itself. The Lawyer will find relief from the festering grievances of pettifogging technicality; law, the Minister of Justice, he has often seen perverted by the unscrupulous into an engine of mischief, and yet been helpless to prevent the wrong, and often truth and justice entangled and borne down by the very means designed for their succour and support. Yes, a great revolution has been effected; the suitor for justice need no longer travel a blazed path beset with thorns, traps and pitfalls; the road has been cleared, fenced, and rendered safe.

Acts of Parliament often bear a lie on their face; the flourish of trumpets in a preamble is at all events seldom sustained by the enactments it introduces. It is *not* so with the acts to which we refer; they are, as the preamble declares, "to simplify and expedite" the proceedings of the Courts, and with that declaration the enactments are consistent. What is justice? to render to every one his due! and to Mr. Attorney General Macdonald, the profession and the public must award well deserved praise for these most meritorious measures.

We have read both Acts with care. Mr. Macdonald has not attempted to "doctor" this, to patch that Rule of Practice, to repeal a bit of Law here, to graft on something new there, in our system of procedure; he has approached his subject not as a "niggler" and a quack, but scientifically and searchingly as became his position. He radically remodels the whole structure, effecting immense improvements in the administration of the law. There was no loud popular cry to force on these measures; they appear to have been spontaneously taken up by their author, under the obligations every one owes his own profession; and it is gratifying to find that amidst the turmoil of political life, the head of the Bar has not been unfaithful to the cause of Science, or cold to its claims.

Nor is it the least favourable feature in the new laws that they adopt *verbatim* such of the clauses in the English Common Law Procedure Acts as are applicable to our condition and legal institutions. Where sections have been changed, the alterations have been made as sparingly as possible, and with much judgment: we will therefore have all the benefit which can be derived from the judicial construction these acts have undergone, and will continue to receive, in England.

The sections, based on the old practice, bring the subjects embraced into a clear and orderly shape; the law respecting absconding debtors (wherein, by the way, we have taken the lead of England in Law Reform) is clearly traced out and the several enactments well consolidated: in many other particulars, also, improvements have been

made. The manifest design and tendency of which is to make substantial justice paramount to *merely* technical Rules, to the free administration of unnecessary shackles in attaining its end by the speediest and simplest means.

What may be called the Court of the humble suitor, the County Courts, and the Superior Courts have been improved, *pari passu;* the country Practitioner will now find in the Local Courts a practice similar to that of the Courts at Osgoode Hall. The embarrassing distinction between the practice of these tribunals, inferior and superior, no longer prevails; and the Judges of the Inferior Courts will be, therefore, greatly aided in the discharge of their duties by the English decisions and those in our own Superior Courts, which would not have been the case had the County Courts been neglected: uniformity of procedure comes next in value to simplicity; expedition is the necessary result of the latter.

It is not to be expected that measures of such magnitude should be perfect; nor can the Statutes before us claim exemption from the general rule. We notice some few points where the intention is not quite clear—some things unprovided for, some slight errors, and one or two apparent contradictions, but nothing very important: and it also occurs to us that in some particulars additions, perhaps, might be advantageously made.

"Questions of construction," (says Mr. R. A. Harrison, in his prospectus of a work on these Acts now in the hands of the publisher) "are the sure result of every effort to apply general enactments to particular cases; light, therefore, wherever light can be obtained, is desirable." The remark is very true—and adopting it, with the consideration referred to in view, it seems desirable that questions of difficulty or matter of a doubtful meaning, arising out of the Acts, should be canvassed; and that any one who can do so, should lend his aid to resolve, as well as endeavor in every way to elucidate the provisions of the new law.

The columns of the *Law Journal*, the only legal periodical in Upper Canada, seem the appropriate place for such discusssions, so that all may participate in the benefits to be derived from an early examination. We will lend our own aid, and we invite the co-operation of professional men. Doubtless Mr. Harrison's work will be of great utility in this respect, and we anxiously look for it as a work indispensable to the Practitioner; but his will be but one mind brought to bear on the subject, and in that practical shape too, where, of necessity, brevity is required, and prolonged critical discussions would be out of place.

"Light," we repeat, "wherever light can be obtained, is desirable."

THE ENLARGED JURISDICTION IN THE COUNTY COURTS.

