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VOL. IV. TORONTO, JUNE, 1858. No. 6.

THE UPPER CANADA LAW JOURNAL

AND LOCAL COURTS' GAZETTE.

CONDUCTED BY

W. D. ARDAGH, Barrister-at-Law; ROBT. A. HARRISON, B.C.L., Barrister-at-Law.

PRINTED AND PUBLISHED BY MACLEAR & CO., KING STREET EAST, TORONTO.

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Legislative Council,
Toronto, 4th September, 1857.

EXTRACT from the Standing Orders of the Legislative Council.

Fifty-ninth Order.—"That each and every applicant for a Bill of Divorce shall be required to give notice of his or her intention in that respect specifying from whom and for what cause, by advertisement in the official Gazette, during six months, and also, for a like period in two newspapers published in the District where such applicant usually resided at the time of separation; and if there be no second newspaper published in such District, then in one newspaper published in an adjoining District; or if no newspaper be published in such District, in two newspapers published in the adjoining District or Districts."

J. F. TAYLOR,
10-tf. Clerk Legislative Council.

LAW SOCIETY OF UPPER CANADA,

(OSGOODE HALL.)

Easter Term, 21st Victoria, 1858.

During the Term of Easter, the following Gentlemen were called to the degree of Barrister-at-Law:—

William Baldwin Sullivan, Esquire. | Alexander Forsyth Scott, Esquire.
Henry Massingberd. " | Ward Hamilton Bowlby. "
Anthony George Lefroy, Esquire.

On Tuesday, the 25th day of May, in this Term, the following Gentlemen were admitted into the Society as members thereof, and entered in the following order as Students of the Laws, their examinations having been classed as follows:—

University Class:

Mr. Edmund John Hooper, B.A.

Junior Class:

Mr. Henry Robertson.
" Theophilus Begue.
" Edward Robinson.
" David Lennox.
" John Hoskins.
" James Graham Vansittart.
" Augustus Roche.
" John Bell Gordon.
" Patrick William Darbey.
" Edward James Denroche.
" Alexander Forbes, junior.
" Richard Stotesbury McCulloch.
" Morgan Coldwell.
" Thomas Babington McMahon.
" Kenneth Goodman.
" Robert Smith.
" William Torrance Hays.
" George Augustus Hamilton.
" William Henry Walker.
" John Downey.
Mr. Frederick Nash.
" James Frederick Smith, junior.
" Octavius Prince.
" Hamilton Douglas Stewart.
" Robert Kerr Robb.
" Thomas Ferris Nellis.
" Franklin Metcalfe Griffin.
" Thomas Wellesley McMurray.
" Michael Joseph McNamara.
" John Joseph Landy.
" Jabez Manwaring Moffatt.
" Thomas James Fitzsimmons.
" Edward Clarke Campbell, junior.
" Gilbert James Wetenhall.
" Henry Mann Briggs.
" Edmund Haynes Reed.
" Pedro Alma.
" Robert John Keating.
" John Elley Harding
" Joseph Aloysius Donovan.
Mr. John Mclean Stevenson.

NOTE.—Gentlemen admitted in the "University Class" are arranged according to their University rank, in the other classes, according to the relative merit of the examination passed before the Society.

Ordered—That the examination for admission shall, until further notice, be in the following books respectively, that is to say—

For the Optime Class:

In the Phœnissæ of Euripedes, the first twelve books of Homer's Iliad, Horace, Sallust, Euclid or Legendre's Geometrie, Hind's Algebra, Snowball's Trigonometry, Farnshaw's Statics and Dynamics, Herschell's Astronomy, Paley's Moral Philosophy, Locke's Essay on the Human Understanding, Whateley's Logic and Rhetoric, and such works in Ancient and Modern History and Geography as the candidates may have read.

For the University Class:

In Homer, first book of Iliad, Lucian (Charon Life or Dream of Lucian and Timon), Odes of Horace, in Mathematics or Metaphysics at the option of the candidate, according to the following courses respectively, Mathematics, (Euclid, 1st, 2nd, 3rd, 4th, and 6th books, or Legendre's Geometrie, 1st, 2nd 3rd and 4th books, Hind's Algebra to the end of Simultaneous Equations); Metaphysics—(Walker's and Whateley's Logic, and Locke's Essay on the Human Understanding); Herschell's Astronomy, chapters 1, 3, 4, and 5: and such works in Ancient and Modern Geography and History as the candidates may have read.

For the Senior Class:

In the same subjects and books as for the University Class.

