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DIARY FOR APRIL.

3. Friday .... *Good Friday.*
4 Saturday . .. Last day for notice of trial for York and Peel Assizes.
5. SUNDAY...... *Easter Sunday.*
6. Monday ..... County Court and Surrogate Court Terms begin.
7. Tuesday .... Chan. Sitt. Simcoe. Last day of notice Whitby & Woodstock.
11. Saturday... .. County Court and Surrogate Court Terms end.
12. SUNDAY...... *Low Sunday.*
13. Monday .... York and Peel Spring Assizes. [and Cobourg.
14. Tuesday........ Chy. Sitt. Guelph & Sarnia. Last day notice Barrie, Goderich,
17 Friday . . .. Last day for setting down for Hearing in Chancery.
19. SUNDAY...... *2nd Sunday after Easter.*
20. Monday .... Last day for notice of Hearing in Chancery.
21. Tuesday .... Chan. Sitt. Whitby & Woodstock. Last day notice Belleville.
26. SUNDAY...... *3rd Sunday after Easter.*
27. Monday .... Chancery Hearing Term commences. [Kingston
28. Tuesday .... Chan. Sitt. Barrie, Goderich and Cobourg. Last day of notice
28. Thursday .... Last day for Comp. Assess. Rolls. Last day for Non-Residents to give lists of their lands.

BUSINESS NOTICE.

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

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

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

The Upper Canada Law Journal.

APRIL, 1863.

MR. SCATCHERD AND CHEAP LAW.

Cheap law, like cheap whisky, is a curse to a people. This is a trite remark, often made, but not always understood. There is a fascination about litigation, which some men cannot resist. The cheaper the cost of litigation, the greater is the fascination. Much and needless litigation is only productive of ill-feeling, malice and hatred.

What so much discourages the litigious as a wholesome dread of law costs? It has always been found that in proportion as law costs are reduced, litigation increases. Jones is angry with his neighbour Brown, because the latter, in a hasty moment, called the former "a scapegrace;" whereby Jones fell much in the estimation of his fellow-men; became sick, sore and much pained in body and mind. Jones would like to sue Brown for this great wrong; but the prospect, in the event of failure, of having to pay costs to the amount of $100, puts a damper on his intentions. Reduce the costs from $100 to $25, and Jones without doubt will have "a slap" at Brown. Win or lose, the costs cannot be much; so that, with little or no hesitation, he proceeds to gratify his appetite for revenge. Jones and Brown are fair specimens of the genus "homo" in matters of litigation.

Is it not within the experience of us all, that the immediate effect of the increase of the jurisdiction of our Division Courts, was to increase litigation to such an extent, that suits increased by tens and hundreds? Two or three hundred suits at one court was no uncommon occurrence. Why was this? Because before the change in the law, two hundred out of the three hundred suits could not be brought without the risk of County Court costs, or about $'0 in each suit. The dread of such a consequence exercised its influence in pacifying the discontented, and led to compromises of a conciliatory kind, leaving men good neighbours instead of bitter enemies.

Why is it that the Judges of our superior courts are now so often called upon to try actions for malicious arrest, and maliciously suing out process? It is because of the increased facilities afforded to men for resort to courts of law for the mere gratification of their angry passions. Most of such suits are for the malicious issue of attachments or other process out of the inferior courts. When once the seeds of dissension are sown, one suit leads to another, till happy homes are rendered desolate, and well-to-do men are brought to the brink of poverty, if not of insanity.

The zealot for cheap law costs should ponder on things such as these; let him also consider how much peace between men is preserved by keeping up the respectability of the legal profession.

It is a fact, that respectable lawyers, so far from encouraging litigation, do all they can to prevent it. It is no part of a respectable lawyer's duty "to get his neighbours by their ears," in order that he may profit by their misery. No respectable lawyer is guilty of such conduct. Better, then, to pay lawyers well for what they do, than to make it their interest to increase the number of suits by fostering litigation, in order to make their gains, notwithstanding the decrease of law costs, correspond with former receipts. Reduction of law costs might have the effect of driving respectable men out of the profession of the law into other callings, where their talents and their learning would be better requited; but most assuredly their place would be supplied by vampires, who would prey upon the very vitals of the community, and whose number would be legion.

No profession exercises so powerful an influence on the community as that of the law. The influence may be for good or for bad, according to the description of the men who wield it. A liberal and learned profession is at once the pride and the glory of England. The profession in Canada, so far, has not been under the mark. But tell the able advocate, whose life has been spent in the study of his profession, that he shall not be paid for his services beyond the compensation allowed to the "negro minstrel," or "vendor of quack medicines," and what will become of

him? He will leave the profession in disgust, and his place will be taken by those whose moral faculties are more blunted, and appetite for plunder more craving. The result, in the language of the penny-a-liner, "may be more easily imagined than described."

In England it has not yet been attempted, as a rule, to limit counsel fees. The laborer there is worthy of his hire. One man is more deserving than another. While Mr. Addlepate might be delighted to receive the magnificent fee of ten dollars for pleading a case, Mr. Skilful would not accept the brief with less than fifty. And perhaps, after all, the services of Mr. Addlepate at ten dollars, would be dearer than those of Mr. Skilful at fifty. Why, then, attempt to put both these men on the same footing? Why say that no greater counsel fee shall be taxed than twenty dollars? What is the consequence? It is this: it compels the suitor to employ mediocrity, or else pay the difference between the fee for mediocrity and talent out of his own pocket. This is not as it ought to be. The rule is, that the party in the wrong should pay the penalty of his position by paying the costs of litigation. But if the fees of litigation are so small that no man of talent or respectability will accept them, then the party in the right, who employs a man of talent or respectability, must pay his counsel out of his own pocket, and so be a loser, no matter what the result of the litigation.

The principle of measuring a lawyer's fees by a tariff, and taxing them according to that tariff, is at best a doubtful one, and should not be stretched. Why should not the lawyer as well as the doctor be allowed to make his own bargain? There is no substantial difference between them. The one is employed to preserve and protect life; the other is employed to preserve and protect property. Each is a member of a liberal profession; each is licensed to practise that profession. There was a time when the Legislature of England endeavored to fix the value of different commodities, and of the services of different classes of the community, by acts of Parliament. That time is almost past. The only relic of it, in the case of commodities, is that of the usury laws or fixed price of money; the only relic of it, in the case of individual classes of the community, is that of lawyers. It is absurd to attempt to fix by law that which, owing to surrounding circumstances and lapse of time, must necessarily fluctuate. If money, like any other commodity, exceeds the demand, it will be cheap. If lawyers, like any other class of laborers, exceed the demand, their services will be cheap. Such is the law of supply and demand. It constantly adjusts itself to surrounding circumstances. But the attempt to fix the price of a thing fluctuating in itself, is as illogical as an attempt to curb the wind.

Lawyers must live. If they do not live strictly "by the sweat of their brow," they live by brain work—no less arduous. They are trained for a particular profession. For a consideration their services are offered to society. If the price for the services which the lawyer may at the instance of his fellow-men be called upon to perform are fixed by act of Parliament, why should not the price of services which he receives? He must eat, drink and live, like other men. If the shoemaker is not restrained by act of Parliament to a fixed price for his boots, why should the lawyer, who pays him for the boots? If the grocer, who supplies the lawyer with the necessaries of life, is not limited to a tariff, why should the lawyer, who pays for the groceries? If the laborer, who cuts the lawyer's wood, may charge less or more for his services, according to circumstances, why should the lawyer who pays be limited in his receipts? A fee of twenty dollars for pleading a cause, when provisions and other necessaries of life are cheap, may be a fair compensation, and yet no compensation at all if the price of provisions and other necessaries of life increase three-fold. If the prices of the necessaries of life increase three-fold, why should not the lawyer, whose expenditure is thereby increased, be allowed to make some corresponding increase in his charges? A tariff of fees for the services of lawyers is theoretically if not practically a rank absurdity. It is the remnant of absurdities which long since, as the statute book of England to this day testifies, have exploded.

Lawyers are eminently conservative in their views. Their whole course of duty is to administer the laws as they find them. Their whole training causes them to cling to conservative ideas. This is the reason why they still submit to fixed fees for specified services, centuries after others who were in like situation are released from the thraldom.

These remarks have been occasioned by the perusal of a bill, introduced last session, and again introduced during the present session of the Canadian Legislature, by Mr. Scatcherd—himself a lawyer of some little reputation.

This bill is entitled, "An Act to amend the law in relation to law costs in Her Majesty's Courts of Common Law and Chancery in Upper Canada." It is a most extraordinary bill. It professes to be a remedial measure. It recites that "the costs now allowed by law in actions and proceedings in Her Majesty's Courts of Common Law and Chancery in Upper Canada, are exorbitant and oppressive." Strange fact—that Upper Canada has been since its first settlement groaning under oppression, and that there has not been to this day one petition from one individual in support of this bill! But for the sake of argument, suppose the principle to be true, is the Legislature the proper tribu-

nal for deciding whether a lawyer shall receive fifty cents or twenty-five cents for an attendance at court? We thought that modern experience had taught the Legislature that it was much better for them to leave to the Judges, whose position gives them ample opportunity of deciding upon the necessity of changes in law tariffs, the power to regulate such tariffs. But no; this modern Daniel has got new light. He proposes to leave to a tribunal, nine-tenths of whom know nothing of the matter in hand, the power of deciding upon the necessity of changes, and the nature of the changes to be made; which changes, when made, are to be as fixed as if engraved on tables of brass.

Considering the boldness of the design, it does not surprise us to find much boldness in its execution. Mr. Scatcherd proposes to enact, that the table of costs framed by the Judges of the superior courts of common law, under the provisions of the Common Law Procedure Act, 1856; the table of costs framed in pursuance of the County Courts Procedure Act, 1857; and the table of costs framed by the Judges of the Court of Chancery on the 3rd June, 1853; and also every other table of costs, and every order for the allowance of costs now in force in the said courts shall be repealed and declared void.

If, after the repeal of these tariffs, he were to enact that lawyers, like other classes of the human family, should be allowed to charge for their services whatever their services are worth, "anything in any law to the contrary notwithstanding," there might be something in the bill which would at all events give it a claim to a respectful consideration; but instead of this, we find it gravely proposed to reënact the tariffs on a reduced scale, which perhaps would be quite adequate for the services of a man of Mr. Scatcherd's calibre, but intensely laughable if intended as a full compensation for the services of a lawyer of ability.

Let us take a few examples:

	S. C. £	s.	d.	C. C. £	s.	d.
TO THE ATTORNEY.						
Attendance at Judges' Chambers, at Crown Offices, at the Clerk's Office, and all other common attendances in course of a cause,	0	1	0	0	1	0
IN COURTS OF COMMON LAW.						
COUNSEL FEES.						
Fee on motion of course, or on motion for rule nisi, or on motion to make rule absolute in matters not special..........	0	5	0	0	2	6
On special motion for rule nisi (only one counsel fee to be taxed)..................	0	15	0	0	5	0
To attend reference to Master or Clerk, where counsel necessary	0	10	0	0	5	0
For argument on supporting or opposing rule on return of rule nisi, or argument on demurrer, special case or appeal........	1	10	0	0	15	0
Fee, with brief, on assessment..................	0	10	0	0	5	0
Fee, with brief, at trial in actions of a special and important nature (in Co. Court).	.....	.....		1	10	0
Fee, with brief, at trial in cases of tort, or in ejectment	2	10	0	....		
For fee, with brief, in other cases	0	15	0	....		
For fee, with brief, in Queen's Bench or Common Pleas, to counsel in argument or examination in Chambers, to be allowed by the Judge at the time when he considers the attendance of counsel necessary, not less than........................	0	5	0	....		
Nor more than..	0	12	6	....		
IN THE COURT OF CHANCERY.						
COUNSEL.						
On argument at Chambers.................	....			0	5	0
Fee when cause at issue and set down for the examination of witnesses	....			2	10	0

The framer of the bill, not thinking that he has so far made himself sufficiently ridiculous, proposes to enact as follows:

"No Judge in either of Her Majesty's Superior Courts of Common Law, or of any County Court, nor the Master, nor any taxing officer of the said Superior Courts, shall, after the passing of this Act, *increase* any counsel fee with brief at trial, or on argument of demurrers, special case, appeal or otherwise, *in any case whatever.*"

He in like manner also proposes to enact as follows:

"No retainer shall be allowed or taxed in any bill of costs; and it shall be the duty of the Judge presiding at the trial of any cause wherein such charge is made, to disallow the same, whether such action is contested or not."

The remaining portion of the bill consists of some provisions, more or less absurd, for the taxation of bills of costs, intended, no doubt, as a substitute for the provisions now existing by law for the taxation of bills, though the existing provisions are in no way referred to, much less repealed. The machinery proposed, if intended as a substitute, will not be less expensive than existing machinery, and will be found to be clumsy and unsatisfactory. Our objection, however, being to the principle of the bill, we have no inclination to examine its provisions more in detail.

Some will say the bill must be a good one, as it is "fathered" by a lawyer. This does not follow. Mr. Scatcherd's motives in giving birth to such a bill are either good or bad. If his object be to pander to the popular prejudice against lawyers, and to gather political support because of claptrap against law costs, his motives are bad. If, however, his object be to do good by attempting to remove an imaginary evil, his motives at least are good. But he ought to take heed that in "casting out one devil," he does not take unto himself "seven other devils worse than the first." Perhaps he in his heart thinks that the fees which he proposes to enact as the only fees for the services indicated, are sufficient; perhaps he so thinks, because in his own practice he deemed them sufficient; perhaps his clients considered them enough, if not too much, for his services; but he ought to remember that all men in the profession are not to be judged by his standard. He was never, that we are aware of, entrusted with any cause of

importance. His responsibilities were light, and in all probability his fees were in due proportion to his responsibilities.

Much odium is unjustly thrown upon lawyers for their apparently large bills of costs. Those who pay them forget that a large proportion of the bill is made up of moneys disbursed to the officers of the courts in the course of the cause. The lawyers are the collectors of the court fees, and, like other tax collectors, bear much of the odium that properly belongs to those who impose the taxes, or for whose benefit they are intended. If Mr. Scatcherd's real object be to reduce law costs, so as to relieve suitors as much as possible, he should endeavor to do so without injury to the respectable portion of the profession. Let him reduce the "court fees," so as to allow the lawyer's bill to represent as nearly as possible the lawyer's receipts.

But we neither agree with Mr. Scatcherd in the object of his bill, nor in his mode of carrying that object into effect. His aim, we assume, is pure patriotism—the public good. We think the public good would be better consulted by the increase of law costs, than by the reduction of them. All admit that the less litigation in a community, the better. All know that in England the costs of a suit are four times what they are in Canada; and all know that suits in England, considering the difference in population, are not one-fourth the number they are in Canada. We fearlessly assert that the direct consequence of cheapening law is to increase litigation. All experience proves it. It may be asked—Why then do you, on the part of lawyers, oppose the reduction of law costs? Our answer is, that our opposition is not so much on behalf of the interests of lawyers, as what we conceive to be the true interests of society. Were we to consult the interests of unscrupulous lawyers only, we should advocate every measure that would have a tendency to increase litigation, and so would support Mr. Scatcherd's bill. But, representing as we do at the same time the interests of respectable lawyers and the interests of society, we advocate only such measures as will best preserve the rights of both. Their interests are, we think, in this respect identical. We say to society—have only respectable lawyers, and pay them well; and in so doing, while you maintain the standard of the bar, you discourage litigation—better far this course of action, than to have indifferent and unscrupulous lawyers at small fees, and wide-spread litigation—remember that if you lower the standard of the bar, you lower the standard of the bench;—remember also that upon the integrity of the bench, depends your most cherished and most valued rights—those of life, liberty and property. Sap not the foundation of the edifice, or you will ruin the superstructure.

PROPOSED AMENDMENT OF THE DIVISION COURTS ACT.

Among other proposed law amendments, we find a bill introduced by Mr. M. C. Cameron, to amend the Division Court Act. The following is a copy of it:

BILL.

An Act to amend the Act respecting Division Courts, Chapter 19 of the Consolidated Statutes of Upper Canada.

Whereas by the eighth section of Chapter nineteen of the Consolidated Statutes for Upper Canada, the Justices of the Peace in each County in General Quarter Sessions assembled, may, subject to the restrictions therein contained, appoint and from time to time alter the number, limits and extent of every Division, and shall number the divisions beginning at number one; but a less number of Justices cannot alter or rescind any resolution or order made by a greater number at any previous Sessions: And whereas more townships than one in many instances have been and may be included in one Division, and by reason of the increase of population in townships so included, the public convenience may require that the number of Divisions and Courts should be increased: And whereas in consequence of the difficulty experienced in effecting such increase by reason of the non-attendance at any General Quarter Sessions of as many Justices as were present when the Divisions were established, it is expedient for remedy thereof that the said eighth section should be repealed; Therefore Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada enacts as follows:—

I.—From and after the passing of this Act, the eighth section of the said Act cited in the preamble shall be repealed, and the following clause be read as forming part of the said Act in the place of the said eighth section:—

"A majority of the Justices of the Peace in General Quarter Sessions assembled in any County may, subject to the restrictions hereinafter contained, appoint and from time to time alter the number of Divisions or the limits and extent of any Division or Divisions, and shall number the Divisions beginning at number one; but a less number of Justices than five shall not alter or rescind any resolution or order made at any previous Session; nor shall a less number of Justices decrease the number of Divisions established in any County by an order or resolution made by a greater number at any previous Session."

II.—Notwithstanding anything in the one hundred and seventy-fifth section of the said Act, any party brought before any Division Court or any County Judge under the provisions of the said section, dissatisfied with the decision of such Court or Judge or the verdict of any jury, in respect to any claim to any property seized or attached under execution or attachment, where the property seized or attached shall exceed the value of fifty dollars,—whether seized under one execution or attachment, or several may appeal from such decision or verdict to the County Court of the County or United Counties in which such decision or verdict is made or rendered;-Provided always, that no such appeal shall be heard or allowed unless the party or parties appealing, shall within ten days after such decision or verdict shall have been given or rendered, give notice of his or their intention to appeal to the Clerk of the Division Court in which such decision or verdict shall have been given or rendered, and shall also, within the time aforesaid, file with such Clerk a bond to the said Clerk, executed by the party appealing, or by some other person, and two sureties to be approved by the said Clerk, in the sum of two hundred dollars, conditioned to prosecute the appeal with effect and without delay, and to pay all costs as well of the proceedings in the said Division Court as of the said appeal, in the event of the appellant not succeeding in the said appeal; And provided also, that the said bond be accompanied by an affidavit of justification

by such sureties, and an affidavit of the due taking thereof by a subscribing witness to the execution of the said bond.

III.—The question to be tried on the said appeal shall be the right of the claimant or claimants to the property seized or attached as against the plaintiffs in the execution or executions, attachment or attachments, and it shall be tried before a jury without formal pleadings, in the manner in which interpleader issues are now tried in the County Court; and it shall be the duty of the party or parties appellant to prepare an issue embodying such question, and a statement of the goods or property claimed, and to file the same in the office of the Clerk of the County Court of the County in which such issue is to be tried, within fifteen days after the decision or verdict appealed from is made or rendered, and to give notice thereof to the Clerk of the Division Court in which such decision or verdict was made or rendered; and in case the party or parties in whose favour such decision or verdict has been made or rendered, shall not object to such issue and give notice of such objections to the said Clerk within five days next after the expiration of the last day allowed to the appellant to file such issue, the issue so filed shall be tried by a jury of the County at the next sitting of the County Court for the trial of causes which shall happen not sooner than twenty four-days next after the decision or verdict appealed from shall have been given or rendered; Provided always, that it shall be lawful for the Judge of the County Court in which such issue is to be tried, to enlarge the time for the trial thereof, upon cause shown by either party as in ordinary cases.

IV.—The jury before whom the said issue is tried may render a general verdict in favor of the appellants or respondents, and for the whole of the goods and chattels or personal property seized or attached, or in favor of one or more appellant or appellants, respondent or respondents and against the other or others of them, or in favor of one or more as to some portion of the goods or property and of the others as to other portion or portions.

V.—Wherever the jury shall render a general verdict in favor of the appellant or respondent, or for the whole of the property seized or attached, the successful party shall be entitled to his costs; and in case of the verdict being apportioned, the costs shall be in the discretion of the Judge of the Court before whom the issue is tried, who shall make an order on the back of the issue directing by whom the costs shall be paid; and such costs shall, after taxation by the Clerk of the County Court in accordance with the tariff of fees, or practice in interpleader issues, be recovered by execution to be issued out of the County Court as upon a judgment in ordinary cases; and in case the appellant shall be directed to pay the costs, the respondant shall or may in his option proceed to recover such costs by execution as aforesaid, or action on the bond given as security aforesaid.

VI.—All parties giving notice of their intention to appeal shall be made appellants in one issue, and all parties in whose favor the decision or verdict appealed from has been given or rendered shall be made respondents, and shall be answerable for costs according to the provisions of the fifth section of this Act, unless he or they shall give notice of the abandonment of the appeal or of the decision or verdict in his or their favor appealed from, within twenty days next after such decision or verdict shall be made or rendered; and in case of the appeal being abandoned, the decision or verdict appealed from shall stand, and in case of the abandonment of the decision or verdict by the party or parties in whose favor the same has been rendered, the said decision or verdict shall be reversed with or without costs in the discretion of the Judge of the Court in which the proceedings appealed from was pending; such costs to be recovered and all further proceedings to be had in the said Court as if the decision had been originally in favor of the appellant.

VII.—The Judge of the County Court before whom any issue shall be tried under the provisions of this Act shall have all the powers of amendment and other powers of a Judge in the County Court in causes originated in such County Court.

DIGEST OF ACTS PASSED DURING SESSIONS OF 1860-1-2,

WHICH REPEAL, AMEND, VARY OR AFFECT, CONSOLIDATED STATUTES FOR UPPER CANADA.