By the 20th section of the County Courts Procedure Act, 1856, the ordinary jurisdiction of the Court is considerably enlarged. We copy the section:—

"And whereas it is expedient to enlarge and more clearly define the jurisdiction of the several County Courts in Upper Canada—It is enacted, That for and notwithstanding anything contained in the first section of an Act of Parliament of this Province, passed in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to amend and alter the Acts regulating the practice of the County Courts in Upper Canada, and to extend the jurisdiction thereof*, or any other Act of the Parliament of this Province, the said County Courts respectively shall hold plea of all personal actions where the debt or damages claimed is not more than fifty pounds, and of all causes or suits relating to debt, covenant or contract where the amount is liquidated or ascertained by the act of the parties or the signature of the defendant, to one hundred pounds; Provided always, that the said County Courts shall not have cognizance of any action where the title to land shall be brought in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or for any libel or slander, or for criminal conversation or for seduction."

This is a clear and intelligible enactment. The professed object is twofold: first, to *enlarge;* second, to *more clearly define* the jurisdiction.

The Act of 1850 gave the Courts jurisdiction to hold plea of causes relating to *debt, covenant* or *contract*, to £50; in cases of *debt* or *contract, where the amount was ascertained* by the *signature* of the defendant, to £100; and in case of *tort* to personal chattels, to £25. This definition of the subject matter of jurisdiction excluded many cases not coming within the tecnical terms of the enactment, though obviously of less importance in their nature than the subjects *literally* covered. The object of a limit to jurisdiction is to withdraw from the Inferior Tribunals cases, with which they are not competent to deal; but the jurisdiction referred to, recognized no

fixed principle, and actually excluded from the cognizance of the County Courts a great variety of cases that the Division Courts, Courts of Summary Jurisdiction, were empowered to determine. Moreover, a distinction unfounded in principle was made between actions founded on contract and for wrongs; the latter being assumed to be the more difficult in the process of investigation.

The jurisdiction is not increased in *amount* by section 20, but is very materially enlarged as to *subject matter*. The general limit as to amount is £50, but where a suit relates to *debt*, *covenant*, or *contract*, and the amount happens to be *liquidated* or *ascertained* by the *act* of the parties (for example, where an account has been stated) or the signature of the defendant (as in the case of a bond or promissory note) it extends to £100. The distinction is simple and intelligible. The practitioner will now, if the amount sought to be recovered for debt or damages is £50 or under, have only to ask himself, does it fall within the exemptions, viz., will title to land be brought in question in the action, or the validity of any devise, bequest or limitation, under any will or settlement be the subject of dispute? or will the cause assume the shape of an action for libel, slander, criminal conversation or seduction? if not, then the action may be maintained in the County Courts.

The powers of the Court are "more clearly defined" in this way: the terms used "all personal actions," is the broadest that can be employed, including actions for the specific recovery of goods, or for damages or breach of contract, or wrongs done to the person or property; in other words, all actions *ex contractu*, and actions *ex delicto*, not including those which form the exceptions set out in the clause—neither Dower nor Ejectment fall within the definition of personal actions.—*Communicated.*

WHO IS THE *IRNERIUS?*

In the authorized copy of the Common Law Procedure Act of the last Session, we notice, shall we call it, a *gloss* upon the Statute. At all events on the first page the reader is directed by a star to a foot note, and throughout the Act we found certain figures and letters to which this foot note referred.

Dim visions of the learned labours of Irnerius and Placentius, and other restorers of the Roman Law, floated before us, and the maxim "*quidquid non agnoscit glossa, nec agnoscit curia,*" was upon our lips. A glossed Act of Parliament! was something so entirely novel, that we were for the moment at a loss what to think. With reflection, occurred the question,—What does it mean? Who is the glossator? Has the Legislature drawn light from the East, or has the Law Clerk or the Queen's Printer volunteered to illumine? Without saying with Johnson, that that "all change is in itself an evil," we confess a constitutional timidity respecting novelties, and think in the matter of an Act of Parliament that "*via antiqua, via est tuta.*"

It may be said certainly that the common marginal notes in our Statutes are held to form no part of the Law itself, and are rejected by the Courts in the work of Interpretation; and that the note in question is, something like the changes in type, to be regarded as a little embellishment of the Printers. But an *abridgement* of the body of the Law is a very different thing from a *gloss* or note which serves as an *interpretation* of the law itself.

"The notes in brackets," says the note, "indicate the sources from which the provisions of the clauses &c., are derived": plenty of room for "Judge-made Law," if this is to read as part of the Act.