For the Junior Class:

In the 1st and 3rd books of the Odes of Horace; Euclid, 1st, 2nd, and 3rd books, or Legendre's Geometrie, 1st and 3rd books, with the problems; and such works in Modern History and Geography as the candidates may have read: and that this Order be published every Term, with the admissions of each Term.

Ordered—That the class or order of the examination passed by each candidate for admission be stated in his certificate of admission.

Ordered—That in future, Candidates for Call *with honours*, shall attend at Osgoode Hall, under the 4th Order of Hil. Term, 18 Vic., on the last Thursday and also on the last Friday of Vacation, and those for Call, merely, on the latter of such days.

Ordered—That in future all Candidates for admission into this Society as Students of the Laws, who desire to pass their Examination in either the Optime Class, the University Class, or the Senior Class, do attend the Examiner at Osgoode Hall, on both the first Thursday and the first Friday of the Term in which their petitions for admission are to be presented to the Benchers in Convocation, at Ten o'clock A. M. of each day: and those for admission in the Junior Class, on the latter of those days at the like hour.

Ordered—That the examination of candidates for certificates of fitness for admission as Attorneys or Solicitors under the Act of Parliament, 20 Vic. chap. 63, and the Rule of the Society of Trinity Term, 21 Vic. chap. 1, made under authority and by direction of the said Act, shall, until further order, be in the following books and subjects, with which such candidates will be expected to be thoroughly familiar, that is to say:

Blackstone's Commentaries, 1st Vol.; Smith's Mercantile Law; Williams on Real Property; Williams on Personal Property; Story's Equity Jurisprudence; The Statute Law, and the Practice of the Courts.

NOTICE.—A thorough familiarity with the prescribed subjects and books will, in future, be required from Candidates for admission as Students, and gentlemen are strongly recommended to postpone presenting themselves for examination until fully prepared.

NOTICE.—By a rule of Hilary Term, 18th Vict., Students keeping Term are henceforth required to attend a Course of Lectures to be delivered, each Term, at Osgoode Hall, and exhibit to the Secretary on the last day of Term, the Lecturer's Certificate of such attendance.

ORDERED.—That the Subjects of the Lectures, next Term, be as follows: Trusts—S. H. Strong, Esquire, Damages—J. T. Anderson, Esquire.

ROBERT BALDWIN,
Treasurer.

Easter Term, 21st Victoria, 1858.

STANDING RULES.

ON the subject of Private and Local Bills, adopted by the Legislative Council and Legislative Assembly, 3rd Session, 5th Parliament, 20th Victoria, 1857.

1. That all applications for Private and Local Bills for granting to any individual or individuals any exclusive or peculiar rights or privileges whatsoever, or for doing any matter or thing which in its operation would affect the rights or property of other parties, or for making any amendment of a like nature to any former Act,—shall require the following notice to be published, viz:—

In Upper Canada—A notice inserted in the Official Gazette, and in one newspaper published in the County, or Union of Counties, affected, or if there be no paper published therein, then in a newspaper in the next nearest County in which a newspaper is published.

In Lower Canada—A notice inserted in the Official Gazette, in the English and French languages, and in one newspaper in the English and one newspaper in the French language, in the District affected, or in both languages if there be but one paper; or if there be no paper published therein, then (in both languages) in the Official Gazette, and in a paper published in an adjoining District.

Such notices shall be continued in each case for a period of at least two months during the interval of time between the close of the next preceding Session and the presentation of the Petition.

2. That before any Petition praying for leave to bring in a Private Bill for the erection of a Toll Bridge, is presented to this House, the person or persons purposing to petition for such Bill, shall, upon giving the notice prescribed by the preceding Rule, also, at the same time, and in the same manner, give a notice in writing, stating the rates which they intend to ask, the extent of the privilege, the height of the arches, the interval between the abutments or piers for the passage of rafts and vessels, and mentioning also whether they intend to erect a draw-bridge or not, and the dimensions of such draw-bridge.

3. That the Fee payable on the second reading of and Private or Local Bill, shall be paid only in the House in which such Bill originates, but the disbursements for printing such Bill shall be paid in each House.

4. That it shall be the duty of parties seeking the interference of the Legislature in any private or local matter, to file with the Clerk of each House the evidence of their having complied with the Rules and Standing Orders thereof; and that in default of such proof being so furnished as aforesaid, it shall be competent to the Clerk to report in regard to such matter, "that the Rules and Standing Orders have not been complied with."

That the foregoing Rules be published in both languages in the Official Gazette, over the signature of the Clerk of each House, weekly, during each recess of Parliament.