(By J. S. Hallowell, Student-at-Law.)

Con. Stat. U. C.

- c. 3, p. 7, vide 23 Vic. c. 40, s. 2.
- c. 3, sub-s. 6, p. 9, Townships of Raglan, Lyndoch, Radcliffe and Brudenell, added to County of Renfrew by 23 Vic. c. 39, s. 4.
- c. 3, sub-s. 6, Nos. 10, 16, p. 9, Rep. by 23 Vic. c. 39, s. 2.
- c. 3, sub-s. 6, 7, p. 9, Counties of Renfrew and Lanark, 24 Vic. c. 51, separates them.
- c. 3, sub-s. 11, p. 10, Townships of Miller and Cannonto added to County of Frontenac by 23 Vic. c. 39, s. 2, 5; and vide s. 1 as to union of Frontenac with Lennox and Addington.
- c. 3, sub-s. 12, p. 10, Townships of Effingham, Abinger, Ashby and Denbigh, added to County of Addington by 23 Vic. c. 39, s. 3, 5; and vide s. 1 as to union of Addington with Lennox and Frontenac.
- c. 3, sub-s. 13, p. 10, vide 23 Vic. c. 39, s. 5; and vide s. 1 as to union of Lennox with Frontenac and Addington.
- c. 3, sub-s. 15, p. 10, vide 23 Vic. c. 39, s. 5.
- c. 3, sub-s. 18, 19, p. 11, 12, Counties of Peterborough and Victoria, vide 24 Vic. c. 50.
- c. 3, sub-s. 20, No. 15, p. 12, Township of Robinson changed to Morrison by 23 Vic. c. 40, s. 3.
- c. 3, sub-s. 30, p. 14, sub-s. 9, p. 16, Biddulph and McGillivray taken from the County of Huron and annexed to the County of Middlesex.
- c. 3, sub-s. 36, County of Middlesex, by 25 Vic. c. 28, Townships of Biddulph and McGillivray added to this county.
- c. 3, sub-s. 34, No. 8, p. 16, Township of Sandwich, by 23 Vic. c. 96, divided into two distinct Municipalities.
- c. 3, s. 6, p 19, this section not affected by 23 Vic. c. 21; vide 23 Vic. c. 21, s. 7.
- c. 5, s. 1, p. 23, Repealed as to registered judgments by 24 Vic. c. 41, s. 10.
- c. 10, s. 6, p. 32, as to rank of Chief Justice of Upper Canada, repealed by 25 Vic. c. 18, s. 1.
- c. 12, s. 66, p. 59, s. 67, 68, p. 60, as to registered decrees and orders which bind lands, &c., repealed by 24 Vic. c. 41, s. 1.
- c 13, s 5, p. 63, as to President of Court of Error and Appeal, repealed by 24 Vic. c. 36; vide 25 Vic. c. 18, s. 1, 2, 3.
- c. 13, s. 8, p. 63, Time of sittings of said Court altered by 25 Vic. c. 18, s. 4.
- c. 15, p. 75, vide 23 Vic. c. 42, s. 4, cases in Superior Courts may be tried in County Courts; 23 Vic. c. 43, extends jurisdiction of County Courts; 23 Vic. c. 44, regulates the removal of causes from County Courts.
- c. 17, p. 115, Court of General Quarter Sessions, by 24 Vic. c. 14, not to try treasons and felonies.
- c. 17, s. 10, p. 117, as to Court of General Quarter Sessions apppointing Constables annually, repealed by 23 Vic. c. 8; and last mentioned act amended by 24 Vic. c. 48.
- c. 19, p. 136, Division Court Act, c. 29, p. 325, Replevin Act, and 23 Vic. c. 43, to be read as one act so far as relates to cases within the jurisdiction of the Division Courts, vide 23 Vic. c. 45, s. 7.
- c. 19, s. 151, p. 162, as to what may be seized under a Division Court execution against goods, part repealed by 23 Vic. c. 25, s. 2.
- c. 19, s. 146, p. 161, certificate of Division Court judgment may be obtained for registry, repealed by 24 Vic. c. 41, s. 2.

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c. 22, s. 264, p. 228, how records to be endorsed, repealed by 23 Vic. c. 42, s. 1; 23 Vic. c. 42, s. 2, in lieu thereof.
c. 22, s. 265, p. 229, how records in town causes to be entered, repealed by 23 Vic. c. 42, s. 1.
c. 22, s. 265, p. 229, 23 Vic. c. 42, s. 3, in lieu thereof.
c. 22, s. 245, p. 238, Deputy Clerks may give certificates of judgments entered by them, which certificate may be registered in the proper county, and bind lands, repealed by 24 Vic. c. 41, s. 3.
c. 22, s. 254, p. 239, apparel, tools, &c., exempted from execution, repealed by 23 Vic. c. 25, s. 3, 4, vide s. 5, 6.
c. 22, s. 326, p. 254, suits within jurisdiction of County Courts may be brought in the Superior Courts, repealed by 23 Vic. c. 42, s. 1.
c. 22, s. 327, p. 254, but in County of York not without Judge's fiat of leave, repealed by 23 Vic. c. 42, s. 1.
c. 22, s. 333 to 341, p. 256-7-8, as to power of Judges to make rules, applied to 23 Vic. c. 45, s. 9.
c. 22, s. 339, p. 258, Judges may extend Superior Court rules to County Court, vide 23 Vic. c. 43, s. 5.
c. 24, s. 21, p. 281, decrees in cases of sequestration, when registered, to create a charge on real estate, repealed by 24 Vic. c. 41, s. 4.
c. 25, s. 3, p. 287, when writ of attachment to be marked "inferior jurisdiction," repealed by 23 Vic. c. 42, s. 1.
c. 27, p. 302, Ejectment Act, certain provisions thereof applied to County Courts and to 23 Vic. c. 43, by 23 Vic. c. 43, s. 3, vide s. 6.
c. 28, p. 323, Dower, vide 24 Vic. c. 40, as to assignment of dower; and 24 Vic. c. 40, s. 18, as to necessity of notice of action.
c. 29, p. 325, Replevin Act, c 19, p 136, Division Court Act and 23 Vic. c. 45, to be read as one act, by 23 Vic. c. 45, s. 7.
c. 33, s. 8, p. 409, Clerks of Crown and Pleas, &c , to render half yearly accounts, repealed by 23 Vic. c. 46, s. 1.
c. 33, s. 8, p. 409, 23 Vic. c. 46, s. 2, in lieu thereof.
c. 34, s. 1, sub-s. 2, p. 410, as to Graduates of three years' standing on books of the Law Society, amended by 23 Vic. c. 47, s. 1, and 23 Vic. c. 47, s. 2, to be read as an additional section to c. 34, s. 1, p. 410.
c. 35, s 2, sub-s. 2, p. 411, not to apply to persons entered after 1st March, 1860; vide 23 Vic. c. 48, s. 1.
c. 35, s. 2, sub-s. 2, 23 Vic. c. 48, s. 2, to be read as an additional section to c. 35, s. 2, p. 411.
c. 40, p. 436, Medical Board and Practitioners, vide 24 Vic. c. 24, as to vaccination.
c. 49, p. 465, Joint Stock Companies for Roads amended by 23 Vic. c. 54, 24 Vic. c. 18; vide 23 Vic. c. 31 and 24 Vic. c. 20.
c. 50, p. 492, Joint Stock Companies for Piers, Wharves, &c., amended by 24 Vic. c. 18; vide 23 Vic. c. 31, 24 Vic. c. 20.
c. 51, p. 498, Joint Stock Companies for Agricultural purposes, amended by 24 Vic. c. 18; vide 23 Vic. c. 31 and 24 Vic. c. 20.
c. 52, p. 503, Mutual Insurance Companies. See as to Foreign Insurance Companies, 23 Vic. c. 33, 24 Vic. c. 47; vide 23 Vic. c. 31 and 24 Vic. c. 20.
c. 54, s. 60, 61, 62, 63, 64, p. 536-7, certain provisions as to dissolution of union of counties applicable where an incorporated village separates from the township in which it is situated, 24 Vic. c. 39.
c. 54, s. 135, p. 554, as to election of Reeves and Deputy Reeves, amended by 24 Vic. c. 37.
c. 54, s. 223, p. 574, Municipalities may pass by-laws creating debts, by 23 Vic. c. 9, s. 8, the County of Middlesex, in consolidating its debt, exempted from the formalities of s. 223.
c. 54, s. 224, p. 575, such by-laws to be assented to by ratepayers, by 23 Vic. c. 9, s. 8, the County of Middlesex, in consolidating its debt, exempted from the formalities of s. 224.

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c. 54, s. 246, p. 583, By-laws as to tavern licenses amended by 23 Vic. c. 53, which last statute and the sub-sections of the 246th section of the 54th chapter, are repealed as regards cities by 25 Vic. c. 23, s. 1; vide s. 2, 3, 4, 5, 6, 7, 8.
c. 54, s. 247, p. 584, sums to be paid for licenses, &c.; vide 25 Vic. c. 6, s. 3, and c. 23, s. 5.
c. 54, s. 249, 250-1-2-4-5-6, p. 584-5-6, these sections applied to unorganized tracts, by 23 Vic. c. 6, s. 5; vide 25 Vic. c. 6, s. 5.
c. 54, s. 259, p. 586, appointment of Inspectors of Licenses, partly repealed by 25 Vic. c. 23, s. 4; vide s. 5, 6.
c. 54, s. 260, 262, 263, 264, p. 587-8, as to licenses, amended by 25 Vic. c. 23, s. 5.
c. 54, s. 370, p. 638, power of Recorder's Court to try treason and capital felonies, by 24 Vic. c. 14, revoked.
c. 54, s. 377, p. 639, Sessions of the Recorder's Court, repealed by 23 Vic. c. 50, which is itself repealed by 25 Vic. c. 19; and see section there substituted for s. 377.
c. 55, p. 649, Assessment Act, amended by 23 Vic. c. 52.
c. 55, s. 9, sub-s. 10, p. 651, as to public institutions, amended by 23 Vic. c. 51.
c. 55, s. 28, p. 655, real property to be estimated at full value amended by 24 Vic. c. 38, s. 1.
c. 55, s. 29, p. 655, what deemed vacant land and how valued amended by 24 Vic. c. 38, s. 2.
c. 55, s. 31, p. 656, assessment of lands of non-residents; vide 24 Vic. c. 38, s. 3.
c. 55, s. 63, p. 663, appeal from Court of Revision; vide 24 Vic. c. 38, s. 4, 5, 6.
c. 61, p. 701, Game Laws, repealed by 23 Vic. c. 55, which act is substituted for c. 61.
c. 64, p. 728, Common School Act, vide 23 Vic. c. 49.
c. 64, s. 17, p. 730, challenging votes, amended by 23 Vic. c. 49, s. 3.
c. 64, s. 23, p. 731, penalty for refusing to serve as trustee, vide 23 Vic. c. 49, s. 18.
c. 64, s. 45, p. 740, union sections of two or more townships, how formed and altered, amended by 23 Vic. c. 49, s. 5.
c. 64, s. 46, p. 740, such union to be deemed one section, amended by 23 Vic. c. 49, s. 5.
c. 64, s. 84, p. 749, difference between teacher and trustees to be settled by arbitration, vide 23 Vic. c. 49, s. 8, 9.
c. 64, s. 85, p. 750, power of arbitrators to examine, vide 23 Vic. c. 49, s. 8, as to auditors.
c. 64, s. 86, p. 750, warrant of arbitrators, vide 23 Vic. c. 49, s. 8.
c. 64, s. 95, p. 754, when more than one grammar school, amended by 23 Vic. c. 49, s. 24.
c. 64, s. 140, p. 767, how penalties recoverable, vide 23 Vic. c. 49, s. 19.
c. 69, s. 1, p. 780, when lands may be vested in trustees for churches, amended by 24 Vic. c. 43.
c. 72, s. 1, p. 787, marriages, amended by 24 Vic. c. 46.
c. 78, s. 8, p. 807, limitations of certain actions, &c., amended by 25 Vic. c. 20.
c. 80, p. 810, claims to lands for which no patents have issued, vide 23 Vic. c. 2, s. 19.
c. 86, s. 12, p. 859, word "judgment" struck out, vide 24 Vic. c. 41, s. 5.
c. 86, s. 27, p. 863, words "judgment or" and "judgment" struck out, vide 24 Vic. c. 41, s. 5.
c. 87, s. 1, 2, 3, p. 867-8, mortgages, amended by 24 Vic. c. 41, s. 6.
c. 88, s. 45, p. 879, limitation of actions, &c., amended by 25 Vic. c. 20.
c. 89, s. 8, p. 883, Registry vaults, offices, amended by 24 Vic. c. 42.
c. 89, s. 17, sub-s. 4, 5, p. 884, judgments and decrees for payment of money, repealed by 24 Vic. c. 41, s. 7, sub-s. 2.
c. 89, s. 17, sub-s. 7, p. 885, words "judgment and" struck out by 24 Vic. c. 41, s. 7, sub-s. 3.
c. 89, s. 17, sub-s. 8, p. 885, discharges of decrees, &c., repealed 24 Vic. c. 41, s. 7.

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c. 89, s. 17, sub-s. 9, p. 885, rules and orders for payment of money to be registered by 24 Vic. c. 41, s. 7.

c. 89, s. 18, p. 885, how judgments, &c., registered, repealed by 24 Vic. c. 41, s. 7, sub-s. 4.

c. 89, s. 36, 37, 38, 39, p. 889, as to judgments and certificates thereof, repealed by 24 Vic. c. 41, s. 7.

c. 89, s. 41, p. 890, registration of decrees for payment of money to bind lands, repealed 24 Vic. c. 41, s. 7.

c. 89, s. 42, p. 890, court may confine effect of registration, repealed by 24 Vic. c. 41, s. 7.

c. 89, s. 47, p. 892, words "judgment," "rule or order," struck out, 24 Vic. c. 41, s. 7, sub-s. 5.

c. 89, s. 48, 49, 50, 51, 52, p. 892-3, effect of judgments, decrees, rules and orders, &c., repealed 24 Vic. c. 41. s. 7.

c. 89, s. 53, p. 894, amended as to judgments and decrees, 24 Vic. c. 41, s. 7, sub-s. 6.

c. 89, s. 54, p 894, judgments no lien on lands until registered, repealed 24 Vic. c. 41, s. 7.

c. 89, s. 55, p 894, judgment creditor not registered need not be a party to foreclosure, repealed 24 Vic. c. 41, s. 7.

c. 89, s. 56, p. 894, amended as to registered judgments and certificates 24 Vic. c. 41, s. 7, sub-s. 7.

c. 89, s. 58, p. 895, discharge of judgments, repealed 24 Vic. c. 41, s. 7, sub-s. 8, which is itself repealed by 25 Vic. c. 21, and see section there substituted for repealed s. 58.

c. 89, s. 60, p. 895, form of certificate of discharge, repealed 24 Vic. c. 41, s. 7.

c. 89, s. 61, p. 896, proof of certificate, repealed by 24 Vic. c. 41, s. 7.

c. 89, s. 62, 63, p. 896, registry of judgments, decrees may be otherwise discharged, repealed by 24 Vic. c. 41, s. 7.

c. 89, s. 64, p. 896, registered judgments to bind lands for only three years, repealed 24 Vic. c. 41, s. 7.

c. 89, s. 71, p. 897, separate register for judgments, &c., repealed by 24 Vic. c. 41, s. 7.

c. 89, s. 74, sub-s. 4, p. 899, Fee for certificate of judgment, repealed 24 Vic. c. 41, s. 7.

With reference to registered judgments, &c., it is enacted, "that all other statutes, parts and clauses of statutes, authorizing the registration of judgments, decrees and orders for the payment of money in Upper Canada, are hereby repealed." 24 Vic. c. 41, s. 3.

c. 90, s. 11, p. 904, judgments to bind lands, &c., repealed 24 Vic. c. 41, s. 8.

c. 93, s. 35, p. 923, allowances for roads laid out by private owners amended by 24 Vic. c. 49, vide Con. Stat. C. c. 77, s. 91, p. 882.

c. 96, p. 929, apprehension of fugitives escaping from foreign countries, repealed 23 Vic. c. 41.

c. 105, s. 1, p. 947, petty trespass, penalty, repealed 25 Vic. c. 22, vide that act for section there substituted.

c. 106, s. 1, p. 948, as to duties of County Attorney at Quarter Sessions and Recorders' Courts, with reference to treasons and capital offences, repealed 24 Vic. c. 14.

c. 114, p. 963, appeal in cases of summary conviction, vide 23 Vic. c. 29, s. 8.

c. 125, p. 988, inquests by coroners, vide 24 Vic. c. 33, as to fire inquests.

c. 128, p. 997, administration of justice in unorganized tracts, vide 23 Vic. c. 6.

Indictments for perjury—Subornation of perjury—Conspiracy—Obtaining money or other property by false pretences—Keeping a gambling house—Keeping a disorderly house, and any indecent assault, not to be presented or found, except under certain circumstances, or with certain official sanction—24 Vic. c. 10.

As to forfeited estates in Upper Canada, vide 24 Vic. c. 44.

Certain certificates issued by County Court judges to insolvents, under 19, 20 Vic. c. 93, confirmed by 24 Vic. c. 45

24 Vic. c. 53, separation of Toronto from York and Peel, amended by 25 Vic. c. 24, 25 Vic. c. 27, repealed 23 Vic. c. 95. These acts, although local, are of sufficient importance to be here noticed.

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The last three lines of s. 14, p. 35, c. 10, Con. Stat. U. C., although not affected by any of the Legislative enactments of 1860-1-2, have become effete owing to the death of the much lamented Sir J. B. Robinson.

c. 11, s. 13, 14, p. 43, and s. 16, 17, 18, p. 44, applying only to W. A. Campbell, have (since his death) become inoperative.

SELECTIONS.

SHAKSPERE AS A LAWYER.

Regret has often been expressed that we know so little of the life of William Shakspere. The facts of his biography were not reckoned of sufficient value to be collected, till they had mainly undergone the "razure of oblivion," and then the busy gleaner's hand could only gather the meagre details which have come down to us. One consolation for the loss is, that he wrote his life most expressively on the monuments of his genius. The framework of events through which he passed, might add very little to the record of his works. Sometimes, unfortunately, the life and the productions of genius, when they are both known to us, are not found to be of a piece. We look in vain in the former for the genius which animates the latter; and are fortunate if the life picture do not prove the ugly reverse of the charms which adorn the work of art. This we realize in reading the painful details of Beethoven's life. He may be called the Shakspere of music. His works are sublime and deep, with the intellect as well as the poetry of music. They exhibit a mind of gigantic power and originality, an imagination unsurpassed, and the profoundest sensibilities. But the record of his life is an unpleasant jargon, and displays a man whose wayward temperament and gusts of passion were a torment to himself and others. Would it not, at least, be more pleasant, if the memory of Beethoven's life were cancelled, and the imagination were left free to surmise such a life as we think suitable to such a genius? Perhaps the same observation may be made respecting the life of Shakspere. What we do know of him is scarcely consistent with our admiration of the great dramatist, whose words have become the vocabulary of all speaking the English tongue, and whose impressive thoughts and images are familiar to every educated mind. That such a person should have become involved with Ann Hathaway, eight years his senior, and been obliged to marry her when he was but eighteen; that he was driven to London by his deer stealing, and to this circumstance the world may be indebted for his dramatic works, which else had shared the fate of the might-have-been lays of the "mute, inglorious Miltons" described in Gray's Elegy: all this is so inconsistent with the dignity of his genius, that some might reckon it as well unknown. Could we see "the immortal" in his daily walks delineated with the graphic fidelity of a Boswell, it might be no agreeable picture for those who are foolishly bent on worshipping human genius.

One advantage, certainly, has been derived from the scantiness of our knowledge of the life of Shakspere; and that is, the field for ingenuity which has thus been opened, and has been fruitful with so much of pleasing speculation. Shakspere has almost got to be a myth: and "the myriad-minded" has shared the honor with Homer of being indefinitely multiplied in personality. As with the latter, so with the former, it is matter of ingenious dispute whether he wrote all the plays ascribed to him; whether indeed all such were not the combined work of a club of writers. If the latter be true, it must be admitted that each was a Shakspere; and not only have such brilliant stars seldom shone in one constellation, but never elsewhere have their beams been confluent in one individuality of style and sentiment.

Not the least pleasing, to our mind, among these ingenious researches in the biography of Shakspere, is the exploration of

a period of his life, during which the literary world are divided in opinion whether he was an attorney's clerk, an assistant schoolmaster, or an assistant *butcher!* The time in question is from about 1570, when he probably left school, to 1586, when he is supposed to have gone to London.