"Where there is no bracketed note, the provisions of the clause are original," so says the note. What say you, my Lords the Judges, to this? "*Original*" doubtless means "*new*," and there is undoubted authority to establish this point "there is no *new* thing under the sun."

"The clauses from the English Act are taken with as little change as was consistent with their adaptation to U. C. Law and Institutions." Are my Lords to take this as gospel, or will they feel that construction may make the "little change" a little less or a little greater without inconsistency; should "the laws and Institutions" referred to, haply change, is the interpretation of the law to change with it?

A nice little swarm of points for point lawyers, might be formed in this little note with its guiding star.

But seriously we think such notes objectionable when placed on the Statute Book: we find no prac-

tice to excuse, no principle to warrant this innovation on settled forms, and we are curious to know how it occurred.

During the Session, a "memorandum on the C. L. P. Bill" was issued by the Attorney General for the information of the members in their examination of the sources from which the Bill emanated, and it has found its way into the hands of the profession generally. It served its purpose at the time, and will be found a very great aid to the practitioner in noting the English cases and otherwise. The information thus given was well timed and presented in a proper shape. But a note to an Act of Parliament is quite another thing. We have no desire to say anything severe, for we really think the noting was intended to be useful, and doubtless gave the person who prepared the matter a good deal of trouble: but we contend it was out of place, and could not properly let it pass unnoticed. And we think, moreover, some explanation on the matter is due to the profession and the public.

V.

THE NEW RULES OF PRACTICE.

The Rules under the Common Law Procedure Act will necessarily form a very important part of the new system of procedure. Doubtless the Judges were promptly furnished with copies of the Act, and it is possible that the Rules may be brought out in the early part of next month, at all events; it is most important to Practitioners that they should be printed at the earliest moment after they have been passed. In the meantime the English Rules will be of some assistance, for it is probable that most of them will be adopted verbatim by the Judges.

It is to be hoped that the Judges will take the plan of annulling all existing rules, and re-enacting under appropriate heads such as it may be found proper to retain. Few can estimate the immense labour before the Judges in preparing these Rules, and it would be no matter of surprise to us, if they were not out till November next; but as the Government will, no doubt, place a few hundred pounds at the disposal of the Judges to enable them to select some competent members of the Bar to do the fag work, we are hopeful that the Rules will appear at an earlier date.

CASES IN RELATION TO THE COMMON LAW PROCEDURE ACT.

A considerable portion of our C. L. P. Acts is taken from the English Acts (of 1852 and 1854.) In general the exact language has been retained, and the changes that have been made are not such as to destroy the value of English decisions on the English Acts. With a view, therefore, to lend our professional readers all the assistance possible in working out the practice under the new law, we have made arrangements by which we will be enabled to give in the Repertory, notes of the cases decided from time to time in England, on sections of their Com. Law Pro. Act which we have adopted. These will be found of great utility to the professional man, as almost every mail will bring in cases on the construction of the Acts. A few will appear in the present issue. The decisions in our own Courts will also receive prompt attention. The practice has in a great measure to be reconstructed, and every fresh decision tends to this end; and the sooner such decisions are known and acted upon, the sooner and firmer will the practice be settled.

THE THREE LISTS: THEIR TRUE SOLUTION.

The 154th section of the Act enacts that Records for the Assizes shall be entered in three distinct lists:

First list, to contain assessments and undefended issues.

Second list, all defended issues not marked "Inferior Jurisdiction."

Third list, all defended issues marked "Inferior Jurisdiction."

A Friend has jocosely suggested the following solution to this order of entry. He says the *First* list is designed to show the cases that will certainly be tried; the *Second* list, the cases that will *probably* be tried; and the *Third*, the cases that will certainly *not* be tried.

We incline to think the solution will be found correct enough, where there is a large business to be disposed of. There is now no justifiable ground for throwing on the Judges of the Superior Court work that properly belongs to County Judges, and

the former will *no doubt* take care that the *suitors-proper* of the Superior Courts are no prejudiced by *interlopers. Ver. sap.*

HARRISON'S "COMMON LAW PROCEDURE ACT," AND "COUNTY COURTS PROCEDURE ACT."

We would direct attention to the advantage early subscriberrs to this work will have, in receiving for immediate use pamphlet copies of the Act, as mentioned in the Publishers' Prospectus, circulated through this Journal and otherwise — Members of the Profession should, in justice to the Editor, promptly send in their names as subscribers, for we understand the Edition will be strictly limited by the number of applications for the work.