If he ever was connected with the business of an attorney, he held some subordinate relation to it; for the court rolls would bear witness to the fact, if he had been admitted to practice as an attorney. Had he even been an attorney's clerk, he would probably have attested many deeds, some of which would be likely to be extant: yet none such have come to light. The only extrinsic evidence that he was ever an attorney's clerk, consists in an alleged libel upon Shakspere by Thomas Nash, which alludes to him as one of those who "learn the trade of *noverint*, whereto they were born." The libel does not name Shakspere, but it describes its subject as one who could "afford you whole Hamlets," &c. The trade of *noverint* no doubt designates a deed maker, this being the opening word in such instruments, "*Noverint universi per presentes.*" This libel was published by one Greene, whose business, with that of Nash, had been diminished by the popularity of Shakspere. Greene afterwards gave vent to his spleen in a direct attack upon Shakspere; whom he calls *Shakscene*, and seeks to stigmatize as a ranter. But Greene's libel does not renew the fling of abandoning the attorney's business. The phrase of being "born" to the attorney's trade, would imply that his father was also an attorney, which Shakspere's certainly was not. The chain of argument is therefore frail as a gossamer in several of its links. First, that Shakspere is alluded to in Nash's libel is inferred from Nash's supposed jealousy of Shakspere as a more successful author. This again is inferred from the evident spleen of Greene, Nash's publisher, exhibited in a subsequent libel by Greene; which spleen is supposed to be founded on a diminution in Greene's profits from another writer eclipsing the author who furnished copy for his press. Something had vexed him, clearly, as the ill-temper of the libel proves, and competition is supposed to be the cause which makes most "doctors disagree." Greene was bitter on Shakspere; but that it was because he did not have Shakspere's publishing, and that his own publishing was undone by Shakspere's eclipsing his writer, Nash, is a mere speculation of ingenuity. Then, supposing it proved from Greene's ill-humor that Nash was thrown into the shade, from this premise we are to infer that Nash also is bitter upon Shakspere, with no corroborative circumstance except the phrase, "whole Hamlets." Hamlet was not published, in its perfected form, till after the libel; but we are at liberty to imagine, if we will, that it may have been previously written in the first draft, and thus performed on the stage. This reasoning in proof of Shakspere having been an attorney's clerk is hardly sufficient to warrant us in annexing, as Spinosa does, often with no better warrant, to his statements of argument—Q. E. D. *questio est demonstrata.*

We must resort to other evidence; and to clear the way for it, let us dispose of a preliminary objection in the supposed incompatibility of poetry and law. Among other popular disparagements of the legal profession, it is said to be hardening to the sensibilities and narrowing to the mind. Thus, Wordsworth, in his lines upon a poet's grave, requests the attorney, with "the keenness of his practised eye," to keep his distance, as being altogether incapable of appreciating the æsthetic beauties which once adorned the sleeping bard. We suspect, however, this popular allegation against lawyers of insensibility, is founded, like the charge against them of want of conscience, on mere vulgar prejudice. That there are numbered among the profession unscrupulous and narrow minds, it would be idle to deny, as it would be impossible to prove that there are not such in every department of life. But that the general character of the profession is far different, is constantly proved by the noble lives of large-minded, liberal-hearted, and conscientious lawyers. It is supposed that presenting the merits of one side of a case furnishes a temptation to swerve from veracity: if this be so, it is not necessary to yield to the temptation; and many are the lawyers whose word is reliable as a bond. And it is equally true that the merchant, vending goods, represents only one side of the case, namely, the interest of the seller; and quite as great is his temptation, and not better resisted, to exaggerate the merits and cover the defects of his commodity. So, too, while the practice of law trains the mind to nice intellectual distinctions, and may tend to narrow and harden it; this is likewise true of other persuits to which the division of labor in society has concentrated the powers of mind and body. Undoubtedly, if the lawyer dedicates himself simply to the law, without stepping outside into the fields of moral, intellectual, and religious culture, the effect will be to develop his powers in the single direction of jurisprudence, and dwarf them in all other departments. But this is not true of the practice of law alone. It is even more applicable to all other departments of business, because scarcely any of them involve so large a field of acquisition. The merchant need know nothing but markets; while the lawyer, to become proficient in jurisprudence, must acquire an extensive knowledge of history, by which the system of law has been gradually moulded, and must study to understand the human social character as manifested in a great diversity of circumstances and periods of time; for it is this character which has given a shape to the common and statute law. Nor is this enough. To be able to apply his legal knowledge, after he has got it, to successful forensic practice, he must make a study of eloquence, which involves largely the culture of the fine arts and extensive acquaintance with *belles lettres;* and he must also become an adept in human character, so that he can read men through as they rise on the witness stand, or sit in the panel. He must also have a knowledge of practical arts and mercantile and maritime usages; for these are continually involved in the trial of causes. A narrow mind will scarcely hold so much as all this; and hence we find the successful lawyer, in any distinguished sense of the term, to be ordinarily a man of large and varied acquisition.

It is capable of proof, too, that the study of the law may furnish an excellent discipline for the literary mind, even in the department of poetry. Milton, it is well known, studied law at one period in his career. For a more modern instance, Bailey, the author of Festus, may be cited, as one who has not found the cultivation of the poetic art inconsistent with the active duties of a successful practice of law. A part of this practice calls into play the same faculties which are excercised in composition. Invention is developed in the preparation of arguments to support legal propositions; and in jury trials the imagination may have large and effective scope. The advocate sometimes presents lively pictures to the minds of the jury of facts which he contends have transpired; and this mode of proving that such facts have actually occurred, is often most impressive. Rufus Choate frequently adopted this method of satisfying the jury that certain facts had occurred, by a dramatic sketch of the events and the state of mind of those concerned in them. Thus, we remember in a trial for perjury, where Choate represented the government, he described the struggle of the culprit's mind when tempted to commit the offence, the memory of his mother's early counsels and prayers making him for a moment hesitate, before he took the fatal step. The oratorical picture, which was deeply impressive, and overwhelmed the jury with conviction that the facts in the criminal's mind did indeed occur as represented, and which secured his conviction, had no other foundation than that a witness had said the defendant hesitated when giving in the testimony alleged to be false. Perhaps no forensic orator could be referred to who brought more of imagination and dramatic representation into the argument even of dry points

of law than Choate. Nothing was dry with him. Musty parchments and black letter lore acquired for a moment a charm fresh as spring, when set off with the flowers of his rhetoric. Nor was he less sound and logical, for his exercise of the imagination. An adversary once tauntingly recommended that he should pluck some feathers from the soaring wings of his imagination, and add them to the tail of his judgment, to give steadiness and safety to his oratorical flight. But the verdicts of the jury showed that the orator had carried them with him; and the adversary was as much baffled to answer the subtle reasoning as to do away with the impression which had been made upon the imagination.

Discipline of mind is eminently secured by the study and practice of law; and discipline is as necessary to the success of the poet as of any other artist. It has been fashionable, indeed, to speak of poetry as thrown off without effort in some happy moment. But, in truth, it holds good in this as in any other art, that what is for a long time must be a long time in preparation. "I am long in painting," said the old artist, "for what I paint is to be permanent." The current maxim, *poeta nascitur non fit*, is only half true. "The vision and faculty divine" must indeed be innate; but the fruits of this faculty will be perfect in proportion to discipline and labor. Artists, indeed, do not always acquire culture by the standard routine. "Books in the running brooks" they may have studied more closely than printed volumes; "sermons in stones" more than treatises of theology. But studied they have, deeply and intently, or they never attain to much excellence. What are called self-made and self-taught men must be harder students than others, because they acquire by force of will without the adventitious aids which universities afford. By force of genius a gifted mind may be its own teacher. But to say that learning hurts genius, unless it be inappropriate to the mould in which genius is cast, is contradictory to reason and experience. We should expect, then, the study and practice of the law rather to foster than hinder a poetic bent of mind; for it would furnish ample range for imagination in subtle invention and in the graphic representations which may be made so telling in a jury argument, as well as in the scope it affords for eloquence, an art very near akin to poetry. Where a man has no poetry in him, we by no means contend that the profession of law is calculated to impart the *Afflatus divinus*. But we think there is abundant evidence that when the gift exists it need not be smothered by the law, but may find a scope for itself in adorning legal practice with its own vivid coloring; and it may emerge from the practice of law to the legitimate sphere of poetry, not ill-trained by law experience for the culture of the muses.

Thus we have disposed of one preliminary obstruction to the theory that Shakspere was an attorney's clerk. It remains to deal with another, consisting of the rival theories, on the one hand, that he was a school teacher, and on the other, that he was a butcher, during the time in dispute.

It must seem strange indeed to the traveller in Stratford-upon-Avon, that these important years of Shakspere's life should be involved in such obscurity. There is still to be seen his father's house, where the bard was born and brought up. The edifice indeed is not identical in material, the veritable mansion having yielded to the assults of time; but it occupies the same site, and is of the same style of architecture, and the interior finish the same, if we except the butcher's shop in the basement. We may still walk, too, the long narrow path, with which the poet's feet must have been familiar, conducting to the house of Ann Hathaway's father, which is still standing. The grand interest of all this scene, is, that here England's great dramatist had his birth and early training; and yet the world is divided as to the occupation pursued by Shakspere as he here entered upon manhood! There is, however, a good deal of negative evidence. Here we know that Shakspere resided during the years in dispute; for here are the records of the christening of his children. There was no school in Stratford but the endowed grammar school, where he himself had been a pupil. We have a record of its masters, of whom he was not one. There is no trace of any usher having been employed in the school, or of Shakspere's occupying this position. It is too much to assume gratuitously that the school had an usher, and then to take the further gratuitous position, that such usher was at one time Shakspere.

The butcher theory is a figment of the brains of those lovers of the marvellous who delight to make great men, as if by magic, out of the most unpropitious circumstances and the most unsuitable material. A butcher might make a Cromwell, possibly; but [we t]hink the scale of possibilities would not admit of a transmutation to the authorship of Romeo and Juliet. We know, too, that Shakspere's parentage was highly respectable. There is no probability that, in his father's day, a butcher's stall made part of the family mansion, for the father was one of the aldermen [o]f Stratford and presided over the board. He became, it is true, much reduced in circumstances; but it cannot be doubted that one who had enjoyed his station would be unwilling to make a butcher of his son, and would be much more likely to place him in an attorney's office.

We may now adduce the evidence that Shakspere was employed in an attorney's office; and this evidence, beyond Nash's libel, already alluded to, consists in the description of law proceedings, the legal phraseology and the reference to legal principles scattered throughout the productions of Shakspere's pen.

Shakspere's sketch of Justice Shallow is so truthful a picture, as to be hardly exaggerated or caricatured. The original of that picture is confined to no age, not even to old England, and is too frequently realized in the assuming wisdom of lay justices in our own land. One would think Shakspere had tried forty-shilling cases before these worthies, and had striven to beat law into their brains, but found the rebound of the legal points invariably more distressing to himself than effective upon the well-walled cranium of the self-taught magistrate. What lawyer has been so happy as never to try a cause before Mr. Justice Shallow? We think the advocate who has gone through with this painful ordeal, will confess that it is a far easier and less embarrassing task to pilot a cause through our highest courts, presided over by deep and erudite judicial minds, rather than try to furnish eyes to the presumptuous but blind Dogberry or Shallow, or force such stolid brains to comprehend a legal principle. The honesty of the lay magistrate, which very generally no doubt characterizes his judicial proceedings, cannot make amends for his lack of knowledge of legal principles · and legal science the layman cannot possess.

We think nothing of the knowledge Shakspere evinces in the first scene of the second act of *Taming the Shrew*, of the wager of battle and the signification of the word "craven," as evincing that he studied with an attorney, more than we should of some knowledge of the pugilistic contest as proving a practice in the ring; although the passage in *Taming the Shrew* has been adduced in support of the attorney theory. Not only had the wager of battle become in practice nearly or quite obsolete in Shakspere's time, but it is of so public a nature, and so calculated to draw the crowd, that its principal features would be generally as well known as the order of a tournament when that material exercise was in vogue. But such a passage as "Be it known to all men by these presents," from the lips of fair Rosalind, in *As You Like It*, would indicate a habit of legal phraseology cleaving to the pen of the writer. This legal phrase is so out of place in the dialect of a woman, that a writer would certainly be unlikely to go out of his customary sphere to fetch such an expression.

In the first scene of the third act of the last-mentioned play, the exact technical word for a levy on real estate is used:—

"Make an *extent* upon his house and lands."

There is an impropriety, it is true, in expressing the *house* in this order; for whenever a house is so detached from land as to be personal property, it is not the subject of an extent, and in other cases it is only an incident to the ownership of real estate, the title to which embraces what is beneath it in converging lines to the earth's centre in the one direction, and *usque ad cœlum* in the other. But that Shakspere was aware of this familiar legal maxim, appears in the second scene of the second act of *Merry Wives of Windsor*, where Ford says, "I have lost my edifice by mistaking the place where I erected it."

In the second scene of the fourth act of the same play Shakspere mentions fee simple with fine and recovery as the strongest species of title, combining as it does the most complete form of grant with the confirmation of a judgment of court. The ex-attorney, in these cases, would seem to flourish a little his law learning, which probably was not half so agreeable to him when reducing its redundancies to parchment, as when laid aside and afterward floating dreamily through the memory of the successful dramatist.

In *All's Well That Ends Well*, Act 4, scene 3, Parolles says: "He will sell the fee simple of his salvation * * * and cut the entail from all remainders." This refers to the mode of barring the entail by a proceeding in court, which was devised to enable the tenant in tail to convey the estate in fee.

In *Antony and Cleopatra*, Act 1, Scene 4, Lepidus says of Antony:

> "His faults, in him, seem as the spots of heaven,
> More fiery by night's blackness; *hereditary*
> Rather than *purchased*."

Here a peculiarly technical law phraseology is used, which classifies the acquisition of property under two heads; that which comes by inheritance on the one hand, and that acquired in all other modes which is styled "purchase." The last term in the ordinary vernacular, would be confined to property obtained by paying money for it; while the law term would include also a legacy, a gift absolutely gratuitous and without consideration, or founded on a degree of blood relationship constituting a good consideration, or by barter trade, or as remuneration for services. One uninitiated in the law would be exceedingly unlikely to use the term "purchase" in its technical sense, as S' akspere manifestly does in the passage cited; because suc a use would not only be unknown to general literature, but would actually conflict with the sense of the expression as interpre*ed in common language. The other word, inheritance, or descent, is nearly as technical: for it not only embraces property which comes down from an ancestor, which sometimes proves a descent indeed; but also an ascent, in cases where the parent is heir of the child.

Hamlet's speech, on taking in his hand what he supposed might be the skull of a lawyer, abounds in legal terminology used in an appropriate sense.

"Where be his quiddets now, his quillets, his cases, his tenures and his tricks? Why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? Humph! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries; is this the fine of his fines, and the recovery of his recoveries, to have his fine pate full of fine dirt? will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures?"

An acquaintance with the terms of real estate law, and the roundabout processes with which, in England, titles were often perfected, would seldom or never be obtained by the general reader. Not only is this sort of learning distasteful and repulsive, but it is so mazy and difficult of comprehension that even "the soul of Shakspere," which Tennys^ refers to as endowed with pre-eminent intelligence, woul. find it no easy matter to understand it. The knowledge of it can only be obtained by becoming imbued with it, at the expense almost of a life sacrifice. Unless the waters of this spring be thus deeply drunk, they are bitter to the taste; so that any cursory acquaintance, by way of a literary accomplishment, with the mysteries of this department of law, is out of the question. Had Shakspere occasionally impressed upon his pages a complex figure of trigonometry, had he run his reasoning, at times, in the mould of geometrical demonstration like Spinoza, especially had he now and then broken out in the jargon of algebra, with its A, B, C, and X, we should consider this as satisfactory evidence that he had, in some part of his career, had to do with mathematics, perhaps been a pedagogue, as some of his admirers insist that he in fact was. His knowledge of the terminology of that driest department of all jurisprudence, real estate law, seems a still stronger argument to show that he had some time or other such a familiarity with it as might be acquired by an attorney's clerk. That he learned this lore for amusement is not to be imagined; for real estate law, like vice, is

> "——A monster of such hideous mien,
> That to be hated needs only to be seen."

The knowledge in a superficial way, of other departments of law, with the processes and forms of judicial proceedings, are by no means so satisfactory evidence of professional training, because this knowledge is often impressive and attractive, and is such as would be acquired more or less by every experience, and especially by a quick observer of men and things.

Thus we cannot argue much from such a passage as this in one of Shakspere's Sonnets:—

> "But be contented; when that fell *arrest*
> *Without all bail*, shall carry me away."

It is indeed a very striking image of the imperative claim of mortality; and implies a knowledge that while some processes admit of bail, in cases of life or death it could not be admitted. Yet to presume that well-informed laymen would be likely to know this item of law, we do not need to appeal to the charitable legal presumption on which the law rigidly insists, that it is known to all men.* The same may be said of the following passage in the second scene of the fourth act of *The Comedy of Errors*, in which, to the question "Where is thy master, Dromio? Is he well?" Dromio replies:

> "No, he's in Tartar limbo, worse than hell:
> A devil in an everlasting garment hath him,
> One whose hard heart is buttoned up with steel;
> A fiend, a fairy, pitiless and rough;
> A wolf; nay worse, a fellow all in buff;
> A back-friend a shoulder clapper, one that countermands
> The passages of alleys, creeks, and narrow lands:
> A hound that runs counter, and yet draws dry foot well;
> One that before the judgment † carries poor souls to hell.
> *Adr.*—Why, man, what is the matter?
> *Dro. S.*—I do not know the matter, he is 'rested on the case.
> *Adr.*—What, is he arrested? tell me at whose suit.
> *Dro. S.*—I know not at whose suit he is arrested, well,
> But he's in a suit of buff which 'rested him, that can I tell.
> * * * * * * *
> *Adr.*—This I wonder at:
> That he, unknown to me, should be in debt.
> Tell me, was he arrested on a *band?*
> *Dro. S.*—Not on a band, but on a stronger thing:
> A chain, a chain!

A graphic description might be given of an officer by a lay man as well as an attorney. Indeed, the acquaintance of the former with this executive personage is often such as to make a more vivid impression, than on his employer the attorney. Literary men have, perhaps, had as much familiarity as any class with the men in buff; not, indeed, in a very gratifying

* Ignorantia non excusat legem.

† An arrest on *mesne process*.

way, or as society of their own seeking, if we may judge from the style in which they have photographed the officer in literature, in seeming revenge. Shakspere's familiarity, in particular, may have sprung in part from his deer poaching adventure, as he was actually pursued by the emissary of law, or pictured the man in buff behind him in his flight to London.

We have thus alluded to Shakspere's apparent familiarity with the phraseology of law forms, and with processes and officers of justice. We may next advert to his allusions to the courts, where justice was administered. It may be remarked, however, that even a familiar acquaintance with the ceremonials of the courts, which in Shakspere's day were more imposing than at present, would go but little way to prove a participation in them. A solemnity of interest has always attended the administration of justice, especially in grave criminal cases. Scenes of this kind, where the magistrate is calmly but earnestly applying all the powers of a gifted and learned mind to dealing out the profound and delicate principles of jurisprudence on which hang the issues of life and death, have always proved attractive to every class of observers. This interest was heightened by the impressive paraphernalia of justice, many of which are now abandoned. Shakspere alludes to some of them in the following lines—

> "Not the king's crown, nor the deputed sword,
> The marshall's truncheon, nor the judge's robe,
> Becomes him with one-half so good a grace
> As mercy does."

The occupation of the dramatist would place the day at his disposal, during much of which he must be observing men and things, to obtain *farrago libelli;* and the courts of justice would be sure to receive their share of his attention. What he then witnessed would impress his mind, and furnish him with a powerful and expressive imagery of thought. The figure of the court of justice, the impartial judge, the suitor with vital interests at stake, has been held up even by inspiration, to convey most impressively upon the mind the divine retribution upon the sinner and the justification of the saint. Secular writers have constantly resorted to the same figure: and hence their pages will often afford evidence of some acquaintance with law proceedings. This has been illustrated in an article in the London Jurist upon Lord Campbell's Treatise on Shakspere's Legal Acquirements. The writer cites passages from Massinger, and Beaumont and Fletcher, to show that law phrases in Shakspere are no evidence of legal training. So far as these passages only relate to the public administration of justice, we think the position of the writer in the Jurist is well taken.

Shakspere's descriptions of law trials do not give evidence, we think, of much familiarity with them, and are less impressive than like sketches from the pen of Sir Walter Scott, who actually received a professional education. In Sonnet XLVI. occurs this description of a jury trial between Heart and Eye on a claim of title to a fair lady—

* * * * * * * *

> "My heart doth plead that thou in him dost lie
> (A closet never pierced with crystal eyes),
> But the Defendant doth that plea deny,
> And says in him thy fair appearance lies.
> To 'cide this title is impanelled
> A quest of thoughts, all tenants to the Heart;
> And by their verdict is determined
> The clear Eye's moiety, and the dear Heart's part;
> As thus; mine Eye's due is thine outward part,
> And my Heart's right, thine inward love of heart."

Here Shakspere sets forth the pleadings which make up the issue, the empanelling of the jury and the verdict. But the sketch is less accurate than the description by Cowper, who was educated a lawyer, of the suit between the nose and eyes, in which the only unwarranted proceeding is the tongue's "shifting his side as a lawyer knows how." Lawyers have been reproached, we hope falsely, with accepting retainers on both sides; but courts have never permitted them to act in this double capacity. Shakspere calls the allegation of the Heart, who goes forward, the "plea," instead of the declaration; whereas that term is correctly given only to the defendant's averment. He represents the case, too, as a *real* action, whereas the subject of it is the *ideal* of romance, a lady, and so much an affair of fancy that the ownership would hardly constitute real estate. Then the plaintiff is not, as he should be, a demandant complaining of disseisin; but avers that he already has what he brings the action for. The Eye sets up title in himself accompanied with possession. Then for the jury are empanelled the "tenants of the Heart." Here is first an inaccuracy of expression; since "tenant" is the denomination of the defendant in a real action: but what is worse, the tenants derive title from and are the party identical in interest with the Heart, the plaintiff—a gross outrage upon impartial justice. Finally, the verdict is not relevant to the issue framed; but produces a result only pertinent to a suit for partition. We think these considerations make it clear, that if Shakspere was an attorney's clerk, it did not fall to his lot to frame the pleadings.

Lord Coke, who was as dwarfish in æsthetic sentiment as he was developed in "the perfection of reason," *scilicit*, the law, in charging a Grand Jury, on one occasion, declaimed against dramatists as vagrants. Shakspere may have been revenging himself for this, when he makes Lear constitute Mad Tom "the robed man of justice," and the fool his "yoke fellow of equity:" an association, by the way, of law and equity judges, which would not occur in England, except, in a special commission.

The trial of Othello in the third scene of the first act, is a very irregular proceeding. After the accusation of Brabantio, without waiting to hear Othello, the excited Duke cries—

> " * * the bloody book of law
> You shall yourself read, in the bitter letter,
> After your own sense."

Thus giving the plaintiff *carte blanche* to perform the judicial function of interpreting the law.

We may now advert to law figures and phrases of a general character, profusely scattered through Shakspere's writings. We do not think, however, that they furnish very satisfactory evidence of his apprenticeship to an attorney. A great writer would not be wholly ignorant of that important department of literature which is made up of law writings, especially of important judicial opinions; and he would naturally be attracted by the terseness and vigor, the forcible and carefully guarded expression, which characterize the best law style; and he would be very likely to transplant some of its terms and figures to his own department.

As specimens of Shakspere's legal figures and phrases, we may refer to the third scene of the third act of *Othello*, where he says thoughts in the breast

> "Keep leets and law days, and in session sit."

And in the Sonnets he uses the same trope—

> "When to the sessions of sweet, silent thought
> I summon up remembrance of things past."

He often uses the figure of a lease, and denominates the expiration of the term in language of technical accuracy, the *determination*. Thus in the Sonnets—

> "So should that beauty, which you hold in lease,
> Find no determination."

Also—

> "And summer's lease hath all too short a date."

Here the word "date" is not accurately used; as it signifies commencement and not continuance.

In the first scene of the fourth act of *Macbeth*, the figure of a bond is expressively referred to—

"———I'll make assurance doubly sure,
And take a bond of fate."

Here Shakspere personifies fate as he always delights to, mental abstractions, thus presenting them in picture, and clothing them with vivid reality. This may be noticed as a peculiar charm and an element of power in the graphic style of the immortal dramatist.

In the sixth scene of the fifth act of *King Henry VI.*, Part Third, is the striking figure—

"Suspicion always haunts the guilty mind;
The thief doth fear each bush an officer."

In the first scene of the second act of *King John*, the kiss is expressly styled the seal of the indenture—

"Upon thy cheek lay I this zealous kiss,
As seal to this indenture of my love."

The force of the seal as imparting strength and solemnity to a contract, is alluded to in the sacred scriptures. Thus it is said, "He hath set to his seal that God is true:" that is, he has adopted this affirmation of God's verity as the motto of his seal, which he is in the habit of using in the most solemn transactions. Christ is also described as sealed by the Father: that is, he had a commission confirmed by the seal of the King of kings. And the New Testament is said to be sealed with the blood of Christ; that is, it derives its validity as a testamentary instrument from the solemnity of this sacred seal. The term "indenture" is very aptly used in the above quotation from Shakspere, as expressive of the mutuality of love. It was not a mere grant on one side, as is the case with a deed poll, requiring to give effect, only acceptance on the other side. Rather, like the indenture, each party is giver and receiver, and each enters into obligations to the other. In the first scene of the third act of *King Henry IV.*, Part I., the phrase is again appropriately used—

"And our indentures trepartite are drawn,
Which being sealed interchangeably," &c.

The peculiarity of the indentures that they are interchangeably *delivered, each party being grantor and grantee, is here* developed.

We have heard that by a very modern contrivance the condemned criminal may be allowed to furnish a substitute at the gallows; that is to "die by attorney," as in the following quotation from the first scene of the fourth act of *As You Like It.*

"*Ros.*—No, faith, die by attorney! The poor world is almost six thousand years old, and in all this time, there was not any man died in his own person, *videlicet*, in a love cause."

Here is the principle *qui facit per alium facit per se*, which will apply to facing almost anything. But in *Venus and Adonis* the phrase attorney is used in its restricted sense, as applicable only to a substitute or agent in a court of justice. Thus—

"But when the heart's attorney once is mute,
The *client* breaks as desperate in the suit."

Whatever evidence the foregoing quotations, and many others that might be adduced, furnish of Shakspere's acquaintance with law forms and phrases, we think he often evinces a want of familiarity with legal principles.* So that, if he was a lawyer, we cannot set him down as a good lawyer. His apparent ignorance of law principles is strikingly evinced in the *Merchant of Venice*. A bond is given to the Jew by the merchant for a pound of flesh next the heart; and the Judge feels obliged to give judgment for the flesh, but forbids to tak a drop of blood with it, inasmuch as the bond did not so stimulate. Thus the Jew is baffled; and presently he is proceeded against as violating the law by machinations against life. This is throughout a tissue of bad law. To begin with, the grant of the flesh next the heart, if valid, would imply whatever was requisite to obtaining the flesh: for a grant always implies, under the head of appurtenants, whatever is necessary to its usufruct. So that the right to shed blood would be incident to the right to take the flesh; for *incidentum sequitur principale*. But this bond being in contravention of the statute forbidding machinations against life, would be against public policy, and wholly void. This it would be, if there were no such statute. The contract was therefore illegal and void. Fnally, in a suit at law to recover the penalty of a bond for a specific article, and not for money, the judgment would be not to recover the specific article, but its measure in money. As the merchant's heart would have no market value in money, the Jew would be jewed in this suit. In an equity proceeding, judgment might be rendered for specific performance; but equity would not enforce an unconscionable contract. So here again the Jew would be nonplussed. The truth is, the heart cannot be so hypothecated as to furnish ground for a suit, except in the court of love.

We think, in view of Shakspere's jurisprudence, that if he was apprenticed to an attorney, his heart was not in the office of his employer, but was roaming in quest of Ann Hathaway, or "chasing the deer." That he was a diligent apprentice to the last named pursuit, we have beautiful evidence in the touching lines addressed to the poor wounded deer, weeping in the stream, in the first scene of the second act of *As You Like It*.

"———Thou mak'st a testament,
As worldlings do, giving thy sum of more
To that which hath too much."

So, too, in the second scene of the fourth act of the *Comedy of Errors*, he describes the officer of justice as

"A hound that runs counter, and yet draws dry foot well."

One other illustration of Shakspere's legal acquirements it may be well to advert to—his will; which is supposed to have been drawn up by himself. He left a wife and children. But he remembers one child only in his testament, Susanna, the wife of Dr. Hall, to whom he devises his lands. His wife is only mentioned in the interpolated sentence—"I give to my wife my second best bed, with the furniture." Did Shakspere expect his wife to accept a legacy so trifling, as to look like an insult in lieu of her dower? Or was he not aware that his wife was entitled to a life estate in one-third of his lands, so that his will, giving the whole to his daughter, could be only partially executed? Again; why did he mention no other child? Was he ignorant that such child not being cut off with a shilling, the law would presume that the omission was through inadvertence, certainly in the absence of controlling proof, and the omitted child could claim as heir as if no will had existed? It would seem that principles so familiar as these, must have been learned by one employed in an attorney's office.

But how shall Shakspere's frequently correct legal terminology be accounted for, if he was not in the office of an attorney? We think a great, original mind like his, cannot be judged in this respect, like an ordinary person. Faculties like his could rifle sweets from every source, and derive material and gain instruction from all quarters. Emerson has described an original mind as one that draws most largely from the learning and experience of others. Such a writer is not a plagiarist in appropriating the acquisitions of others,

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* Many legal principles, which are not technical, nor necessarily acquired from books, but rather are derived from keen observation and the intuition of genius, of course may be found in the writings of Shakspere, without leading us to suppose that he learned them in an attorney's office. Thus in *Best on Evidence*, 3d edit., the text states, "So what a person has been heard to say while talking in his sleep, seems not to be evidence against him," and, as authority, he cites *Othello, Act 3, Sc. 3.*

"There are a kind of men so loose of soul,
That in their sleep will mutter their affairs.
* * * * * *
———nay, this was but a dream.
But this denotes a foregone conclusion."

because in his mind they take new forms and combinations, and produce new results. The most original mind, if shut out from the world of nature and of books, could produce little or nothing in the form of literature, for lack of material. On these genius feeds; and, without them, starves. It would be as hard to say where such a writer as Shakspere got his knowledge, as where a bee got his honey.

We are also to remember that Shakspere mainly re-wrote old plays, or put romances into the dramatic form. He rebuilt his structures, in a new and beautiful architecture, from old edifices, or ruins, or from material which had belonged to other buildings. How shall we know whether these law phrases were the old brick or the new, which Shakspere added in his combination? Till we do know this, we can scarcely draw safe inferences from the law phraseology.

It is also important to notice the period in the history of language, in which Shakspere wrote. Law instruments and pleadings were not as yet couched in English. It would seem that much of his legal phraseology formed at that time a part of the common stock of language; and was not till afterward relinquished to the peculiar province of law by vernacular usage. There has been since Shakspere's day a division of much language, which was held in common then. Many words have either become wholly obselete, or lost some of the significations which then attached to them by common usage. Such words occur, in their former sense, only in literary productions of that period, which have not suffered by time. The Bible was then translated; and much of its language has a sense, then general, but now peculiarly scriptural. Shakspere's phraseology admits of the same observation. Words are now peculiarly Shaksperean, which then belonged to everybody. A comparison of such works as Shakspere and Saint James' version of the Bible, brings this fact strongly to light; many words being used in both with the same sense, and a signification not now attached to them by general usage. This comparison between the language of Shakspere and the Bible forms the subject of an interesting article in *The Bibliotheca Sacra* for July, 1862. From such comparison we may be led to infer that in Shakspere's time many words were in common use which have since become obsolete, except in law language. And, therefore, from the use of legal phrases by Shakspere, we have not the same reason to infer his acquaintance with law, that we should have if the expressions were used by a writer of the present day; inasmuch as phrases now restricted to law usage may then have been a part of the common vernacular.

We have thus glanced at some items of evidence, and adduced some reasons pertinent to the question, whether Shakspere was ever the clerk of an attorney. The conviction produced upon our mind by examining the subject, is, that Shakspere had a knowledge of real estate forms and phrases, which he might have acquired in the employ of a conveyancer, and would not probably have gained otherwise. We think, however, that he did not take to the business, and never imbued his mind with the great principles of jurisprudence. He has somewhere made one of his characters declare that it would be well if a young man could sleep away the period of his life, when the wild oats are sown: and we are inclined to think that "glorious Will" was rather reckless at this period of his own career, when we suppose him to have been with an attorney; and that he gave little heed to the grave doctrines of law, while, at the same time, some of its peculiar maxims and phrases indelibly stamped themselves upon his memory. They were such scraps of learning as the unwilling classic scholar carries away from its field, when liberated from constraint, and do not embody those principles which only deep study can master.

We would refer those who may be disposed to pursue further this interesting theme to *Shakspere's Legal Acquirements* by Lord CAMPBELL, a pleasant and readable disquisition in the simple, direct and attractive style which characterizes the writings of the late Chief Justice of England.

R. F. F.

SELECTIONS FROM OLD REPORTERS AND TEXT WRITERS.

Let the following be a warning to all bad cooks. *Trin.* 8 Hen. 4. Rot 47. Willielmus Milburn recuperat per juratam per billam suam, in qua queriter versus Johannem Cutting Cook de eo quod epse Johannes apud Westmonasterium vendebat dicto Willielmo unum caponem pistum corruptibilem et recale factum, qui capo assatus per quatuor dies in Hospicium Domini Regis et iterum calefactus et pistus extitit de quo postqualm edit vomitum horribilem fecit, ita quod infirmabatur per quas septimanas recuperato inquam viginti solidos per damnis. And Rolle says he was informed that it appears upon the record at large that the judge increased the damages, (1 Roll. 89).

A guest comes into a common inn, and the host appoints him his chamber, and in the night breaks into his guest's chamber to rob him: this is burglary (Dalton, cap. 151, *in nota*).

The wearing of a sword, after one is bound to his good behaviour, no breach of good behaviour now, as perhaps it was heretofore, (See Comp. Just. Peace, 119, 126), when swords were not usually worn but by soldiers; for then they struck as great a terror in people as a blunderbuss does now. But since at this day swords are usually worn by all sorts of people, this cannot now be construed a breach of the good behaviour; so that which heretofore was a crime, is now by custom became none, (Hawle's Remarks, &c. p. 81). So that it would seem, that as swords are now not ordinarily worn, except by soldiers, it would, at the present time be considered a breach of the peace to wear a sword.

A Danish writer assures his readers that the taste for hanging is so prevalent in England, that criminals, who are to be hanged, go laughing and singing to the gallows, and, in the absence of the executioner, hang themselves. "*Ad loca supplicii non ducuntur Angli, sed currunt, ridendoque cantando, facetiis spargendo, et circumstantibus insultando moriuntur; ubi desunt carnifices se ipsos sæpe suspendant,*" (Holbergii Opuscula, tom. 2, 118).

When Lord Coke was presented by Lord Bacon with a copy of the *Novum Organum*, with the title of *Instauratio Magna*, he wrote under the handwriting of Bacon—

"Auctori consilum.
Instauraro paras veterum documenta sophorum
Instaura legis justitiam que prius."

And over the devise of the ship passing under the pillars of Hercules—

"It deserved not to be read in schools,
But to be freighted in the ship of fools"

In the time of Alfred he ordained, that all false judges, after forfeiting their possessions, should be delivered over to false Lucifer, so low that they should never return again; that their bodies should be banished and punished at the Kings's pleasure; and that for a mortal false judgment they should be hanged as other murderers. And he gives a list of the judges executed by the King's order. In one year we are told, that forty-four judges were hanged. He hanged Cole, because he judged Ive to death when he was a madman. He hanged Athelf, because he caused Copping to be hanged before the age of twenty-one years. He hanged Diling, because he caused Eldon to be hanged, who killed a man by misfortune. He hanged Horne, because he hanged Simen at days forbidden. But not only did Alfred hang for hanging; he maimed his judges for not maiming their prisoners. Thus, he cut off the hand of Hanlf because he saved Armock's hand,

who was attainted before him, for that he had feloniously wounded Richbold. And he judged Edolf to be wounded, who feloniously had wounded Aldens, (Mirror, c. 5; and see 3 Inst).

A gentleman is by descent; yet, says Lord Coke I read of the creation of a gentlemen; and thus it was: A French knight came into England, and challenged John Kingston Yeoman, a good and strong man at arms, but no gentlemen. at certain points and deeds of Arms, &c. *Unde Rex* (saith the report) *ut dictus Johnnes honorabilius in præmissis accipiatur ipsum Johannem in ordinem generosum adoptavit et armigerum constituit et cætera cohortis insignia ei concessit*, (2 Inst. 565 & 668).

There are some things personal, and so inseparable connected to a man's person, that he cannot do them by another; as the doing of homage fealty. So it is holden, that a lord may beat his villein, for cause or without cause, and the villein is without remedy; but if the lord command another to beat him without cause, who does accordingly, the villein shall have an action of battery against him. So if the lord distrain his tenant's cattle, when nothing is behind, yet the tenant, for the reverence and duty that appertains to the lord. shall not have trespass *vi et armis* against him; but if the lord command his bailiff or servant to distrain, *secus*, (Comb's case, 9 Co. 76 a).

An action of false imprisonment brought against a constable, who pleaded not guilty, the defendant did show in evidence, that he came to search in time of the plague for lodgers in the town, and he found a stranger and questioned him which way he came into the town; who answered over the bridge, and the judge conceived this to be a scornful answer to an officer, and because he had no pass, but travelled without one, and gave such an answer, the defendant did offer to apprehend him, and the plaintiff thereupon being present said to the defendant he shall not go to prison, but yet offered to pass his word for his forthcoming, upon which the defendant did commit the plaintiff, and it was ruled upon evidence, there was good cause to commit the plaintiff, for opposing the constable, though but verbally, in his office, who is so ancient an officer of the Commonwealth, (Sheffeld's case, Clayt. 10).

The judge did put back the jury twice, because they offered their verdict contrary to the evidence, as he held and set a hundred pound fine upon one of the jury, who had departed from his companions; but after, upon examination it was taken off again, for that it did appear, it was only by reason of the crowd, and some of his fellows were always with him, (Clayt. 50).

Memorandum. One Mr. Guye Faux, of the parish of Leathley a cavillier, had a cause heard about a plunder, upon Monday this week after dinner, and was well in court, and damage against him a hundred pounds, and he was found dead next morning upon the conceit of it, as was supposed, (Clayt. 116.)

DIVISION COURTS.

TO CORRESPONDENTS.

All Communications on the subject of Division Courts, or having any relation to Division Courts, are in future to be addressed to "The Editors of the Law Journal Barrie Post Office."

All other Communications are as hitherto to be addressed to "The Editors of the Law Journal, Toronto."

THE LAW AND PRACTICE OF THE UPPER CANADA DIVISION COURTS.

(*Continued from page 69.*)

THE CLERK'S DUTIES.

The clerk of every court is required to have an office at such place within the division for which he is clerk as the judge may direct: (Rule 3.) The days when the clerk is to attend in his office is not provided for either by the statute or rules; but reasonable attendance should be given; and what would be such would, doubtless, depend greatly on the amount of business in the court. For public convenience every office, however small the number of suits entered, should have set days on which the principal or some one authorized to act for him, will be in attendance for the transaction of business.

Certified copies of the entries in the clerk's books are admitted in all the courts and places as evidence of such entries, and the proceedings referred to thereby, without any further proof (sec. 43); and orders and judgments as they appear on the books, are conclusive between the parties: (sec. 55). A very important part, therefore, of the clerk's duty is to keep the books of his office in the manner prescribed by law. The general rules expressly provide what books are to be kept, namely, two, in addition to the fee-fund book provided by the government under sec. 36, and the book required to be kept under sec. 139.

One of these books is to be called "The Procedure Book," and the other "The Cash Book."

In "The Procedure Book" the clerk is required to enter a note of all summonses issued; of all orders, judgments and decrees; warrants, executions and returns thereto, and of all other proceedings in every cause, and at every court.

In "The Cash Book" he is to enter an account of all suitors' monies paid into and out of court. Both books are to be according to forms given (which will be found in an appendix), and must be kept, as nearly as may be, in manner shewn therein: (Rule 4).

In "The Fee-Fund Book," it is provided by section 36, the clerk shall enter an account of all court fees, and fee-fund monies. A form for this book has been given by the Government, and the book itself has been provided at the public expense. The other books clerks must provide at their own expense, and this though the books do not belong to them, but are public property, and records, so to speak, of the courts.

Sec. 139 requires a book to be kept in which transcripts of judgment sent from other divisions are entered, and may be called "The Trancripts of Judgments Book."

The four books named, viz.: *The Procedure Book*, *The Cash Book*, *The Fee-Fund Book* and *The Transcripts of Judgments Book* must be procured and kept by every clerk. They are the only recognized books, and in them must appear every proceeding in every cause.

There can be no objection to other books as well; and where a large amount of business is done in a court, other books, for facility of reference, may be necessary or advisable. So far as prescribed by the statute or rules, when a

form of entry is given it must be followed; but in general a brief note of the proceeding will be sufficient. In respect to judgments it is important that the very words given in the forms should be followed.

The duties of the clerk in respect to proceedings in the courts will be treated of in detail as each proceeding comes under notice: here it will be sufficient to make general reference to them.

The duties of clerks, then, in respect to proceedings are to receive, number, and enter all claims left for suit; to issue summons thereupon, and subpœnas for witnesses when required by either party; to receive and notify special defences; to summon juries when required; take confessions; attend the several sittings and register all orders and judgments of the court; to administer oaths and affidavits when necessary, attend to applications for new trials; tax costs; issue all warrants, precepts and writs of executions, interpleader summons, and judgment summons; and to receive and secure goods taken under attachment.

The clerk's duties in respect to fee-fund and fee-fund monies, are to keep an account of all court fees and fines payable or paid into court, and enter an account of the same in the book kept for the purpose, and to submit his accounts for examination to the judge: (sec. 36.)

The following sections further provide on this head:—

37. The clerk, at the periods from time to time appointed by the Governor, shall submit his said accounts to be audited or settled by the county attorney.

38. The clerk of every division court shall, from time to time, as often as required so to do by the county attorney of his county, and at least once in every three months, deliver to him, verified by the affidavit of such clerk sworn before the judge or a justice of the peace of the county, a full account in writing of the fees received in his court, and a like account of all fines levied by the court, accounting for and deducting the reasonable expenses of levying the same, and any allowance which the judge may make out of any such fine in pursuance of the power hereinafter given.

39. The fees from time to time received by such clerks respectively and payable to the general fee-fund, shall be by them paid over from time to time to the county attorney, and at least once in three months, and shall form part of a fund to be called the General Fee-Fund, and shall be applied towards the payment of the salaries of the judges of such courts.

40. The clerk of each division court, when required by the judge shall, from time to time, furnish him with a like account, verified by the oath of the clerk sworn, before the judge or a justice of the peace, of the monies received into and paid out of the court, by any suitors or other parties under any orders, decrees or process of the court, and of the balance in court belonging to any such suitors or parties.

41. The clerk of every division court shall, half-yearly at least, furnish to the judge of his court a detailed statement of all fees and emoluments of his, which statement shall be sworn to before such judge; and it shall be the duty of such judge to require such statement, and to file such statement with the county attorney.

42. The clerk shall cause a note of all summonses, orders, judgments, executions and returns thereto, to be from time to time fairly entered in a book to be kept in his office, and shall sign his name on every page of such book, and such signed entries, or a copy thereof, certified as a true copy by the clerk, shall be admitted in all courts and places as evidence of such entries, and of the proceedings referred to thereby without any further proof.

43. The clerk shall, annually in the month of January, make out a correct list of all sums of money belonging to *suitors which have been paid into court, and which have* remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the parties for whom or on whose account the same were so paid.

A copy of such list shall be put up and remain at all times in the clerk's office, and during court hours in some conspicuous part of the court house or place where the court is held.

CORRESPONDENCE.

To the Editors of the Law Journal.

GENTLEMEN,—Your opinion is desired as to whether a bailiff can be sued in his own court for negligence. It is a hardship on parties to go to another court to sue, and often a hardship on the clerk of the original court to have to travel to the next court, bring papers, and give evidence about the case. It is generally considered that the statute prevents a bailiff being sued in his own court; but could not the Judge make order for it.