It is suggested to us that some County Court Officers and practitioners regard this work as "a Superior Court affair"; and suppose that County Court Law will be but lightly touched on. We cannot imagine how this misconception arises, unless from the wording of the first prospectus, written before the County Courts Bill had passed; at all events, the publishers have issued another prospectus, with this heading, "The Common Law Procedure Act of 1856, and the County Courts Procedure Act of 1856, with notes explanatory and practical, by," &c. It was thought possible that laymen might receive this erroneous impression, and therefore the new prospectus may have been advisable: but a lawyer would have known that 227 sections of the law in relation to the County Courts might be expected to receive the Editor's attention. Every one connected with the County Courts will do well at once to order a copy of the work, as the Edition will be limited.

COUNTY COURTS, U.C.

(In the County Court of the County of Essex—A. Cuewitt, Judge.)

McLane v. Nelson.

Declaration on bond. Penalty £100 for not conveying with a sufficient description in a fresh deed, nor giving possession of 25 acres. Plea—performance. Evidence—not getting possession so as to get in crops in time. For defendant that he gave plaintiff possession "under ex." in ejectment *after* this time, and a cross demand that plaintiff got part of crops put in by defendant, reducing loss from £37 10s. to £25 5s. being verdict. New trial for excessive damages. Verdict £5 10s. being as much too little as the first was too much. Certificate moved for from the general difficulty of the case. The penalty being over jurisdiction and damages not ascertained, so that plaintiff could remit, even if the cross demand had not still to be ascertained—which, though allowed in reduction, was not exactly a *payment*. That the provisions of the 70th section of the Act of 1850, enabling certain bonds (where penalty is over jurisdiction) to be sued in Division Court, tends to show by the exception that the bond in this case at least, could not—damages being uncertain. That the descriptive title, by want of sufficient certainty as to what 25 acres defendant had to give possession of to plaintiff by the pleadings, came *incidentally* in question.

Certificate granted.

Quære—How would this apply on common money bond, sum due under jurisdiction, but penalty over—as in Division Court plaintiff, in his claim, could abandon all but the amount due, and interest, or he need not set out the *penalty* in the claim.

MONTHLY REPERTORY.

COMMON LAW.

C.P Batteshill v. Reed and another. *May* 28.

Damages—Action on the case.

In an action on the case by a reversioner for disturbing his right of eavesdropping by cutting off plaintiff's eaves and by building, the plaintiff cannot give evidence that the saleable value of the property is diminished on the supposition that the premises are to remain in the condition they were placed in by the defendant's act complained of, inasmuch as that is not damage in respect of which he is entitled to recover.

Ward v. Law Property Assurance and Trust Society.
Q.B. *May* 29.

Insurance—Guarantee policy—Condition—Notice of criminal misconduct.

Where in a guarantee policy, there is a condition to the effect that the insurer is to give notice within six days of any liability being incurred, or the policy to be void:

Held, that this means notice of any criminal misconduct whereby it is clear that a liability has been incurred, and therefore that the plaintiff, on receipt of evidence that the party, against whose criminal misconduct the policy had been granted, had been guilty of embezzlement, was not bound to give notice thereof until he had ascertained that a liability had actually been incurred.

Regina v. the Guardians of the Holborn Union.
Q.B. *June* 4.

Order allowing indenture of apprenticeship—Jurisdiction of Justices appearing on face of warrant—Police office, Hatton Garden, recognized as in Middlesex.

The allowance of an indenture of apprenticeship described the Justices, as Justices "for the county of Middlesex," and was dated at the police office, Hatton Garden.

Held, that as in certain public statutes, Hatton Garden is described as being in Middlesex, the jurisdiction of the Justices sufficiently appeared.

Q.B. Hanks v. Palling. *June* 4.

Vendor and purchaser—Objection to title of fee farm rent—Nonpayment for twenty years—Condition of sale.

The conditions of sale of a fee farm rent provided that no evidence should be required of its receipt, payment or existence other than that contained in a certain conveyance, and that no objection should be taken to the title in consequence of the non-payment or non-receipt of it for twenty years.

Held, that the purchaser could not repudiate the purchase on the ground that the rent was not in existence.

Q.B. PERRY v. ATTWOOD. *June* 3.

Pleading—Plea of account stated, all the items being on one side, and balance of payment—Error in stating account—Accord and satisfaction.