Yours obediently, T. S.

[If there be a second bailiff in the Court to effect service, we have no doubt that an action as of right may be brought against the officer in the court of which he is bailiff. Sec. 83 provides where an officer *may* sue and be sued, viz., in the next adjoining Division; that is, as we read the statute, the plaintiff may, if he pleases, bring his action where the cause of action arose (in the bailiff's own Division), or, if for any cause he prefer to have it entered elsewhere, he may sue (irrespective of residence of defendant or where the cause of action arose) in the next adjoining Division.

If there be not a second bailiff, we have no doubt the Judge, on being applied to, would direct service to be made by the clerk, or appoint a bailiff *pro hac vice* to make the service. An order to change the venue would not be necessary.—Eds. L. J.]

To the Editors of the Law Journal.

Gentlemen,—Please answer the following question. Is a defendant sued on a bank note, and where defence in part is usury, obliged to give notice to the Bank. And oblige

A Clerk Co. W.

[We assume that the note meant by our correspondent is a note discounted by a Bank. A written notice of defence must be given, the defence of usury being grounded on a statute. The notice is to be served in the manner provided for in sec. 93. Any other defence may be stated in the notice.—Eds. L. J.]

M.—The bailiff who purchased the horse "at a sale under execution by his brother bailiff" acquired no property in the animal. Such purchases are absolutely void by sec. 157. The party claiming the horse may, after demand and refusal, sue in trover, or get hold of the horse at once by writ of replevin. Moreover, the illegal purchase is a misbehaviour for which the Judge, if he did not remove the bailiff on complaint, would probably require him to compensate a party injured as a condition to his being retained in office. We have deemed it unnecessary to copy our correspondent's letter (which is unnecessarily prolix), the facts appearing in our answer.—Eds. L. J.

M. P. (*London*).—Costs in the Division Courts do not necessarily follow the result of the cause, and if a defendant by his own deceitful conduct and misrepresentation led the plaintiff to suppose the existence of facts (of which he alone was certainly informed) necessary to support his action, and which facts had really no existence, a Judge would not give him costs.—Eds. L. J.

UNIFORMITY OF PROCEDURE IN THE DIVISION COURTS.

According to our promise in the March number, we resume the subject of procedure in the Division Courts, and will allow our correspondent to tell his own story as to procedure in different counties, taking up one subject at a time, and premising that unless we had just ground for believing that the communication before us is not overdrawn we would not have made it the foundation for remark.

"In one county, the Judge places such a construction upon the judgment summons clauses (sections 160 to 173) of the Division Courts Act, in cases where the defendant pays no attention whatever either to the first or second summons, that he holds the plaintiff (notwithstanding defendant's failure to appear) bound to prove that defendant is in a position to pay the debt, or some part of it, otherwise he (the Judge) will not make an order for defendant's commitment."

"In another county, the Judge sometimes requires the defendant to be brought to his chambers in the county town for examination upon a judgment summons; whilst at other times (and nobody knows why or where the distinction is made) he will examine him or them at the different Division Court sittings."

"In another county, in order to obtain a judgment summons *to be issued at all* the plaintiff must first make affidavit that judgment has been rendered in the cause, that an execution has issued which has been returned, and stating what the return was, and, lastly, that the plaintiff has good reason to believe that if a judgment summons '*be allowed*' to issue, the plaintiff will be able 'to get an order for payment'! This affidavit must be sent to the Judge, and *if he sees fit* he will order a summons to issue returnable in all cases *at his chambers* in the county town. The plaintiff to be notified by the clerk of the Judge's determination."

"On another occasion, the Judge of a certain court had a great number of judgment summonses to dispose of, the parties were all present waiting to be heard, but the Judge briefly and summarily disposed of them by one order applicable to the whole batch, without hearing one word of evidence, viz., that the defendants respectively should all pay the amounts against them by the next court."

Our present purpose is not to animadvert upon these rulings, but to point out briefly what seems to us the correct view of this branch of the Division Court law, inviting free criticism from all quarters, as our only desire is to have the law known and the proper practice pointed out.

We do not know and do not desire to know the names of the Judge's referred to. It will be sufficient, just now at all events, to discuss the practice.

The first question is, *in what cases and how the judgment summons may issue?*

Sec. 160 enacts that "any party having an unsatisfied judgment or order" in any Division Court for payment of any debt or damages, may procure from the Court, &c., a summons in the form prescribed by the rules of practice. When therefore the judgment appears on the face of the procedure book to be unsatisfied, and in force without revival as between the parties, it seems quite plain that the judgment creditor may of right obtain the issue of the summons, upon payment of the proper fees. Rule 17 shows how he is to proceed, namely, by entering an application in writing, according to form 54 in ordinary cases, and "thereupon" a summons shall issue according to the form given.

The provisions of rule 20 shows how and within what time this summons is to be served.

We can see no ground to dispute that this is the regular course, and no warrant for requiring a previous order from the Judge to allow the issue of the summons. True, Sec. 164 makes provision for a Judge's order under particular circumstances, but this rather confirms the right to issue

before an examination and discharge. The effect of Sec. 164 is that a judgment debtor once *discharged* by the Judge, *after examination*, cannot be again summoned, unless it be shown to the Judge that proper grounds exist for again calling the party up before the Court; and in *such* cases an order must be first obtained, before the issue of the judgment summons.

What is to be done at the hearing, on a judgment summons? Upon the return day, the defendant makes default or appears in obedience to the summons. If default be made, the judgment creditor may call witnesses to show that the non-attendance is wilful, that the debtor might have been present if he would; and if the Judge be satisfied on this point, the creditor is entitled to an order to commit the defendant for non-attendance. If the judgment creditor is unable to furnish such proof, the non-attendance under that summons is noted, and the creditor sues out another summons. If the debtor be so twice summoned and fails to attend on both occasions, and no sufficient reason is alleged for non-attendance, he is liable to commitment for default (see secs. 165 and 166). Until recently, a single default without explanation or excuse authorized a commitment. Now, as already noticed, under sec. 166, the non-attendance must be shown to be wilful, or the defendant must have been twice summoned. We can see no authority for holding the creditor "bound to prove that the defendant is in a position to pay the debt, or some part of it," as a condition to granting an order to commit. It is certainly requiring more than the statutes require.

If the debtor appears, where is he to be examined? Sec. 162 says the examination shall be held in the Judge's chambers, unless the Judge shall otherwise direct. The simple object of the enactment is to prevent needless exposure in open court, and to give authority to hold the examination in private; and the practice in every Court we have knowledge of is to allow the general public to depart after the ordinary business is over, and to make the court room the judge's chamber for the time being. There is nothing either in the language used, or the context, to show that the examination is to be made in the Judge's chambers at the county town, and it would be a great hardship to bring parties there for the purpose, if a discretion existed. But it does not. The party is summoned to be and appear at the place where the Court is held, in the Division in which it issues; and there is no authority to require him to appear elsewhere, for the order in respect to the matter must be entered by the clerk in like manner as any other order of the Court.

But we have now reached our available limits, and must postpone further notice till next number.

UPPER CANADA REPORTS.

IN APPEAL.

[Before the Hon. Sir J. B. ROBINSON, Bart., President; The Hon. ARCHIBALD MCLEAN, Chief Justice of Upper Canada; The Hon. WILLIAM H. DRAPER, C.B., Chief Justice of the Court of Common Pleas; The Hon. Vice-Chancellor ESTEN; The Hon. Mr. Justice BURNS; The Hon. Vice-Chancellor SPRAGGE; The Hon. Mr. Justice HAGARTY; and The Hon. Mr. Justice MORRISON.]

ON APPEAL FROM A DECREE OF THE COURT OF CHANCERY.

(*Reported by* ALEXANDER GRANT, Esq., *Barrister-at-Law.*)

MCQUESTEN v. THOMSON.

T. K. & Co., carrying on business as gas-fitters and plumbers, contracted verbally with D., an hotel-keeper, to supply a new hotel he was erecting with various articles in the way of their trade, which were to be paid for as the work progressed. D. afterwards left this Province, on account of ill-health, having previously executed a power-of-attorney to one S., authorizing him to carry on his business during his absence. T. K. & Co. having discovered that D.'s estate was greatly involved, refused to proceed with their contract, unless secured for their work and materials. Whereupon S., with a view of inducing T. K. & Co. to complete their contract, in pursuance of a previous arrangement, executed, as such attorney, a chattel mortgage of the goods furnished by them, securing T., K. & Co. payment of their demand. At the time of the execution of this instrument, D. was dead, but this fact was not known to the parties until some time after the completion of the work. *Held*, reversing the decree of the court below, that T., K. & Co. were not, under this mortgage entitled to remove any of the fittings put up in the hotel; their only remedy being for the price of their work and material under their contract with D. [ESTEN, V. C., & HAGARTY, J., dissentiente.]
Jacques v. *Worthington*, 7 Grant, 192, commented on, distinguished from the present case, and approved of.

The bill in the court below, as amended, was by James E. Thomson, David S. Keith and Charles C. Thomson, against Geo. Worthington, Calvin McQuesten and others, praying, under the circumstances therein stated, and which are clearly set forth in the judgment of the court, that the personal representatives of Thomas Davidson (defendants to the bill) might be ordered to make and execute a mortgage similar to the one which had been executed by Stevenson as his attorney, and pay off certain incumbrances due to others of the defendants; and that defendant McQuesten (a mortgagee in possession) might be ordered to deliver to the plaintiffs all the goods put or placed by them in or on the hotel and premises in the bill mentioned, subsequently to the death of Davidson; that the defendants might be restrained from using or permitting to be used the said goods and materials, and for further relief.

On the cause coming on to be heard, before His Honor Vice-Chancellor Esten, a decree was pronounced directing "that the defendants to the original as well as to the amended bill do forthwith deliver to the plaintiffs at the Royal Hotel in the city of Hamilton in the pleadings mentioned, all the goods placed by the plaintiffs or their servants or agents in or about the Royal Hotel subsequent to the 30th day of December, A. D. 1857, and which remain in the condition of mere chattels; such goods to be ascertained by the master of this court at Hamilton, in case the parties differ about the same. And this court doth declare that the said plaintiffs are also entitled to such goods as, having been so delivered subsequent to the said date, and having been affixed to the freehold, can be removed therefrom without injury to the inheritance. And it is further ordered, that the plaintiffs be at liberty, at their own expense, to remove the same, restoring the premises as nearly as circumstances will admit to their former condition. And this court doth declare that the said plaintiffs are not entitled to such of the said goods as cannot be removed without injury to the inheritance as against the defendant Calvin McQuesten, until he is paid his debt and costs. And it is ordered, that the defendants, George Worthington, Anthony Copp and James Miller [the administrators of Thomas Davidson], do forthwith pay to the plaintiffs their costs of this suit, up to and inclusive of the former hearing of this cause, to be taxed by the master of this court at Hamilton; and as to the proceedings subsequent to the original hearing of this cause, this court doth not think fit to give costs to any of the parties hereto; and all parties are to be at liberty to apply to this court, as occasion may require, and the costs of the reference hereby directed as to the said goods are reserved until after the

master makes his report. And as to such goods as cannot be removed without injury to the inheritance, this decree is without prejudice to any question of compensation or otherwise as between the plaintiffs and the estate of the late Thomas Davidson."

From this decree the defendant McQuesten appealed, making the other defendants to the bill and the plaintiffs respondents, assigning as reasons for such appeal—1st, because, as to the pure chattels, the only and sufficient remedy of the respondents, Jas. E. Thomson, David S. Keith and Charles C. Thomson, is at law, and the Court of Chancery has no jurisdiction to interfere, or, if it have such jurisdiction, this is not a proper case for the exercise thereof; 2nd, because, as to all fixtures, the same upon their fixture became the property of this appellant, whose title thereto was not and could not be affected by the alleged agreement under which the same were affixed; 3rd, because the alleged mistake in fact upon which the said decree is founded, could not affect the legal result of such fixture, and the parties are practically in the same position as if there had been no such mistake in fact; 4th, because the agreement for a chattel mortgage was as to fixtures manifestly void in law against this appellant, and therefore no equity can be raised in favor of the respondents, Jas. E. Thomson, David S. Keith and Charles C. Thomson, on the ground that the said agreement turned out void on other grounds; 5th, because the respondents, James E. Thomson, David S Keith and Chas. C. Thomson, affixed the said goods with a full knowledge of the appellant's legal rights, and of his intended assertion thereof, and they should not be relieved against such rights and their assertion; 6th, because the said decree is founded on rights alleged to arise in respect of an agreement dated on the 6th day of January, A.D. 1858, and the relief granted should have been confined to goods supplied on or after that date, whereas the said decree extends to all goods supplied on or after the 30th day of December, A. D. 1857; 7th, because the said decree should have directed an account or inquiry as to what, if anything, is due the said respondents, James E. Thomson, David S. Keith and Chas. C. Thomson, in respect of the goods supplied by them, and should not have directed their unconditional restoration, but should have reserved that question until after the state of the accounts had been ascertained; 8th, because the said decree should have directed the respondents, James E. Thomson, David S. Keith and Charles C. Thomson, upon removal of any of the said goods, to place the premises in the same condition in which they formerly were; 9th, because the said decree should have provided, but does not provide any, means for carrying out its provisions, by ascertaining what fixtures, if any, can be removed without injury to the inheritance.

The plaintiffs assigned, in support of the decree, the following reasons:—1. There is jurisdiction in equity as to the pure chattels, and this is a proper case for the exercise thereof; and if there is a remedy at law, it is not an adequate remedy under the circumstances of this case; and even assuming that there were no jurisdiction in equity in the case of pure chattels, there would be jurisdiction in this case, because of part being fixtures, and not pure chattels, by reason whereof jurisdiction is given as to the whole. 2. The fixtures did not, nor did any of them upon their fixture, become the property of the appellant, but the property always remained in the respondents by virtue of the agreement under which the same were affixed. 3. The mistake in fact could and did affect the result of such fixtures, and but for such mistake the fixtures would not have been affixed or the goods forming such fixtures been delivered, and consequently the parties are not in the same position as if there had been no mistake in fact. 4. The agreement for a chattel mortgage showed the intention to preserve the subject matter as chattels, and not to allow the property to pass; and such intention must be carried out, not only between the parties, but also as against the appellant; for, among other reasons, he did not lend his money nor was he otherwise induced to alter his position because of the subject matter being supposed to become fixtures, and particularly the appellant would have been in as good a position as he is if the said subject matter had never been put upon the mortgaged premises. 5. The respondents were not aware of the appellant's legal rights, or of his intended assertion of them; but if they were, they ought not, under the circumstances of this case, to be precluded from the relief granted by the decree. 6. The relief is not founded solely on rights in respect of the agreement of the 6th January, 1858, but the same relief would have been granted under the circumstances of this case if no such agreement had been made; and the respondents, James E. Thomson, Charles C. Thomson and David S. Keith, relied and still rely on the circumstances of this case to entitle them to the relief granted; and they also relied and still rely on the said agreement, together with the other facts in the case; and in either case the said respondents are entitled to the relief as to all goods supplied after the 30th December, 1857. 7. The mortgage to the plaintiff did not operate to vest in him any property which was not the property of Thomas Davidson; and the goods in question, whether fixed or not, never were the property of said Thomas Davidson; nor were these respondents wrong-doers in affixing or placing them upon the premises. 8. Even if the said goods did become at law the property of the appellant, these respondents are in equity entitled to a redelivery of them, unless the appellant elects to treat them as goods sold and delivered to him, which he has not done.

The administrators of Davidson also assigned reasons against the decree, in addition to those assigned by McQuesten—that they, being mere tenants-at-will of McQuesten, had no power or authority to deliver up the said fixtures; and that they were improperly ordered to pay costs before it was ascertained whether the property was put into the hotel before or after the 30th December, 1857 (the date of Davidson's death), and before the final result of the suit.

Proudfoot and *Blake* for the appellant; *McMichael* and *Fitzgerald* for the respondents, Thomson & Co.

Sir J. B. Robinson, Bart.—In *Jacques* v. *Worthington* (7 Grant, 192), which was referred to in the argument of this appeal, the case was, that Thomas Davidson, the proprietor of the City Hotel in Hamilton, which was built and prepared for occupation at the time of his death, had been in negotiation with those plaintiffs for a large quantity of furniture, to be placed in the hotel; but he had not entered into a contract with them, or given any order for the work, before ill-health obliged him to leave Canada and go to Cuba, leaving Stevenson, his general agent, to manage his affairs for him in his absence, and "in particular to do what might be necessary in regard to the conduct and management of the City Hotel."

After he had gone, Stevenson, acting under his power-of-attorney, and in ignorance of Davidson's death, continued to negotiate with Jacques & Hay for the purchase of furniture; but before the delivery of the furniture, in January, 1858, there was no binding contract between them. In the meantime Davidson had died in Cuba; and the question was, whether the contract which Stevenson had made in January or February, 1858, when he gave a chattel mortgage, in the name of his principal Davidson, who had died on the 30th December before, was binding upon Davidson's estate. The Court of Chancery determined that it was not. The prayer of the bill was, that it should either be declared that the title to the furniture had not passed out of the plaintiffs, and that the defendants might be ordered to restore the same to them, or that the defendants (the administrators) might be ordered to execute a mortgage upon the furniture such in its terms as Stevenson had executed in the name of Davidson, but while Davidson was in fact not living.

The judgment in that case was, that although the court could not decree specific performance of a void contract, yet they must consider that the contract was void only in consequence of a mistake common to both parties; that the defendants (the administrators of Davidson), who had set up that defence, could have no right to retain the furniture, which had been delivered to them under a void contract; and that justice required that the plaintiffs should be placed as far as possible in *statu quo*: and they ordered the administrators, who had taken possession of the goods, to deliver them back to the plaintiffs, the vendors, and to pay their costs of the suit.

There can be no doubt that that decree was just, and that the only question in the case was, whether the aid of a court of equity was required or could properly be given. It was contended that the plaintiffs should be left to their remedy at law.

Here we have a question of a similar nature in some degree, but varying in its circumstances, growing out of the supply by these plaintiffs of labour and materials for fitting up the same hotel, and supplied in part before Davidson's death, upon a contract made with himself, and in part supplied after his death, upon a contract, as the plaintiffs contend, made by his agent Stevenson with the plaintiffs after Davidson had died in Cuba, but before information of his death had reached Canada.

In this case also other considerations present themselves, from the circumstance that the goods supplied by these plaintiffs were put up by them in the hotel, and in such a manner that, it is contended, they are fixtures, and have become the property of the appellant McQuesten, to whom Davidson had long before mortgaged the hotel for advances. This difference between the present case and that of Jacques & Hay against the administrators of Davidson, gives rise to several questions.

The labour and materials applied by these plaintiffs, were applied in fitting up the new hotel with gas-lights, steam fittings, bells and water closets. The work, it appears, was begun upon a contract made with Davidson, which the plaintiffs were engaged in executing at the time of his departure from Canada. Soon after he left Canada his insolvency became generally known; and the plaintiffs not being paid, as they should have been, according to the contract, for what they had done, suspended their work, and would not go on, till Stevenson, the agent, on the 6th January, 1858, agreed to give them, as he afterwards did, on the 28th January, a chattel mortgage on the articles they were to supply, and to allow them to remove them from the building if they should not be paid according to the agreement which he had made with them in Davidson's name.

Davidson having died some time before this in Cuba—viz., on the 30th December, 1857—though neither the plaintiffs nor Stevenson were aware of that fact till the 4th February following, the question is, what are the rights of the parties under these circumstances, first, as to the articles not affixed to the realty (if there were any which should not be so regarded), and next as to those which are fixtures?

We do not see the deed executed on the 28th January; but that cannot be material, since it is clearly void and of no effect, being executed in the name of Davidson by Stevenson as his attorney, under a power-of-attorney which had been revoked nearly a month before by the death of the principal. The written agreement or understanding, however, between Stevenson and these plaintiffs, which this chattel mortgage was intended to fulfil, was signed by Stevenson in his own name, and is as follows:

"Hamilton, 6th January, 1858.

"To James E. Thomson:

"Sir,—I undertake that for whatever work and materials you do and find for Mr. Davidson's new hotel after this date, I will give you a chattel mortgage on the materials for the value of the work and materials, and also assign to you sufficient rents, and also the chattels to be sold by auction, as collateral security to cover said work and materials.

(Signed) "JAMES STEVENSON."

The mortgages which Davidson had given upon the hotel and premises to McQuesten, are not shown to us. From what appears in the case, and was said on the argument, I assume them to be mortgages in fee, given some time before (in fact in 1855) to secure advances that had been made, and that should thereafter be made, to Davidson, for enabling him to erect and furnish the hotel. Davidson's interest in the hotel I assume was a freehold interest, but I do not find that stated.

First, then, as to any articles, affixed or not affixed to the freehold, which were delivered in Davidson's lifetime, for which the plaintiffs have not been paid, they must of course take the chance of recovering from Davidson's estate. They have no lien on the goods, having delivered them, and not, as appears, upon any agreement with Davidson that they should have a right to reclaim them if not paid for.

2ndly, as to any delivered after Davidson's death occurred, and before it was known in Canada, I gather from the statements in the bill that the plaintiffs, on account of Davidson's failure to pay, and the apprehensions of his insolvency, had ceased to do work or supply articles for the hotel before or just about the time (30th December) that Davidson died in Cuba; but that, on and after the 6th January, when the written undertaking was given by Stevenson, or perhaps a few days before, upon a verbal agreement to the same effect, the plaintiffs had resumed work and continued to supply materials. In doing this they must be looked upon, I think, as proceeding under the contract made with Davidson in his lifetime, being content to do so upon receiving Stevenson's written guarantee, and thus waiving their right to rescind this contract, and stop in its execution on account of default in payment.

Whatever materials they put in after Davidson's death and up to the completion of their work, must in my opinion be considered as work done and materials found upon the contract made with Davidson himself, just as if no such interruption of the work had occurred. It was, as we may suppose, work necessary to be done for carrying the contract to a completion, and entitling them to be paid for it, and necessary for rendering that portion of their work of value which they had executed in Davidson's lifetime, and on account of which they had received payments.

The contract of plaintiffs with Davidson is stated in the bill to have been verbal only, but particular in its terms—"that is, to furnish, put up and supply the hotel in the manner required by Davidson, with all the materials and articles which could be furnished by the plaintiffs in the way of their trade, which consisted of plumbing, bell-hanging, gas and steam fitting, to be paid for as the work should progress, and as the goods to be furnished should be delivered at the hotel."

No objection is taken that this contract was not binding upon Davidson, under the Statute of Frauds, nor could have been taken, I apprehend, with success. The administrators have in their answer admitted it, and on the side of the plaintiffs it has been fully carried out. It was binding also upon Davidson's administrators as well as upon himself.

The plaintiffs have doubtless their remedy against Davidson's estate by action against his administrators, just as they would have had for any amount of ordinary moveable furniture supplied by them partly before and partly after the death of Davidson, upon a contract made with him in his lifetime, but which during the progress of it they had for a time hesitated to proceed in, but had resumed on receiving assurance from himself or his agent that their payment would be made secure. And so long as they did waive their objection and go on with the contract, it would make no difference, I think, as regards their claim upon Davidson's estate to be paid for the whole of their demand, to hold his administrators liable, that their security for payment had failed in consequence of Davidson's death having occurred before the new stipulation was entered into. I do not think that the plaintiffs could be told that what they did after they resumed work, about the end of December or beginning of January, was upon a new contract with Stevenson, and that they could look only to him, and had no claim upon Davidson's executors. Stevenson, by his written engagement of the 6th January, may have rendered himself personally liable to the plaintiffs—that is, I mean, may have incurred by the terms of that writing a personal liability, from which the death of his principal would not relieve him. But the plaintiffs may have good reasons for not being content to be referred to their common law remedy against the personal representatives of Davidson, or against Stevenson, and for desiring the aid of a court of equity to obtain a remedy more likely to be productive. If they should not be found entitled to any such remedy as the decree appealed from gives them, or as they have asked for, their case will be a hard one, if there is a large sum due to them for the work and materials which they have supplied. McQuesten, in his answer, expresses his belief that there is in fact little or nothing due to them; and it is an objection to the decree, that it does not, as must have been intended, provide for ascertaining what debt, if any, is really due to the plaintiffs for labour and materials, before they can obtain the restitution of the materials. Whatever may be the truth in this respect, and admitting even that there is such a large sum as $12,000 still due to the plaintiffs, as they assert, and that they have little certainty of being paid if they are confined to their legal remedy against the administrators of Davidson or against Stevenson, still their case would not be

harder than cases which are constantly happening, where a merchant sells goods upon credit, and before the credit is expired, or before they are paid for, they are seized by other creditors of the vendee, and sold to pay his debts to them; or where a man has built a house for another, who dies before it has been paid for, leaving an estate which turns out to be worth nothing.

And at any rate we cannot strain the law in order to protect the plaintiffs from loss arising from the common cause of the insolvency of the person with whom they had contracted.

There are well-founded objections to what the plaintiffs have prayed for, and to what has been decreed in their favor.

The case of *Jacques & Hay v. Worthington*, was free from any such difficulties as occur in this. It was found there that the articles had not been sold and delivered upon a contract with Davidson, but on a contract made with Stevenson, supposed (it is true) to be made with him as the agent of Davidson; but not so, in fact; for his principal was dead, and could no longer be represented as a contracting party.

It was assumed, therefore, that his estate could not be made liable. Whether Stevenson could not have retained the goods, if he had chosen to pay for them, was not made a question; nor whether he could not have been made personally liable under the circumstances, which I think he could be. If the goods had been of a perishable nature, and had perished in the meantime, so that they could not be restored, the case of the vendors would have been hard indeed, if neither the estate of the principal nor the agent could have been made to pay. But no such questions were made; and as the estate was held not to be liable, and to have no interest in the goods sold, and as Stevenson did not take them, nothing could be more just than that the vendors should, at least, get the goods back, for which no one was held liable to pay.

But in the case now before us, there was a contract made with Davidson that extended to and covered all that has been furnished, and though the executing of that contract was suspended for a few days by the plaintiffs, and though it appears that Davidson had been in default upon it, so that the plaintiffs might have declined finally to go on with it, yet on being made secure, as they thought, they did in a short time go on with it; and upon such an agreement as shews that they were executing the work not for Stevenson but for Davidson, as they supposed, that is, upon their *contract with him*, which they might do notwithstanding his death. The writing of 6th January, 1858, shows that Stevenson only intended to make the plaintiffs secure by undertaking to give them, on behalf of Davidson, a chattel mortgage on the things *as collateral security*—collateral with what? with the contract between them and Davidson, on which they had hitherto proceeded—so far as the being able to give this collateral security depended upon Davidson continuing in life, who was then in a distant country—the plaintiffs must be taken to have trusted to that. The proposed collateral security was, at all events, security in addition to what they had before; and, according to the statements in the bill, nearly 8,000 dollars was due to them for what they had done and supplied in Davidson's life-time.

Then comes the question, when the plaintiffs, trusting to their agreement with Stevenson, went on and completed their contract and their work, did or did not the materials which they put in become the property of the estate of Davidson, in the same manner as the materials which they had put in in his life-time become his as soon as they had set them up in the building, or had delivered them? I think they did.

The plaintiffs endeavor to treat the work done after the end of December as done upon a new contract, and in no manner in execution of the former; but I do not look upon it in that light. If Davidson had been in default in his payments, as is alleged, that put it in the power of the plaintiffs to rescind the contract and stop where they were; but they did determine not to do so, and they went on, as I consider, under the contract, having received the collateral security that satisfied them.

It seems to me that the property in all the materials put into the hotel, by the way of fitting it for the reception of gas or water, putting up bells, heating furnaces, or other work of that kind, became the property of the estate, as being furnished upon a contract with Davidson which did not cease with his life, but on which his personal representatives are liable, and these plaintiffs liable to them, on the principles which govern all such contracts.

And I do not think that the property can be divested by any order of a court, and such things or parts of things as were delivered and put up after the death of Davidson, separated from those which had been in part or wholly put up before. Such a separation in regard to work of this kind might be destructive of the value of that which remained, as well as of that taken away, or, at least, very injurious to it; and though this would be no reason for denying the equitable relief, if the plaintiffs were right in what they had contracted for, yet it furnishes a strong reason against going contrary to strict legal principles, in order to protect them against a loss that all persons in business of that nature are subject to.

If the materials furnished since the death of Davidson belong to his estate, as, for the reasons I have stated, I think they do, save only as to the claim of McQuesten and others, in respect to their being fixtures, the plaintiffs' bill should be dismissed; and it is incumbent to consider the case in reference to McQuesten's interest.

I will only, therefore, say as to that part of the case, that at present I consider that McQuesten, as mortgagee of the hotel, now in his possession, is as much entitled to insist on being protected in the enjoyment of whatever has been affixed to the hotel, so as to form part of the realty, as he would be if he held the absolute estate, which in law, at this moment indeed, he does; and that he would be so entitled in respect of fixtures put in since he took the mortgage, as well as in regard to any that were in at the time. And I apprehend that right of his would be found to interfere with the relief intended to be given by the decree to a greater extent perhaps than was contemplated by the learned judge who disposed of the case; for in a question concerning fixtures in a case of this kind, not involving the condition of trade fixtures as between landlord and tenant, and relating to fixtures of such a description as those under consideration, I question whether we should find ourselves warranted by the doctrines which are now maintained—in treating all articles as chattels that have not been actually affixed to the freehold—or, that having been affixed to the freehold, can be removed therefrom without injury to the inheritance. We should be bound I think to consider that many things that are in common use, as parts of some machinery or contrivance that is affixed to the freehold, and without which it would be incomplete, may and must be held to partake of the legal character of the machine or contrivance as a fixture, and this also in some cases where they are not in actual and constant contact one with the other; and still more, that parts of the machinery or contrivance which are really fixtures, from being actually affixed to the freehold, are not the less fixtures and property of the owner of the estate, merely because they can be removed without injury to the inheritance—that is, I mean without breaking or destroying the building. I am now again speaking of the law of fixtures as between vendor and vendee, mortgagor and mortgagee, heir and executor, and not of trade fixtures as between landlord and tenant.

The chattel mortgage given by Stevenson after the death of his principal, Davidson, cannot affect the case, as it was simply void, and it can be of no consequence as far as regards McQuesten's interest, on these grounds, to contend that that deed and the agreement made on 6th January between Stevenson and the plaintiffs; was only void because the parties acted under a mistake in supposing Davidson to be alive when he was not, because if he had been alive at this time, and had even been present in Hamilton, and made such an agreement himself with the plaintiffs, nothing done between him and the plaintiffs could destroy or impair McQuesten's right as mortgagee, so long as he was not an assenting party; and I agree in the conclusion come to by the Vice-Chancellor, that the evidence shows that he was not assenting, but gave fair notice that he would insist upon his legal rights as mortgagee, and that they must act at their peril in removing any fixtures from the hotel. And this was no unreasonable line of conduct to take, if Mr. McQuesten advanced his money, as it appears he did, for the purpose of enabling Davidson to put up and complete a large and valuable hotel upon the land mortgaged, for he would naturally rely upon all that was to be done towards erecting and finishing the building and rendering it habitable and convenient was enhancing the value of his security.

The plaintiffs' bill should, in my opinion, have been dismissed, but not with costs.

DRAPER, C. J.—Concurred in the opinion of His Lordship the President, except on the question of costs. [His Lordship the Chief Justice thought the bill should be dismissed with costs.]

ESTEN, V. C.—It appears to me immaterial to consider many points that were raised in the case. It may be safely said that there was no confirmation or adoption of the agreement alleged in the bill, on the part either of the personal representatives of Davidson or McQuesten.

This point being settled, it seems immaterial whether the goods delivered after the 6th January, 1858, were delivered in pursuance of the original contract with Davidson, or of some contract supposed to have been made before his death with his agent Stevenson, or of the contract of 6th January. That no property vested in the goods till delivery, seems clear. In the two former cases the delivery should have been to the personal representatives of Davidson. But at that time he had no personal representatives. The delivery was to Stevenson, the agent of Davidson. There was therefore no delivery to Davidson, who was dead; no delivery to his personal representatives, as he had none; no delivery to Stevenson in his individual capacity; no delivery to McQuesten, with whom there was no contract and who was not in possession at the time. The only doubt that could be suggested, as appears to me, would be whether what occurred would not operate as a delivery to the administrators when they were appointed by a sort of relation. But whatever conclusion might be arrived at, if such delivery had been made with full knowledge of Davidson's death, it seems unjust to apply such a principle when the plaintiffs were totally ignorant of that fact when the delivery occurred. They might have acted very differently had the fact been known. But at all events it seems very clear that the goods delivered after the 6th January were delivered in pursuance of the agreement made on that day, although the plaintiffs may have laid themselves open to an action for not performing the original contract, or for not performing the contract supposed to have been made on the 24th December or on some other day before the 6th January.

The result seems to be that the 'plaintiffs' goods are in the house of Davidson. mortgaged to McQuesten, who is in possession, excepting that the fixtures have probably vested at law in McQuesten; and the question is, what are the rights of the parties under such circumstances—McQuesten having refused to permit the plaintiffs to remove their goods. As to the chattels I presume that no doubt can exist. If one person place his goods by mistake in the house of another, the latter must permit him to remove them at proper times, and cannot treat him as a trespasser for entering his house at such times for the purpose. The only question would seem to be, whether a sufficient remedy does not exist at law. The withholding the goods would be, I presume, a wrongful conversion, and an action of trover could be maintained, probably also an action upon an implied contract. But in the case of *Eyre* v. *Eyre*, 2 Ves. sr. 86, relief seems to have been given in equity, although a sufficient remedy existed in law on the ground of mistake. The question is whether a different rule applies to the fixtures. I see no reason for treating the mortgagee and heir as standing in a different position. No doubt the mortgagee is entitled to all fixtures subsequently annexed to the estate, and so is the heir, and so is the owner of the estate, whoever he may be; but it is absurd to consider the mortgagee as a purchaser for valuable consideration of these fixtures not annexed, with any intention to augment his security, although doubtless the mortgage debt forms a sufficient consideration to support his title as a purchase for value to every thing which properly belongs to the security. But if the goods are affixed by mistake, he must be treated like any other owner of property, to whose freehold, goods have been affixed by mistake. Suppose A. to order goods to be affixed to the freehold of his house, and the tradesman by mistake to affix them to the house of B., supposing it to be A.'s house, it could make no difference in his rights and remedies that B.'s house was in mortgage and the legal estate vested in a mortgagee. The question is what are his rights and remedies under such circumstances. In the present instance, no doubt, the plaintiffs delivered the goods under an agreement to have a chattel mortgage of them for their security. They relied more on this chattel mortgage probably than on Davidson's personal responsibility. This agreement would have been binding on Davidson and his real and personal representatives even as to the goods which became affixed to the freehold, if he had been alive when it was made. It was not binding on the mortgagees, who could have insisted on holding the goods affixed to the freehold until their claim should be satisfied.

The plaintiffs, however, stand in a very different position from what they would have held had Davidson been alive when the agreement was made. Supposing the mortgage satisfied, they appear to be without remedy unless the goods be specifically restored, or unless they would be entitled to proceed at law against the heir, in case of his refusal to permit the removal of the fixtures. They could maintain no action against the personal representatives of Davidson, or against Stevenson. If the goods were delivered in pursuance of the contract of the 6th January, which was clearly the case, the mortgagee and heir are in *pari materia*, because the heir is no more bound by the contract than the mortgagee, the contract being totally void as made with a dead person.

In short, it appears to me that the plaintiffs having, under a mistake of facts, placed their goods in a position in which but for that mistake they would not have been placed, are entitled to be relieved against the effect of the technical rule which vests the property of the affixed chattels in the legal owner of the freehold. With regard to the chattels which remain in that state, whether the contract were made in Davidson's lifetime, or after his death, as there was no delivery, the property did not pass and the plaintiffs are entitled to relief. With regard to the chattels which have become part of the freehold, and of which the property has vested for that reason, I think they are entitled to be relieved against the effect of the technical rule; the mortgagee being placed in the same situation as if no mistake had occurred; that is to say, the property being placed in as good a position at the expense of the plaintiffs as if the goods had never been affixed; it being as I think clear that the contract under which the goods were delivered and affixed was made after Davidson's death, it was therefore void. I think that the decree is right in all essential respects and ought to be affirmed and the appeal dismissed with costs. The plaintiffs have an equity to be relieved against the effect of the mistake, and this equity constitutes the legal owner of the inheritance, whether mortgagee or heir, a trustee for them. Of course they must be placed in the same position as if the accident had not happened, and if they cannot be the plaintiffs must bear the loss.

HAGARTY, J.—I have rarely had a case before me in which I have found it so difficult to arrive at a satisfactory conclusion, and feeling, as I do, fully impressed with the justice of the decree that has been pronounced in the Court below, and in absence of direct authority to the contrary, I think the decree should be affirmed and the appeal dismissed.

Per Curiam.—Appeal allowed and bill in court below dismissed with costs. [ESTEN, V. C., dissenting.]

QUEEN'S BENCH.

Reported by C. ROBINSON, ESQ., Barrister-at-Law, Reporter to the Court.

GLASS v. WHITNEY.

Warehouse receipts—Endorsement of—Consol. Stats. U. C., ch. 54, secs. 8 and 9,—Construction of.

The plaintiff declared that one G. had deposited with the defendant certain wheat, and obtained from him a warehouse receipt therefor; that by the course of trade such receipt was transferable by endorsement, and the property in the wheat would pass to an endorsee: that G sold said wheat to the plaintiff, and endorsed to him the receipt; but that when he presented it to the defendant the latter refused to deliver to him the wheat. Defendant pleaded that before he had any notice or knowledge of such transfer or sale, the wheat was taken out of his warehouse by G.

Held, a good defence, for at common law the endorsement and transfer of the receipt would clearly not pass the property, and the Consol. Stat. C., ch 54, relied upon by the plaintiff, has no application to an absolute sale of goods, but to pledges only, to secure payment of a bill or note negotiated, or a debt contracted when the receipt is endorsed over.

[Hilary Term, 26 Vic.]

This was an action brought to recover from the defendant the value of a quantity of wheat.

Plaintiff declared as follows:—"That the defendant carrying on business under the name and style of F. A. Whitney & Co., as a warehouseman, did, on the 14th of October, 1862, as such warehouseman receive in store for A. L. Groundwater, 777 32/60 bushels of fall wheat, and did thereupon give unto the said A. L. Groundwater a receipt for the same, known as a warehouse receipt, to the effect following:—

No. 133. Toronto, Oct. 14th, 1862.

Received in store, for A. L. Groundwater, the following property, in apparent good order and condition, subject to storage, seven hundred and seventy-seven 32/60 bushels fall wheat.

F. A. Whitney & Co.

777 32/60 bushels.

And whereas by the course of trade in this province such warehouse receipt was and is transferable by endorsement, and the property in the wheat mentioned therein by such course of trade would pass to an endorsee and holder of such receipt, the plaintiff says that the said A. L. Groundwater afterwards, and before the commencement of this suit, sold to the plaintiff the said 777 32/60 bushels of wheat mentioned in said receipt, and duly endorsed and delivered the said receipt to the plaintiff, whereby the said wheat became, was, and is the property of the plaintiff; and *thereupon the defendant became liable by such course of trade to* deliver the said wheat to the plaintiff upon presentation by him of said receipt; yet the plaintiff says that the defendant did not deliver the said wheat mentioned in the said receipt to the plaintiff, although the plaintiff duly presented the said receipt to the defendant, and requested him to deliver the said wheat, but the defendant wholly neglected and refused, and still does neglect and refuse so to do."

The second and third counts were upon similar receipts for other wheat.

The fifth plea, to all the counts, was, that after the making of the said several receipts, and the receipt by the defendant of the several quantities of wheat therein respectively mentioned, and before the defendant had any knowledge or notice of the transfer of the said receipts respectively to the plaintiff by the said A. L. Groundwater, or of the sale of the said wheat to the plaintiff, as in those counts alleged, the said A. L. Groundwater, took, had, and received to his, the said A. L. Groundwater's own use, out of the warehouse of the defendant, the several quantities of wheat in the said several receipts respectively mentioned.

To this plea the plaintiff demurred, on the grounds, that after the making of the several receipts by the defendant, and the transfer of said receipts by the said A. L. Groundwater to the plaintiff, it is no answer to the plaintiff's claim that the said A. L. Groundwater took and received from the plaintiff the said wheat as in said plea mentioned, as the defendant does not aver that the said A. L. Groundwater was at that time the holder of the said receipts.

Galt, Q. C. for the demurrer, relied on Consol. Stats. C., ch. 54, sec. 8; ch. 59, sec. 7; ch. 92, secs. 68, 69; and cited *Holton* v. *Sanson et al.*, 11 C. P. 606.

M. C. Cameron, contra, cited *Deady* v. *Goodenough*, 5 U.C. C.P. 173; *Proudfoot* v. *Anderson*, 7 U. C. Q. B. 573; *McEwan* v. *Smith*, 13 Jur. 265; *Goodenough* v. *The City Bank*, 10 U.C C P. 51; *The Wisconsin, &c., Bank* v. *The Bank of British North America*, 21 U.C. Q.B. 284; *Bentall* v. *Burn*, 5 D. & R. 284.

McLean, C. J.—It was contended for the plaintiff that by the course of trade the certificates endorsed by Groundwater passed their respective contents, and that the plaintiff thereby became the owner of the wheat: that being the owner he was entitled to receive the same from the defendant on production of the endorsed receipts, *but that the defendant alleged that he had delivered* the same again to Groundwater, and that without the receipts being produced the defendant had no right to re-deliver the wheat to Groundwater.

Had there been an advance of money by the plaintiff to Groundwater, and the receipts endorsed to him as collateral security for the amount of advances, the argument of the plaintiff's counsel might well be sustained, for under ch. 54 of the Consolidated Statutes of Canada, section 8, it is provided that "notwithstanding any thing to the contrary in the charter or act of incorporation of any bank in this province, any bill of lading, any specification of timber or any receipt given by a warehouseman, miller, wharfinger, master of a vessel, or carrier, for cereal grains, goods, wares or merchandize, stored or deposited, or to be stored or deposited in any warehouse, mill-cove or other place in this province, or shipped in any vessel, or delivered to any carrier for carriage, from any place whatever to any part of this province, or through the same, or on the waters bordering thereon, or from the same to any other place whatever, and whether such cereal grains are to be delivered upon such receipt in species or converted into flour, may, by endorsement thereon by the owner of or person entitled to receive such cereal grains, goods, wares or merchandise, or his attorney or agent, be transferred to any incorporated or chartered bank in this province, or to any person for such bank, or to any private person or persons, as collateral security for the due payment of any bill of exchange or note discounted by such bank in the regular course of its banking business, or any debt due to such private person or persons, and being so endorsed shall vest in such bank or private person from the date of such endorsement all the right and title of the endorser to or in such cereal grains, goods, wares or merchandize, subject to the right of the endorser to have the same re-transferred to him, if such bill, note, or debt be paid when due; and in the event of the non-payment of such bill or note when due, such bank or private person may sell the said cereal grains, goods, wares, or merchandise; and retain the proceeds, or so much thereof as will be equal to the amount due to the bank or private person upon such bill or note, or debt, with any interest or costs, returning the overplus, if any, to such endorser."