In an action for breach of a covenant to pay a certain sum for every ton of ore raised, defendant pleaded that the plaintiff and defendant met and examined the defendant's books, and agreed on a certain sum as the balance due to the plaintiff, and that plaintiff paid that sum before action. Plaintiff replied that the accountings were erroneous, certain amounts of tonnage rent having been omitted by mistake, and that the balance agreed was erroneously agreed to be that due.

Held, first, that on the authority of *Smith v. Page*, 15 M. & W. 683, the plea was bad, the items of the account being all on one side: secondly, that the replication was good.

Q.B. BENNETT v. THOMPSON. *May* 31.

Costs, certificate for—Under 13 & 14 *Vic., cap.* 61, *sec.* 12.

In an action on the case for a nuisance brought in one of the Superior Courts, the plaintiff recovered only 40s. damages.

Semble, that the certificate made necessary by sec. 12 of 13 & 14 Vic., cap. 61, to entitle him to his costs, may be given after the trial.

Q.B MARVIN v. WALLIS. *June* 4, 5.

Statute of Frauds, sec. 17—*Sale of horse—What amounts to a receipt.*

An agreement having been made for the purchase and sale of a horse at a certain price, the vendor, without delivering the horse into the manual possession of the vendee, asked the latter if he might take the horse with him on a journey, to which the vendee consent. The vendor having taken him on the journey the vendee subsequently refused to accept him and to pay the price. In an action for the price, the Jury found that the contract for sale was complete, and that subsequently thereto the vendor's use of the horse was by way of loan.

Held, that there was a sufficient acceptance of the horse within the Statute of Frauds.

C.P. EASTMEAD v. WITT. *June* 9.

Slander—Privileged communication—Express malice.

A master dismissed two of his domestic servants, A. and B. A. came to the master and asked him the cause of the dismissal. The master said that he (A.) and B. had robbed him, (the master.)

Held, in an action by B. for the slander that the communication was privileged. What—not evidence of express malice.

B.C. IN THE MATTER OF AN ATTORNEY. *June* 7.

Attorney—Summary jurisdiction over after action against—Double remedy.

Where an award arising out of an action against an attorney was made against him—but he kept out of the way and did not pay the sum awarded, being money entrusted to him for investment which he had appropriated a summary remedy against him was refused.

Q.B. SLOPER v. COTTERELL. *June* 6.

Husband and wife—Action by husband for money received to separate use of wife—Trust fund—Assignment—Notice—Equitable plea and replication.

To an action for money received, the defendant pleaded on equitable grounds, that the money was bequeathed to the sole and separate use of the plaintiff's wife during coverture, and was paid to the defendant by the executors upon her separate receipt, and that she, in her lifetime, disposed of and assigned the fund upon trusts in which the plaintiff took no interest, and that the defendant held the money upon those trusts. The replication to that plea on equitable grounds alleged a prior assignment by the wife to the husband, before the receipt of the money by the defendants; and that the defendant received the money merely as agent for the wife, in order to get in the money from the executors as the money of the plaintiff.

Held, that the plea was good, but that the equitable defence thereby set up was answered by the replication, and that the defendant could not object that upon the plea and replication the plaintiff's title appeared to be only an equitable one.

B.C. *In re* SHAW AND PITT'S ARBITRATION. *June* 6.

Arbitration—Distress, expenses of—Mistake of law—setting aside award.

An arbitration to whom a question of the legality of a distress was submitted, made his award in favour of the applicant, but deducted the expenses of the distress, which he decided was illegal, from the sum awarded. The applicant's attorney subsequently saw him, and told him he ought not to have made that deduction, and he said he had done so by a mistake from inadvertence. Upon an application to set aside or refer it back, on the ground of mistake, the former branch of the rule was refused.

C.B. HIRSCH v. COATES; FOUNTAIN, GARNISHEE. *June* 12.

Attachment of debts—Common Law Procedure Act, 1854.

Debts already assigned are not liable to attachment at the suit of the judgment creditor of the assignor.

Quære, whether the 61st section of the C. L. P. Act, 1854, is applicable to debts which are not inforceable under the subsequent clauses of the Act.

C.B. TARRANT v. WEBB. *June* 18.

Master and servant—Liability of master to servant for injuries caused by negligence or unskilfulness of fellow servant.

A master does not guarantee his servant against accidents caused by the negligence or unskilfulness of the fellow servants with whom he is associated, or warrant their competency. His duty is only to take all due and reasonable care to employ skilful and competent persons as servants.

EX. JONES v. BROWN. *May* 7.

Partnership property—Action by one tenant in common against another.

Where one tenant in common does not destroy the thing in common, but merely takes it out of the possession of the other and carries it away, no action lies against him by the other tenant in common.

IN THE MATTER OF HODGSON AND BROWN'S ARBITRATION.

B.C. *May* 7, 29.

Arbitration—Meeting behind back of one of the parties—Interference of attorney—Setting aside award—Legal maxim.

H. and B. referred a matter to three arbitrators, two chosen by the parties respectively, and the third by the other two. The arbitrators met, and having agreed on their award, a writing, signed in duplicate, was delivered to the arbitrators chosen by the parties for delivery to the respective attornies, but not as the formal and final award. B.'s attorney discovered a blunder

in the account affecting B., of which he gave notice to B.'s arbitrator, requesting him to send the umpire and the other arbitrator to him; they came and the matter was discussed without result, H.'s arbitrator, relying on a memorandum fo the correctness of the account. Subsequently another meeting of the three arbitrators took place, when the attorney for B. produced a formal award, with the alleged error corrected. The arbitrator chosen by H. refused to acquiesce in it, but the other two signed it. Neither H. nor his attorney had any notice of this meeting, and did not attend it.

Held, that the award must be set aside upon the ground that the last meeting was one at which the parties were entitled to attend: that though no new evidence was then adduced, it would be mischievous to allow the attorney of one side to interfere as B.'s had done behind the back, and without notice to the other side.

CHANCERY.

R.C. DRYSDALE v. PIGOTT. *April 22, May 5.*

Debtor and creditor--Insurance on life of debtor—Subsequent premiums paid by creditor—No claim made by debtor during his life or by the surety.

Where a creditor insured in his own name the life of his debtor, under an agreement between them and a surety that the first years premium should be added to the debt, and he continued to pay the premiums, and the surety having refused to repay him the second premium and no offer having been made by the debtor to repay the amount:

Held, that the creditor was not the agent of the debtor in keeping alive the policy, and the debtor and his surety repudiated or abandoned any interest in it after the expiration of the first year, and that the creditor kept up the policy at his own risk, and on the death of the debtor, after the debt had been paid, he was entitled to the policy money.

V.C.K. WARNER v. WILINGTON. *April 17 & 29.*

Lessor---Lessee---Agreement---Specific performance—Demurrer—As a general rule, in order to establish a contract, the names of the contracting parties must appear.

Upon demurrer to a bill by intended lessor to establish as an agreement for a lease a memorandum embodying the terms of a proposed lease, signed by the intended lessee only, followed by the agents of the lessor sending the draft lease and correspondence from which it appeared who was to be the lessor:

Held, that the sending of the draft lease was not sufficient, as it was not an unconditional acceptance, for he still reserved the right of retracting.

C. of A. HARRISON v. GUEST. *May 3, 24 & 31.*

Vendor and purchaser—Conveyance—Fraud—Inadequacy of consideration—Onus probandi—The duty of a solicitor for a purchaser, when dealing with a vendor, without the intervention of a solicitor considered.

A solicitor should not allow his client to complete a transaction, or allow himself to be the instrument of concluding it without insisting upon another solicitor or a professional or other adviser being employed on the part of the person with whom he is negotiating.

If persons standing in a certain relation to one another deal as vendor and purchaser, the Court expects the purchaser of the purchase is complained of by the vendor to show that the vendor had due protection afforded him; thus if a guardian purchased of his ward, though that relation may have ceased only for a short time, so that the influence of the guardian may be supposed to exist, the burden of the proof is upon him to show that his quondam ward was protected; it is no answer to a bill seeking to impeach the transaction, to say, "I have obtained the conveyance, now prove that it was obtained wrongfully."

The same doctrine applies to an attorney buying of or selling to his client. Where a fiduciary relation subsists between a vendor and purchaser, the Court throws the burden of proof upon him who sets up the transaction against the person whom he was bound to protect, scus, where no such relation subsists. In the latter case, the burden of proof is upon the vendor, to show that he was imposed upon, and he cannot be heard to say that he had no professional adviser; but must show a contrivance or management on the part of the purchaser to prevent his having that advice. If a vendor is kept in ignorance of what he is doing,—or *a fortiori* is taught or led to believe that he is doing something different to what he intended as executing a mortgage instead of a conveyance of his estate—that is a ground to set the transaction aside, and is not applicable only to the cases of persons who, from age or circumstances, are likely to be misled.