The ninth section provides that "no such cereal grains, goods, wares or merchandize, shall be held in pledge by such bank or private person for any period exceeding six months; and no transfer of any such bill of lading, specification of timber or receipt, shall be made under this act to secure the payment of any bill, note or debt, unless such bill, note or debt, be negotiated or contracted at the same time with the endorsement of such bill of lading, specification of timber or receipt; and further, no sale of cereal grains, goods, wares, or merchandise shall take place under this act, until or unless ten days' notice of the time and place of such sale has been given by registered letter transmitted through the post-office to the owner of such cereal grains, goods, wares or mechandise, prior to the sale thereof."

It is, I think, evident that this act was first introduced for the purpose of enabling banks to take collateral security for advances made to enable parties to purchase grain or timber. Its title is "An act respecting incorporated banks," but by the eleventh section its provisions are extended to all banks chartered during the session of the year 1859, and they are also extended by the eighth section to private persons in respect to any debts due to such private persons. Individuals could before the passing of that act have taken collateral security upon any property in the hands of a debtor, but they could not do so merely by the endorsement of a bill of lading or specification of timber, or any receipt given by a warehouseman, or miller, or other person, as pointed out by the eighth section of the act.

It is not alleged that the certificates or receipts for wheat given by the defendant to Groundwater were endorsed for the purpose of giving collateral security to the plaintiff for a debt due to him. On the contrary the plaintiff's absolute right to such wheat is rested on the endorsement of these receipts. They could not possibly have any effect as a transfer at common law. The defendant, as bailee, would be bound by them to Groundwater, as affording evidence of the receipt into store of the quantities of wheat specified, and, notwithstanding what is alleged to be the course of trade, Groundwater alone could enforce the re-delivery of the wheat, unless indeed he made a transfer more formal and more substantial than the mere endorsement of the several receipts.

In the cases cited in the argument it is evident that the plaintiff had taken an assignment from the parties holding the receipts, besides taking the endorsed receipts of the wharfingers or warehousemen.

In the case of *Holton* v. *Sanson et al.* (11 U.C., C.P. 606,) and *Deady* v. *Goodenough* (5 U.C., C.P. 173) it is evident that the right to recover did not rest upon the mere endorsement of the warehouse receipts. In the latter case a delivery order was given with the

wharfinger's receipt to the purchasers of the flour by the defendant Goodenough, who acted as broker in the sale of the flour, and it was for negligence in giving up these documents, by which the vendees were enabled to get possession of the flour without payment of the amount agreed upon, that the action was brought. With respect to these, Macaulay, late Chief Justice of the Common Pleas, observes in his judgment in that case, at page 176, "The delivery of such instruments was not a constructive delivery of possession of the flour itself, either to the defendant himself when he received them, or by him when he parted with them. They do not pass the property in goods like bills of lading, at all events until presented and acted upon.

In the former case, Richards, J., in delivering the judgment of the court, says; "As to the first court count," (trover for a quantity of wheat) "assuming that the wheat belonged to Clarkson, Hunter & Co., and as "all in the defendants' possession separated from any other wheat, the quantity being exactly that bought, namely, 600 bushels, then the property in the wheat passed to the plaintiff by virtue of the bargain and sale. The endorsing of the receipt was nothing more than a direction to the defendant to deliver the property to the person who had become the owner, and who had a right to it independently of that endorsement." In *Dixon* v. *Yates*, 5 B. & Ad. 340, Parke, J., says: "I take it to be clear that by the law of England, the sale of any specific chattel passes the property in it to the vendee without delivery."

In that case, *Holton* v. *Sanson et al.*, Galt, Q C., for the plaintiff, in opposing a rule for a new trial, contended that as to the count for trover the property passed by virtue of the sale, and the transfer of the receipt was merely an order to the defendant to deliver to the plaintiff what he had purchased from Clarkson & Hunter, and what the defendant acknowledged they had in store for them. So in this case the endorsement of the receipts only amounted in fact to such order; the sale being an absolute one, the certificates and the endorsements upon them could not operate as a collateral security for a debt which did not exist.

The 59th chapter of the Consolidated Statutes of Canada, on which some reliance seemed to be placed on the argument, only relates to the dealings of factors with other parties in certain cases, and none of its provisions assist in making out a title for the plaintiff to the wheat mentioned in the defendant's receipts.

The 68th, 69th, and 70th sections of ch. 92, Consol. Stats. C., are by the tenth section of chapter 54 of these statutes made applicable to all false bills of lading, receipts or documents mentioned in the eighth section of the latter act, and prescribe the punishment of persons offending against their provisions. Whether any of them apply to the conduct of Mr. Groundwater in selling a quantity of wheat for which he held the receipts after the whole had been withdrawn by himself (if the plea of the defendant speaks truly) it is not necessary to enquire, but the defendant should not be guilty of anything criminal in giving back to the depositor the wheat stored by him, and which he had a right to withdraw at any time he thought proper.

The plaintiff relied upon the honesty of the person from whom he purchased, and certainly the possession of the receipts was strong presumptive evidence that the wheat was still in the defendant's warehouse. If notice of the purchase had been given to the defendant, accompanied by an offer to pay the storage, and he had subsequently allowed the wheat to be withdrawn, there can be no doubt that as the purchaser of the wheat the plaintiff could recover its value from the defendant, but it would be very unjust to hold the defendant liable for delivering the wheat to Groundwater at a time when he was in utter ignorance that the defendant had any claim whatever upon it.

I think defendant entitled to judgment on the demurrer.

Hagarty, J.—The argument for the plaintiff seems to concede that at common law the plea would be a good bar: that in fact a bailee receiving goods in store for the owner, and giving a receipt acknowledging such fact, must be protected if he give up the goods to the owner on demand, in good faith, unaware of any sale or disposition of them by the bailor, and that the law would not impose upon the bailee any duty to insist, as a condition of such re-delivery, on the return of his receipt.

This would seem to be the law. As Willes, J., remarks in *Sheridan* v. *The New Quay Company*, (4 C. B. N. S. 659.) a case relating to carriers, "The law would have protected them against the real owner if they had delivered the goods in pursuance of their employment, without notice of his claim." The principle here recognised runs, I presume, through all classes of bailees. Delivery to the original bailor, the only person known as owner, or as having any title or interest, will be a good discharge; and as to the effect, independently of statute law, of warehouse receipts transferred by endorsement from vendor to vendee, as is remarked by Macaulay, C. J., in *Brady* v. *Goodenough* (5 U.C.C P. 176) "The delivery of such instruments was not a constructive delivery of possession of the flour itself, either to the defendant when he received them, or by him when he parted with them. They do not pass the property in goods like bills of lading, at all events until presented and acted upon." The well known case in the House of Lords, *Smith* v. *McEwan*, (13 Jur. 265,) is also in point.

But the plaintiff relies on the statute (Consol. Stats. C. c. 54), the provisions of which have been stated at length by the learned Chief Justice.

Ch. 59, Consol. Stats. C., sec. 7, also relied upon, merely applies to dealings with factors and those dealing with them in certain cases, and does not seem to affect this case.

Chapter 92, Consol. Stats C., secs. 68 and 69, provides for the punishment of warehousemen and others giving false receipts for goods not actually received, and to punish fraudulent dispositions of goods by owners on which consignees have made advances.

I am of opinion that the act chiefly relied on by the plaintiff has no application to this case: that it does not affect any direct sale or purchase of property, such as the plaintiff sets up in this case, but only applies to pledges of property to secure payment of a note, bill, or debt, discounted or contracted at a time when the receipts are endorsed to the bank or private person: that the latter only acquire a limited and not an absolute right, that of retaining the property for a period not over six months, and if the note or debt for which it is so deposited be not paid when due, then to sell, after certain notice to the owner, sufficient to pay the claim, and account for the surplus. The transaction before us is one of absolute sale and purchase, unconnected with any giving of time or security.

It is pressed upon us that, as alleged in the declaration, the custom of trade here is to endorse these warehouse receipts, and to treat the property as passing thereupon to the endorsee. This may be so, and the endorsee may generally perfect his title by notice to the bailee or holder of the goods. In the case before us the receipts do not even profess to be negotiable, (if they could be made so,) but are simple acknowledgments that the defendant had received certain specified property in store for Groundwater. I know of no principle of law, in the absence of some express statutable declaration, which could warrant us in holding the giver of this receipt answerable in this action to a plaintiff of whose claim he never heard until after he had in good faith re-delivered the goods to the only person he ever knew as owner. We are asked to annex to his contract as bailee the condition that he shall not be bound to re-deliver these goods unless and until the receipts given by him be first handed back to him.

I think the defendant is entitled to judgment.

Connor, J., concurred.

Judgment for defendant on demurrer.

Robertson v. Freeman.

Clerk of the peace—County attorney—Consol. Stats. U. C., ch 106, sec. 7.

In 1858 the plaintiff was appointed county attorney for Wentworth. In May, 1862, following the person who had for many years been clerk of the peace for that county died, and in July, defendant was appointed to succeed him in such office.

Consol. Stats. U C, ch 106, sec. 7, enacts that any clerk of the peace appointed after that act "shall be *ex-officio* county attorney for the county of which he is clerk of the peace."

Held, that defendant upon his appointment as clerk of the peace became also county attorney, although the plaintiff's commission had been not otherwise revoked, and he had received no notice of any change in his position.

[Hilary Term, 26 Vic.]

SPECIAL CASE.

This is an action brought by the plaintiff against the defendant, to recover the sum of $500, alleged to have been received by the defendant for the use of the plaintiff, between the first day of

September, 1862, and the twelfth day of November of the same year, being the alleged amount of certain fees and emoluments received by the defendant, and alleged to be due and of right payable to the plaintiff as county crown attorney for the county of Wentworth.

By consent of the parties, and by the order of Mr. Justice Morrison, dated 21st of November 1862, and granted according to the Common Law Procedure Act, the following case has been agreed upon, and is now stated for the opinion of the court, without any pleadings:

1st. On the 19th of June, 1857, the provincial legislature passed an act entituled "An Act for the appointment of County Attorneys, and for other purposes in relation to the local administration of justice in Upper Canada," 20 Vic., ch. 59; Consol. Stats. U. C., chaps. 37 and 106.

2nd. When the above act became law one Peter Bowman Spohn was, and continued to be until his decease hereinafter mentioned, clerk of the peace for the said county.

3rd. On the 6th of April, 1858, by commission under the sign manual of the Governor-General of this province the plaintiff was appointed county attorney for the said county, "to have, hold, receive and enjoy the said office of county attorney as aforesaid, together with all and every the privileges, rights, powers, and profits, emoluments and advantages, to the said office belonging, or which ought to belong to the same, unto him, the said Thomas Robertson, for and during pleasure and his residence within the province."

4th. On the ninth of April, 1858, the plaintiff appeared before the judge of the county court of Wentworth, and took the oath of office before him, prescribed by the sixth section of the statute 20 Vic., ch. 59, and continued to discharge the duties of the office of the office of county attorney for the said county until hereinafter mentioned.

5th. On the 28th of May, 1862, the said Peter Bowman Spohn died, and the office held by him became vacant.

6th. On the 22nd of July, 1862, the Honourable the Attorney-General of Upper Canada wrote to the defendant as follows: "I am now in a position to offer you the clerkship of the peace for the county of Wentworth, vacant by the death of the late Mr. Spohn. By law the office of county attorney goes with the former office:" which offer the defendant by letter, addressed to the said Attorney-General, accepted, which letter was as follows; "Not having applied for the office of clerk of the peace for Wentworth, I cannot too highly appreciate the consideration you have extended towards me in offering it to me. I cannot allow myself to stand in the way of those whom I have recommended for the appointment, but as you give me to understand if I take the office I will not thereby prevent either of them getting it, I thankfully accept your offer."

7th. On the 1st of August, 1862, by a like commission as aforesaid, the defendant was appointed to the office of clerk of the peace of said county, "in the room and stead of Peter Bowman Spohn, deceased, to have, hold, exercise and enjoy the said office of clerk of the peace as aforesaid, together with all and every the powers, rights, privileges, profits, emoluments and advantages to the said office belonging, or which ought to belong to the same, unto him, the said Samuel Black Freeman, for and during pleasure, and his residence within this province."

8th. This commission was sent to the defendant, with the following letter, addressed to him: "Secretary's office, Quebec, August 12th, 1862. Sir, I have the honour to inform you that his Excellency the Governor-General has been pleased to appoint you to the office of clerk of the peace of the county of Wentworth, in the room of Peter B. Spohn, Esq., deceased. Your commission is transmitted herewith. I have to refer you to the hon Minister of Finance for instructions as to the completion of any securities you may be called upon to furnish in your capacity as clerk of the peace. I have the honour to be, &c.—*A. A. Dorion*, secretary."

9th On the 15th of August, 1862, the defendant wrote as follows: "To the Honourable the Minister of Finance.—Sir, I have the honour of intimating to you that I have been appointed to the office of clerk of the peace for the county of Wentworth, and that the Honourable the Provincial Secretary refers me to you for the completion of any securities I may be called upon to furnish '*as clerk of the peace.*' I am prepared to furnish any such securities, but so far as I am aware the clerk of the peace is not required *as such officer* to furnish any securities. I presume that under the 9th sec. of ch. 17, of Con. Stats. U. C., p. 117, and sec. 7 of ch. 105, Con. Stats. U. C., p. 918, my appointment carries with it the obligation of discharging the duties pertaining to the office of county crown attorney. By sec. 2 of ch. 20, Consol. Stats. U. C., p. 180, that officer is required to give security for the due performance of his office. You will please advise me whether I will be required to perform such duties, and the nature of the security required."

10. On the 23rd of August, 1862, the following reply was sent to the defendant, signed by the Deputy Inspector General:—"Sir, in reply to your letter of the 15th instant, enquiring if your recent appointment as clerk of the peace for the county of Wentworth was intended to embrace also the office of county Crown attorney, I have the honour to refer you to the 9th section of the 7th chapter of the Consol. Statutes of Upper Canada, by which, according to the view of the Honourable Attorney-General for Upper Canada, you, as clerk of the peace, are also county attorney by the operation of the statute. I beg, therefore, to enclose herewith, a printed form of bond, which you are required to fill up with the penal sum of ten thousand dollars for yourself, and five thousand dollars for each of your two sureties, and to return same when completed to this department." Which bond, after being duly executed by the defendant and two sureties, was sent as above directed, and was accepted, and is retained by the Government as security according to law for the due performance of the duties of the office of county Crown attorney for the county of Wentworth aforesaid, by the defendant.

11th. Afterwards, and before the defendant commenced to perform the duties of the last mentioned office, he took the oath prescribed by law in reference thereto.

12th. On the 13th of September, 1862, the Honourable the Minister of Finance, at the request of the defendant as county Crown attorney, furnished the defendant with printed instructions for his guidance as county Crown attorney, and blank forms for the returns of moneys received and paid out in connexion w[illegible] the division, county, and surrogate courts, and the salarie[illegible] of county judges and recorders.

13th. The defendant, claiming under the above mentioned authority and instructions given to him to be and to act as county Crown attorney for the said county, from the time of taking said oath, has acted as such: and he admits, for the purpose of the question now submitted, that he he has received the sum of one dollar for fees for services rendered by him for business pertaining to the said office.

14th. The plaintiff has received no intimation of any [illegible]ind from the Governor-General, other than aforesaid, informing him that he has been relieved from office; and notwithstanding the appointment of defendant to the office of clerk of the peace for the county of Wentworth, and the other matters above alleged, he contends that he is still county attorney for said county.

The questions for the opinion of the court are, whether the plaintiff is still the county attorney for the county of Wentworth and whether he is entitled to the fees payable f[illegible] the duties of said office performed by the defendant.

If the court shall be of opinion in the affirmative, then judgment shall be entered up for one dollar.

If the court shall be of opinion in the negative, then judgment shall be entered up for the defendant.

Robert A. Harrison, for the plaintiff, cited *Smith* v. *Latham*, 9 Bing. 692; *Commonwealth of Pennsylvania ex rel., Bowman* v. *Slifer*, 25 Pennsylvania Reports, 23; *Stowbridge* v. *Clark*, 12 C. B. 335; *Hall* v. *The Mayor &c. of Swansea*, 5 Q. B. 526; Com. Dig. "Officer" E. a.

The defendant, in person, contra.

The statutes cited are referred to in the judgments.

McLean, C. J.—On the 10th of June, 1857, the legislature passed "An act for the appointment of county attorneys, and for other purposes in relation to the local administration of justice in Upper Canada," (20 Vic., ch. 59, Consol. Stat. U. C., ch. 17.) The third section of the act as passed, ch. 59, provides that "it shall be lawful for the Governor to appoint a county attorney for

each and every county in Upper Canada, who shall hold office *during pleasure*, and upon the death, resignation or removal of any county attorney to supply the vacancy.

The second section provides, that "no person shall be appointed as a county attorney, or shall act in that capacity, who shall not be a barrister-at-law of not less than three years' standing at the Upper Canada bar, and resident in the county for which he shall be appointed; provided that any person now" (that is on the 10th of June, 1857) "holding the office of clerk of the peace, who is a barrister-at-law, *may* be appointed to the office of county attorney for the county of which he shall be clerk of the peace."

There were at that time, and there are yet, clerks of the peace who are not barristers, and there may be some who were barristers who are of less than three years' standing at the bar, and the second clause provided that any of the latter might be appointed to the office of county attorney within the county for which he was clerk of the peace. It was not made incumbent on the Governor to appoint such persons to be county attorneys of their several counties, but they were eligible for appointment.

At the time of the passing of the act a Mr. Spohn, a barrister, held the office of clerk of the peace, and he continued to hold the office up to the time of his death, on the 28th day of May, 1862. The vacancy was filled up by the appointment of the defendant on the 22nd of July, 1862, as clerk of the peace, up to which time the plaintiff continued to act as county attorney, having been duly appointed to that office by commision bearing date the 6th day of April, 1858. The plaintiff was not removed from office except by the appointment of the defendant as clerk of the peace, and under the 9th section of 20 Vic., ch. 59, claims to be *ex-officio* county attorney for the county of Wentworth, of which he is clerk of the peace. That section provides that "from and after the passing of this act no person shall be appointed as clerk of the peace for any county in Upper Canada, who is not a barrister-at-law of not less than three years' standing at the Upper Canada bar; and such clerk of the peace shall be *ex-officio county attorney* for the county of which he is clerk of the peace."

By the appointment of defendant as clerk of the peace he became—not by virtue of any commission appointing him to the office, *but by operation of law*, having all the qualifications required—*ex-officio* county attorney of the county of Wentworth; and the government could not, contrary to the express provision of the statute, have continued the plaintiff in that office by any other means except by revoking or rescinding the commission given to defendant as clerk of the peace.

But by the special case submitted, it appears that the Governor gave the appointment as clerk of the peace to defendant, fully intending that such appointment should bring with it the office of *ex-officio* county attorney, and he has been called upon to furnish the security required by law from the person holding the latter office, but not required for the performance of duties of the clerk of the peace. The office held by the plaintiff was *during pleasure*. The government might at any time have removed him by any act showing that it was the pleasure of the Governor-General that he should not longer continue to fill the office. The defendant was in fact a tenant-at-will, and no act could more clearly shew the determination of that will than the appointment of defendant as clerk of the peace, and as such *ex-officio* county attorney.

In my opinion the defendant is entitled to judgment in this case.

HAGARTY, J.—(After referring to 20 Vic., ch. 59, secs. 2, 3, and 9, already cited by the learned Chief Justice.)—In the Consol. Stats. U. C., ch. 17, sec. 9, the ninth clause of 20 Vic ch. 59, is somewhat varied in expression, "No person shall after this act takes effect be appointed a clerk of the peace for any county who is not a barrister-at-law of not less than three years' standing at the Upper Canada bar, *and every clerk of the peace so appointed shall be ex-officio county attorney for the county of which he is clerk of the peace.*

When the office of county attorney was first established, Mr Spohn filled the office of clerk of the peace for Wentworth. The government did not avail itself of the right of appointing that gentleman to the new office, even if he were legally qualified within the clause already cited, but appointed the plaintiff, Mr Robertson. Mr. Spohn held the clerkship of the peace till his death, in May, 1862.

It was then necessary to appoint a successor, and accordingly the present defendant was appointed clerk of the peace, being legally qualified within the words of the statute.

He was, therefore, appointed after the act above cited, and I do not see how the inevitable consequence must not be, that "*so appointed, he shall be ex-officio county attorney for the county of which he is clerk of the peace.*"

The legislature has thought proper, in the event of every appointment to be made after the passing of the act to annex this office of county attorney to that of clerk of the peace.

Mr. Harrison, for the plaintiff, argues strongly that Mr. Robertson must continue to hold office as county attorney under his commision till legally dismissed, or removed by writ of discharge. But the paramount authority of the legislature seems to me to remove the case beyond all question by the clear language used. When they declare that whenever a man be thereafter appointed clerk of the peace, he shall *ex-officio* be county attorney, it seems to me to do away with all necessity for any thing else, and gives the new clerk of the peace a parliamentary title to be county attorney. His appointment must, I consider, be held to revoke any existing commission to any other person. He requires no commission or appointment as county attorney. He enters upon that office not by any commission or appointment, but solely by virtue of his appointment to the former office.

Parliament has placed in the hands of the executive the power to remove or dismiss any county attorney, and that power, I presume, may be exercised at any time, at pleasure. Judging from the language used in the several acts, I assume that the general intention was that the same person should fill both offices; that when this act was passed, certain persons may have held the clerkship of the peace who had not the legal standing deemed proper for future occupants of that office; that such persons need not necessarily be disturbed in their offices, and that county clerks could, in such cases, be appointed without reference to the other office, but that for the future a certain fixed legal standing should be required in all clerks of the peace, and that every one properly qualified, and duly appointed to the latter office, should *as such* at once become county attorney. This would, in my opinion, at once revoke or annul, by the express words of the enactment, any previous or existing appointment as county attorney.