Bill filed to set aside a conveyance on the ground of fraudulent contrivance; the purchaser was a man of influence and and education—the vendor a poor, aged, uneducated, imbecile man; the one acted under the advice of his solicitor, the other had no professional or other adviser—the consideration was inadequate, and the vendor died six weeks after the date of the conveyance. The Court of Appeal, reversing the decision of Kindersley, V.C., dismissed the bill, but without costs.

CORRESPONDENCE.

To the Editors of the U. C. Law Journal.

GENTLEMEN,—

The arguments heretofore used to obtain the common justice of a reasonable remuneration for their services for the County Judges, have at the same time been linked with so many insinuations about its not having been hitherto "*an object of laudable ambition to men distinguished for acquirements and talents*," to aspire to the office held by those gentlemen, that many of them have doubtless been constrained to use the stale old cry about saving them from their friends.

The remuneration hitherto held out, does not seem to have been the first object with many of those gentlemen in accepting office, otherwise we would not find among their number many who could not only command, as they had commanded, seats in Parliament, but who were equal in point of practice to any in the respective Counties. The outside barbarians are perfectly well aware, that the centralizing system practised in reference to Toronto, has produced a species of Cockney vanity in all those there residing, leading more or less to a contemptuous feeling in reference to those beyond their narrow circle; and yet it is the opinion of some, that, laying aside a certain hair-splitting knowledge of technicalities, the country practitioner, who is necessarily obliged to be well read upon the Laws in reference to Real Estate and Commercial matters, and who sends mostly all important cases to Term with his *instructions* to his agent—ought not to be so vastly far behind his compeer.

From the signs abroad, we, in the country, think it will be

somewhat difficult in Canada to carry out the centralizing policy at present in vogue in France and England, but fast breaking up in the latter.

Yours, &c., A. B. C.

To the Editors of the U. C. Law Journal.

GENTLEMEN:—

The Legislature at its recent Session passed an Act extending the Insolvent Debtor's Act to Traders who were heretofore held to be excluded from the benefit of its provisions, and as it is likely there will be many persons presenting petitions during the present year, you will confer a favour by informing many of your readers, in what Office or Court the petition is to be filed,—what Clerk is to register the proceedings? Has not the County Judge the power to appoint as Clerk whomsoever he pleases? What are the costs and disbursements to be paid and received? If there be no assets belonging to the Estate of the petitioner, by whom are they to be borne and paid? In proceedings under the Act in a new county, what Orders and Rules are to govern the proceedings, where the County Judge has passed none? and, do Fees to the Judge belong to the Fee Fund?

Yours truly, P. M.

[We have not yet been able to procure a copy of the Act.]

To the Editors of the U. C. Law Journal.

GENTLEMEN:—

Being a subscriber to your valuable Journal, and having noticed in the June number some queries relative to Judgment Summons being served on parties living in another County, and as you expressed a wish to hear if anyof the County Judges had taken action on the same, I hereby submit a case that occurred in this Court.

A. B. obtained a Judgement in this Court against C. D., who resides in the United Counties of Lanark and Renfrew; said Judgment not having been paid in the time specified, A. B. ordered out a Judgment Summons, which was duly served and returned with the necessary affidavit of service, to this Court. C. D. failed to appear as required, and the Judge ruled that he had no jurisdiction on a Judgment Summons served on a party residing in another county.

Truly yours, HIRAM MCCREA,
Clerk 7th D. C., Leeds & Grenville.

Frankville, July 7, 1856.

To the Editors of the U. C. Law Journal.

GENTLEMEN:—

You richly merit the approbation and support of the business men of the country generally, and of the Law Officers especially, for the valuable information given in the *Law Journal*.

Hoping that you will receive that encouragement which will enable you to render the work yet more useful,

I am truly yours, ABISHAI MORSE,
Clerk 3rd D. C., Lincoln.

Smithville, 5th July, 1856.

APPOINTMENTS TO OFFICE, &c.

COUNTY JUDGES.

WORSHIP BOOKER McLEAN, of Osgoode Hall, Esquire, Barrister-at-Law, to be Judge of the County and [illegible] Courts for the United Counties of Leeds and Grenville, in the room of George Malloch, Esquire, resigned.

WILLIAM ROSS, of Osgoode Hall, Esquire, Barrister-at-Law, to be Judge of the County Courts of the United Counties of Stormont, Dundas & Glengarry, in the room of George S. Jarvis, Esquire, resigned.