The case cited of *Smyth* v. *Latham* (9 Bing. 710) shews that the subsequent appointment of a new officer, in the place and stead of one holding an office during pleasure, "bears so close an analogy to the case of a tenancy-at-will, where a demise to a new tenant would be a determination of the will as to the former tenant, as to make it difficult to maintain that the new appointment is not a virtual revocation of the former." Again, it is said there, "As the office is an office during pleasure only, the will of the commissioners to determine the former appointment has been sufficiently declared by the appointment of a successor."

I think we must give effect to the clear words of the statute, and hold the defendant to be the county attorney, and therefore that the postea should be to defendant.

CONNOR, J., concurred.

Judgment for defendant.

COMMON PLEAS.

(*Reported by* E. C. JONES, Esq., *Barrister-at-Law, Reporter to the Court.*)

COOK ET AL V. CHRISTIE.

Ejectment—Deeds—Thirty years old—Custody of.

In an action of ejectment, the plaintiffs claimed title through two deeds, over thirty years old, in proof of which they shewed one to have come from the custody of the former owner's agent, and the other to have been produced under a written order from the agent. On motion against the verdict on the ground that they were not proved to have come from the proper custody, *held*, that the evidence was sufficient, without calling the agent who had had charge of them.

(M. T., 26 Vic. 1862.)

Ejectment for the west half of lot No. 8, 3rd concession, Willamsburgh. Writ tested 4th September 1861. Defence for the whole. The claimants set up title, under a deed from Charles Jacob, heir-at-law of John Jacob, Martha Lockhead, Richard Denning, and Lucy his wife, Elizabeth Jacob, and Mary Russell; the said Martha

Lockhart, Lucy Denning, Elizabeth Jacob, and Mary Russell, being co-heiresses of William Jacob, and John Jacob, and William Jacob, deriving title, by deed from Richard Wharffe, who derived title, by deed, from Philip Meyers, the grantee of the Crown. The defendants set up no other title but by possession.

The case was tried at Cornwall, in October last, before Hagarty, J. The whole dispute at the trial (renewed in term) was on the sufficiency of the evidence as to two deeds, one dated the 7th February, 1803, purporting to be from Philip Meyers (to whom it was proved the Crown, by patent, dated the 16th July, 1797, had granted the whole lot named in the writ) to Richard Wharffe, for the whole lot; the other dated the 31st May, 1808, purporting to be a conveyance from Richard Wharffe to John Jacob, and William Jacob, of London, merchants. The question was, whether the deeds came out of the proper custody. A witness swore that he obtained the first deed from the Hon. G. S. Boulton, of Cobourg who was said to be, and who acted as agent for the Jacob family as to these lands. The second deed he received from the plaintiff's counsel, by the written authority of Mr. Boulton. It was admitted that the plaintiffs' counsel had charge of the papers of the late George Macdonell, Esquire, and had this deed among such papers, and that George Macdonell had, during his life, written to Mr. Boulton for information, and that, in reply, he had sent him the deed. Both these deeds on the face of them, being more than thirty years old, were shown to have come out of Mr. Boulton's hands. Wharffe, it was admitted, at one time resided in Cornwall. It was objected that the evidence did not shew that these deeds came out of the proper custody; that Mr. Boulton should have been called, and that there was not sufficient evidence of the identity of the parties. Leave was reserved to move for a nonsuit on these points, and the plaintiff had a verdict.

In Michælmas term, *McLennan* obtained a *rule nisi* to enter a nonsuit, on the leave reserved, because the deed to Wharffe, and the deed from him to John and William Jacob, were improperly received in evidence.

Richards, Q. C., shewed cause. He cited *Rees* v. *Walters*, 3 M. & W., 527; Doe *Doe Jocob* v. *Phillips*, 8 Q. B. 158; *Doe* v. *Keeling* 11, Q. B., 884.

McLennan supported the rule.

DRAPER, C. J.—I am of opinion this rule should be discharged. The deeds in question were produced on behalf of the plaintiff, who claimed the estate, and who was, therefore the proper person to have the custody of them; and they came from the hands of a person with regard to whom there was some evidence that he was agent for the former owners of the property, and parted with the deeds in affirmance of the title of the purchasers from them.

In *Jacob* v. *Phillips*, Coleridge, J. observed "Evidence of the custody from which a deed thirty years old comes is given, not as a ground for reading the instrument for or against a party, but only to afford the judge reasonable assurance of its authenciity," and in *Rees* v. *Walters*, Baron Parke said he rather thought it was for the judge to say whether a deed was produced from the proper custody or not, and that the court could not interfere, unless they though him wrong. Under the circumstances proved, which I think are as strong as in *Doe Earl of Shewsbury* v. *Kneeling*, we could not properly grant a nonsuit, and I see no sufficient reason to grant a new trial, in order that Mr. Boulton might be called to establish facts of which there is some evidence, and the existence of which the defendant has not ventured to deny.

Per cur.—Rule discharged.

CHANCERY.

(*Reported by* THOMAS HODGINS, Esq., M.A., *Barrister-at-Law.*)

STEVENSON v. BROWN.

Partner—Assignment for benefit of creditors—Power.

One partner of a mercantile firm has no power, either during the existence or after the dissolution of a partnership, to make an assignment of the property and effects of the firm, to a trustee for the benefit of creditors.

The bill in this case was filed by William Stevenson against James A. Brown, Hiram Capron, and Matthew Crooks Cameron, setting forth that the plaintiff and the defendant Brown were partners in the firm of J. A. Brown & Co.; that difficulties had occurred between them; that the defendant Brown had thereupon, and in consequence of the alleged inability of said firm to pay its debts, made an assignment of all the partnership stock and effects to the other defendants as trustees for the benefit of creditors; that plaintiff had protested against such assignment, but that, nevertheless, the said defendant had let said trustees into possession and had ousted the plaintiff. The bill prayed that the assignment might be declared void and the defendants restrained from acting under it, and that the partnership might be wound up and a Receiver appointed.

Hodgins, for the plaintiff, cited the cases referred to in the judgment of the Vice-Chancellor.

McMichael & Fitzgerald, for the defendants, relied upon *Fox* v. *Rose*, 10 U. C. Q. B., 16, and *Burchart* v. *Draper*, 10 Ha. 453.

SPRAGGE, V.C.—The question is, whether one of two co-partners in business can make an assignment of the whole effects of the partnership to trustees for the benefit of creditors.

No English authority has gone this length, and the existence of such a power in one partner is not, it appears to me, in accordance with the principles upon which one partner is held to have authority to bind his co-partner as well as himself. Such authority is, as was said by Lord Wensleydale in *Ernest* v. *Nichols*, 6 H. of L. C. 417, a branch of the law of agency, and it was concisely stated by him, (*Hawker* v. *Bourne*, 8 M. & W., 710,) "One partner by virtue of that relation is constituted a general agent for another as to all matters within the scope of the partnership dealings, and has communicated to him, by virtue of that relation, all authorities necessary for carrying on the partnership, and all such as are usually exercised by partners in that business in which they are engaged"

In the case of *Fraser* v *McLeod*, 8 Gr. 275, I referred to several cases where the dealings of one partner are held to be beyond his authority and his co-partner not affected thereby. The English authorities go this length, that one partner may sell partnership goods, or transfer them in payment of a debt, and in one case, *Fox* v. *Hanbury* (2 Cox, p. 445) the whole of the goods of a partnership were so transferred, and upon trover brought against the purchaser the judgment was for the defendant. The judgment was given by Lord Mansfield, who said, "Each (partner) has a power singly to dispose of the whole of the partnership effects." This case was decided chiefly upon the frame of the action.

In the American Courts, however, there has been a conflict of decision upon the point. The reasons of Chancellor Walworth against such a power residing in one partner are forcible and, I think, conclusive. After enumerating instances of what a partner may do he proceeds, *Haven* v. *Hussey* 5, Paige, 30, "All these instances of authority, as well as that to make negotiable paper, flow from the principle that each is the agent for the whole. But for what is he such agent? For the purposes of carrying on the business of the firm, and because the authority to do the act is implied from the nature of the business. Now a transfer of all the effects of the firm for payment of its debts is a virtual dissolution of the partnership. It supersedes all the business of the firm as such. It takes from the control of each all the property with which such business is conducted. The purposes of the business then clearly do not require that such a power should be implied. What other reason is there for holding that by the contract of partnership it should be inferred. I do not think that the principle insisted upon is a true one, namely, that such a transfer is only invalid when it operates as a fraud upon the other partner, when, for example, it is made against his wishes, and to give preferences which he is unwilling to give. It strikes me that the principle upon which the invalidity of the principle is established lies deeper. I consider that neither during the existence nor after the dissolution of a partnership can such a transfer be made, because of want of power in any one partner to make it. A direct payment of money, or a transfer of property to an acknowledged creditor is an admitted and a necessary power during the existence of the partnership. We probably are compelled by authorities to go so far as to say that it is a necessary surviving power after a dissolution in whatever way that is effected. All that is requisite to test the transfer is the amount of debt and the extent of the fund assigned. But upon the assignment of the property of a firm to a trustee a complication of duties and res-

ponsibilities is involved. An agent is appointed to control and dispose of the whole. The capacity, integrity, and industry of another are brought to the management and the fitness of the party selected is judged of solely by one member of the firm."

It is thus well put, that granting the authority of a partner to sell the whole of the partnership effects, an authority which seems to have been upheld in the Court of Queen's Bench in this Province, in *Fox* v. *Rose*, 10 U. C. Q. B. 16, still it is going much further to say that he can assign to a trustee, *Butchart* v. *Draper*, 10 Ha. 453, before Sir Page Wood, and in appeal (4 D. M. & G.) before the Lords' Justices, is certainly no authority for this position. The point decided was only this, that after a dissolution of partnership one partner has authority to do what is necessary to carry out a contract made during the partnership—that contract being within the scope of the partnership business. This case is stronger than those cited, in this, that the plaintiff in express terms dissented from the proposed assignment. I think that the defendant has exceeded his authority, and that the plaintiff is entitled to the relief prayed by his bill.

COMMON LAW CHAMBERS.

(*Reported by* ROBERT A. HARRISON, Esq., *Barrister-at-Law.*)

EXPARTE GLASS, IN RE MCDONALD, ONE, &C.

Bill of costs—Conveyancing charges—Con. Stat. U. C. cap. 35—Third party's clauses.

A bill exclusively for conveyancing charges cannot be referred to taxation in Upper Canada. (In re Lemon & Peterson, 8 U. C. L. J., 185, upheld.)

If the bill contain any one taxable item, the whole bill is liable to taxation.

Where two bills were delivered at the same time, the one being for the costs of an action of ejectment, and the other for expenses attending a sale of mortgaged property, pursuant to a power of sale contained in the mortgage, both bills being referable to a written statement containing an item "Solicitor's costs, $143." *Held*, as the ejectment bill was taxable, it drew with it the remaining bill for conveyancing charges.

A mortgagor has a right to have a taxation of the mortgagees solicitor's bill, because he is liable to pay it; but the act in no way alters the relation between the solicitor and his client.

(CHAMBERS, February 28, 1863.)

The applicant, Glass, mortgaged his property to the Trust and Loan Company, with power of sale.

Default was made, and mortgagees, by Mr. Macdonald, their attorney, brought ejectment and then sold the land under the power, and paid the surplus purchase money to Glass, deducting their attorney's costs of this ejectment and the sale.

Mr. McDonald sent mortgagor a statement of principal and interest due on mortgage, and an item for solicitor's costs $143.

Applicant requested an account in detail of this item, and received two bills, one for £10 14s. 7d., costs in the ejectment, the other £20 12s. 3d., costs of exercising power of sale.

These bills he received in March last.

In November following, he obtained a summons to have the bill taxed. After several enlargements the summons came on before Hagarty, J., for argument.

W. H. Burns for the summons.

S. J. Vankoughnet contra.

The following cases were cited during the argument: *Re Phillpotts*, 18 Beav., 84; *Re Fyson*, 9 Beav., 117; *Re Dawson & Bryan*, 28 Beav., 605; *Re Loughborough*, 23 Beav., 439; *Re Abbott*, 4 L.T. N. S., 576; *Re Begnald*, 9 Beav., 269; *Re Lemon & Peterson*, 8 U. C. L. J., 185.

HAGARTY, J.—Before the passing of our attorney's act, 16 Vic., cap. 175, now Consol. Stat. U. C., cap. 35, the applicant would have had no such remedy as asked, because no sufficient privity existed between him and the mortgagee's solicitor, and his only course would have been to file a bill for an account.

But sec. 38 of Consol. Stat. U. C., cap 35, (taken from Imperial Act 6 & 7 Vic., cap. 73,) declares that any person not being chargeable as the principal party, who is liable to pay or has paid any bill to the attorney, or to the principal party entitled thereto, the party so paying may make the like application for a reference thereof to taxation, and in like manner as the party chargeable therewith might himself have made, and the same proceedings shall be had thereupon as if such application had been made by the party so chargeable. Section 39 of the same act allows the court or a judge to consider any additional special circumstances applicable to the persons making the applications, although they be not applicable to the party chargeable with the bill. Section 40 empowers an order to be made on the attorney to deliver to the applicant a copy of the bill, on paying costs of copy.

These provisions, under the name of "third party clauses," have made an important change in the law.

I consider the present applicant comes clearly within their reach, if there be no difficulty as to the right to refer this peculiar kind of charges.

I agree with the judgment of my late lamented brother, Judge Burns, in *Re Lemon & Peterson*, 8 U. C. L. J., 185, that a bill exclusively for conveyancing charges cannot be referred to taxation in Upper Canada.

The Imperial Act, already cited at section 37, gives express power to the Lord Chancellor and Master of the Rolls to order a taxation of a bill "in case no part of such business shall have been transacted in any court of law or equity." Our statute has no analagus provision, and merely refers to business done by any attorney or solicitor "as such." In England it is common to find a petition to the Chancellor or Master of Rolls (when no cause in court) to refer in a case exactly like the present.—(In *re Abbott*, 4 L. T., N. S., 576). It has, I think, always been our practice to see if the bill contained any one taxable item, and if so, then to hold, as in the language of Park, J., in *Smith* v. *Taylor*, 7 Bing., 263, "one taxable item draws into its vortex all others in the same bill."

I have had some doubts as to my poweer to refr the bill for the costs of exercising the power of sale, as it is made out separately, but I think a liberal construction of the rule and practice warrants my considering, that although on separate sheets of paper, and headed separately, the two documents, viz., the ejectment costs and the power of sale costs are referable to the item in the statement rendered to the mortgagor, "solicitor's costs $143, and so I may consider them as the particulars of this item, and that as the ejectment costs are clearly taxable, they must draw the other charges after them.

It must be understood, that in the taxation, the principle on which the bill is taxed is not as between the third person (viz.: the applicant) and the solicitor, but as between such solicitor and his own client. (See 1 Smith, Ch'y Prac., 134.)

It is also to be noted as laid down in the same work, "that if the mortgagee thinks fit to pay his own solicitor's bill, then, although the right of the mortgagee to ch ge the full amount against the mortgagor is left open, the mortgagor cannot, as of course, open that settlement as between mortgagee and his solicitor." The mortgagor would not, in such a case, be without a remedy, for, in the settlement between him and the mortgagee, every improper payment made by the mortgagee to his solicitor would be disallowed as between mortgagee and mortgagor.

This language is taken almost *verbatim* from that of the Master of the Rolls in *Exp. Bignold*, 9 Beav. 271. The Master of the Rolls further says: "a mortgagor has a right to have a taxation of the mortgagee's solicitor's bill, because he is liable to pay it; and I have often had occasion to say, that this act in no way alters the relation between a solicitor and his client; * * the mortgagor cannot, as of course, open that settlement (viz.: between mortgagee and his solicitor) and say, "the matter is still open, for the bill has never been settled as between me and the mortgagee's solicitor." The solicitor has a right to say, "I never acted as your solicitor; I have fairly settled all matters with my own client, and am not liable to account again to you." I also refer to *Exp. Fyson*, 9 Beav., 118; *Exp. Gotskill*, 1 Phill., 581; *Exp. Dickson*, 28 L. T. 153; Marshall on Costs, 217, 218.

I therefore direct a reference of these bills to be taxed by the Master of the Court of Common Pleas, in which court the ejectment suit was brought.

When the true amount properly taxable to the mortgagees, as between them as clients and Mr. Macdonald as their solicitor, is ascertained, the applicant can be readily advised as to his remedy for any amount which he can prove has been unwarrantably retained by the mortgagee.

Order accordingly.

MONTHLY REPERTORY.

COMMON LAW.

EX. Edwards and Another v. Southgate.

Contract—Lien—Shipping agent—Bill of lading—Liability in Trover.

A shipping agent having a lien on the bill of lading of goods he has shipped, may, if the lien is not satisfied before they have reached their destination, have the goods brought home in order to retain his lien upon them, and is not liable to any action for so doing.

EX. C. Begge et al v. Parkinson.

Contract—Implied and express agreement.

Where A., a provision merchant, agreed with B., a ship owner, to supply him with provisions for the use of passengers on board his ship, with knowledge on A.'s part of the purpose for which the goods were destined, and it was specifically and expressly agreed that such goods were guaranteed by the seller A. to pass the survey of the officers appointed by the East India Company.

Held, in error on bill of exceptions that the express guarantee that the goods should pass such survey did not exclude the implied contract on the part of A. that the provisions so furnished should be fit for the intended voyage.

EX. Holme v. Clark and Another.

Practice—New Trial—Surprise.

A party to a cause, who has not been called as a witness, cannot have a new trial on the ground of surprise, in regard to the effect of any conversation with himself, at all events, if he admits some conversation to have occurred, and the effect of it is not necessarily decisive of the case.

EX. Wilson v. Chartier.

Practice—Ejectment—Execution—Habere facias possessioner—Retaking possession by the defendant.

Although when an execution is in progress the court will enforce obedience and punish resistance to its process, by attachment, for contempt, and when possession is forcibly retaken before the writ is returned, will allow a fresh writ to be issued; yet when possession is retaken after the writ is returned, it will not interfere summarily by rule or order to enforce re-delivery of possession.

CHANCERY.

V. C. S. McCulloch v. McCulloch.

Will—Construction—Legacy to a single woman with gift on her marriage.

A. (*inter alia*), bequeathed to B. (a single woman), the sum of £3000 sterling, "the interest thereof to be for her sole and separate use during her lifetime, and while she continues unmarried; thereafter, should she marry, the principal and interest to go over to the residuary legatee."

Held, that there was a gift of principal and interest to B., subject to be divested on her marriage.

V. C. S. Loftus v. Maw.

Specific performance—Services in consideration of promise to bequeath—Codicil—Revocation.

A. rendered domestic services on the faith of a promise by B. that he would compensate her, and of a codicil by which, in pursuance of such promise, he bequeathed to her a life interest in certain houses. B. revoked that codicil by another which was duly proved.

Held, that it appearing that A. had been induced to render valuable services to B., on the faith that by so doing she would become entitled to the benefit of the trusts created in her favour by the former codicil, the testator had no right to revoke the same, and that such trusts must be performed.

M. R. Parsons v. Hayward.

Partnership—Articles—Term of years—Continuation of business after expiration of term—Account of profits—Notice of dissolution.

A and B were partners under articles of partnership, which provided that the term of the partnership should be seven years, that the business should be carried on in the name of B, who should reside on the business premises and act as managing partner, and that at the expiration of the partnership the assets should be realised, sold and divided. After the seven years had expired the same business was still carried on in the same place and under the same style, but no notice was given by either partner to the other that the former arrangement was to be considered at an end. The capital of A still remained in the business. In consequence of the claim made by A to the whole profits of the business since the expiration of the term, A filed his bill for a dissolution of the partnership and the usual accounts upon the footing of the partnership deed.

Held, that as the articles required that the partnership assets should be realised and divided at the expiration of the partnership, B ought to have adopted that course if he wished to deprive A of a right to participate in the future profits of the business, and not having done so, but having allowed the business to go on in the same way as during the term, the profits up to the time of the sale and realisation of the business must follow the same rules as those provided in the articles, and that the accounts ought to be taken upon that footing.

Where a partnership business for a term is carried on after the expiration of the term, although either party may then put an end to the arrangement by notice, yet, until he does so put an end to it, the business will be presumed to have been carried on upon the previous footing.

BOOK REVIEWS.

Several periodicals are before us for notice. We shall endeavour to review them in our next number.

APPOINTMENTS TO OFFICE, &c.

NOTARIES PUBLIC.

DONALD GUTHRIE of Guelph, Gentleman, to be a Notary Public in Upper Canada. (Gazetted February 28, 1863.)

CHARLES BERTRAM ORDE of Lindsay, Esq., Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted Feb. 28, 1863.)

WILLIAM HENRY WALKER of Ottawa, Esq., Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted Feb. 28, 1863.)

JOHN DOWNEY of Toronto, Esq., Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted Feb. 28, 1863.)

THOMAS JAMES FITZSIMMONS of Brockville, Esq., to be a Notary Public in Upper Canada. (Gazetted Feb. 28, 1863.)

D. MITCHELL McDONALD of Toronto, Esq., Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted March 7, 1863.)

WILLIAM DAVID HAMMOND of Wardsville, Esq., to be a Notary Public in Upper Canada. (Gazetted March 7, 1863.)

JOHN McGILL CHAMBERS of Smith's Falls, Esq., to be a Notary Public in Upper Canada. (Gazetted March 7, 1863.)

PHILIP McKENZIE of London, Esq., Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted March 7, 1863.)

CORONERS.

JOHN BIGHAM, Esq., M.D., Associate Coroner for the United Counties of Huron and Bruce. (Gazetted March 7, 1863.

TO CORRESPONDENTS.

T. S.—A Clerk Co. W.—M.—M.P. (London).—Under "Division Courts."

A. M.—Your communication must be addressed to the Editors of the *Law Journal*, and so published by us. In its present shape we can make no use of it.

Ignis Fatuus.—Too late for this number. Will receive attention in our next.

Evins.—Received, but too late for present issue.