SHERIFF.

FREDERICK WILLIAM JARVIS, Esquire, to be Sheriff of the United Counties of York & Peel, in the room of William R. Jarvis, Esq., resigned.

ASSOCIATE CORONERS.

WILLIAM EVATT, SAMUEL HALTON, JOSEPH GRAHAM, JOHN SWAIN, GEORGE E. SHAW, and ALEXANDER PRESTON, Esquires to be Associate Coroners for the United Counties of Northumberland & Durham.—[Gazetted 5th July, 1856.]

CHRISTOPHER LEGGO, of Richmond, Esquire, M.D., to be an Associate Coroner for the County of Carleton.—[Gazetted 12th July, 1856.]

RICHARD LAZIER, Esquire, to be an Associate Coroner for the County of Hastings.—[Gazetted 19th July, 1856.]

NOTARIES PUBLIC.

JAMES HENRY FLOCK, of London, Esquire, Barrister and Attorney-at-Law, THOMAS WILLCOCKS SAUNDERS, of Guelph, Esquire, Barrister and Attorney-at-Law, CHRISTOPHER R. BARKER, of Penetangore, Gentleman, and OLIVER McKAY, of Hamilton, Gentleman, to be Notaries Public in U. C.—[Gazetted 5th July, 1856.]

JOHN GRAHAM CARROLL, of Woodstock, Esquire, Attorney-at-Law, and CHARLES INGERSOLL CARROLL, of Toronto, Esquire, Barrister-at-Law, to be Notaries Public in U. C.—[Gazetted 12th July, 1856.]

Stafford F. Kirkpatrick, of Peterborough, Esquire, Barrister-at-Law, to be a Notary Public in U. C.—[Gazetted 19th July, 1856.]

THE DIVISION COURT DIRECTORY.

Intended to show the number, limits and extent, of the several Division Courts of Upper Canada, with the names and addresses of the Officers—Clerk and Bailiff,—of each Division Court.†

COUNTY OF KENT.

Judge of the County and Division Courts, W. B. WELLS, Esquire.

First Division Court.—Clerk, Thomas Glendinning,—Chatham P. O.; *Bailiffs*, Richard Mauck and Henry Robinson.—Chatham P.O.; *Limits*—Town of Chatham, townships of Raleigh north of the middle street; Tilbury East, first and second concessions; Harwich, west of the Communication road and north of the Ridge road; Dover West and Dover East south of the fourth concession; township of Chatham from first to fifth concession to the line between Lots numbers 18 and 19.

Second Division Court.—Clerk, George Duck, senior.—Morpeth P. O.; *Bailiffs*, James Reynolds and Ewan Irvisher.—Morpeth P. O.; *Limits*—The southerly part of the township of Howard from the line between eighth and ninth concessions; the southerly part of Harwich from the Ridge and Government roads.

Third Division Court.—Clerk, David Wallace,—Dawn Mills P. O.; *Bailiff*, Bedford Kimmerley.—Dawn Mills P.O.; *Limits*—The townships of Camden and Zone, and that part of the township of Chatham not included in the first and sixth Divisions.

Fourth Division Court.—Clerk, Geo. Young.—Village of Harwich P.O.; *Bailiff*, James McCann,—Village of Harwich P.O.; *Limits*—All of the townships of Howard and Harwich not included in the first and second Divisions.

Fifth Division Court.—Clerk, James Little,—Deal Town P. O.; *Bailiff*, Joseph Hetherington.—Deal Town P. O.; *Limits*—The townships of Romney and all those parts of the townships of Tilbury East and Raleigh not included in the first Division.

Sixth Division Court.—Clerk, Robert Mitchell.—Oungah or Wallaceburgh P.O.; *Bailiff*, Stephen Kinney.—Oungah P. O.; *Limits*—Dover East north of the fourth concession and west of lots seven in each concession northerly.

Seventh Division Court.—Clerk, Thomas Ridley,—Clearville P.O.; *Bailiff*, Amos King,—Kilmarnock P.O.; *Limis*—The townships of Oxford.

NOTICE TO SUBSCRIBERS.

The Publishers of the *U. C. Law Journal* request any Subscriber whose name may not appear in the List of Remittances (his Subscription having been sent in) at once to notify them of the fact of the omission. It may be as well also to observe that the advanced price of $5 will be charged, unless Subscriptions be at once remitted.

† *Vide* observations *ante* page 196, Vol. I., on the utility and necessity of this Directory.