J. F. TAYLOR, Clk. Leg. Council.
10-tf. WM. B. LINDSAY, Clk. Assembly.

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IS published monthly in the City of Toronto, at $4 per annum if paid before 1st March in each year; $5 if paid afterthat period.

It claims the support of Judges, Lawyers, Officers of Courts, Municipal Officers, Coroners, Magistrates, and all concerned in the adminstration of the Law, on the following grounds:—

1st. It is the only Legal Periodical published in Upper Canada.

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5th. Each number contains articles in plain language for the guidance and information of Division Courts, Clerks, Bailiffs and Suitors, and Reports of cases of interest to all whose support is claimed.

6th. Each number contains a Repertory of English decided cases on Points of Practice.

7th. It is the only recognized organ of intercommunication between Lawyers, Officers of Courts, and others concerned in the administration of law.

8th. It is the only recognized medium of advertising on subjects of legal interest.

9th. It circulates largely in *every* City, Town, Village and Township in Upper Canada.

10th. It exchanges with more than fifty cotemporary periodicals published in England, the United States, Upper and Lower Canada.

11th. It has now reached the fourth year of its existence, and is steadily increasing the sphere of its usefulness.

12th. It has advocated, and will continue to advocate sound and practical improvements in the law and its administration.

Vols. I., II. and III. on hand, $12 the three, or $5 for either separately.

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REMITTANCES.

May, 1858.—J. A. C., Stratford, $1; J. M., Tullamore, $5; D. B., Brantford, $4; L. D., Burford, $4; W. D., Berlin, $44; H. McC., Galt, $1.

DIARY FOR JUNE.

6. SUNDAY... *1st Sunday after Trinity.*
8. Tuesday.... Quarter Sessions and County Court sittings.
10. Thursday... Sittings Court of Error and Appeal.
13. SUNDAY... *2nd Sunday after Trinity.*
14. Monday..... 10 A. M., P. C. Judgments; 11 A. M., C. P. Judgments.
15. Tuesday .... 11 A. M., Q. B. Judgments.
18. Friday ..... 10 A. M., P. C. Judgments; 11 A. M., C. P. Judgments.
19. Saturday .. 12 Noon, Q. B. Judgments.
20. SUNDAY... *3rd Sunday after Trinity.*
21. Monday .... Queen Victoria proclaimed, 1837.
27. SUNDAY... *4th Sunday after Trinity.*
30. Wednesday Last day for filing Pleadings before Vacation.

"TO CORRESPONDENTS"—*See Last Page.*

The Upper Canada Law Journal.

JUNE, 1858.

THE WORK OF LEGISLATION.

To legislate is to make laws—to exercise a power of fearful import—a power attended with vital consequences to society.

We are told by Blackstone that the only foundation of society consists of the wants and fears of individuals. This is true in almost every state of society; so out of the wants and fears of individuals, arises the business of legislation.

When men in the first state of society lived on roots and herbs; when in the second, they lived by hunting; when in the third, they lived by flocks and herds; when in the fourth, they lived by agriculture—legislation was simple and its responsibility light. But when we find agriculture and manufactures combined; when we find these great interests of society surrounded by a phantasmagoria of lesser interests; when we find not only various material interests, but various social and political interests conflicting; when we find rival trades, rival creeds, and rival interests of every kind; we have forced upon us some idea, though a confused one, of the nature and dignity, the utility and importance of law making.

Wherever the will of the ruler, as distinct from the people, is the law of the land, there can scarcely be freedom. Neither in Great Britain nor any of her dependencies, does such a state of things exist. The British constitution not only makes the people the object of legislation, but in a great measure the source of it,—not only the source of it, but in a great measure the author of it. De Lolme has wisely said that the basis of the English constitution, the capital principle on which all others depend, is that the legislative power belongs to Parliament.

And what is Parliament? The same enlightened writer tells us that the constituent parts of Parliament, are the King, the Lords, and the Commons. So in a modified form is the Parliament of Canada. Though we have not the Monarch in person, we have her representative. Though we have not the lords, we have our legislative council or assembly of men of high qualifications and long term of office. And last, though not least we have the veritable Commons,—the real Simon Pure of popular interests. In this Province, as in England, there are three constituent parts of Parliament. Each has a negative on the acts of the other. Hence each is independent of the others and cannot be affected by them, unless through its own deliberate choice. Either House may originate a measure, but the other may veto it. The Queen's representative may veto it though it have received the approval of both Houses. It is by this admirable piece of machinery that our laws are made, our liberties preserved, and our properties protected.

We do not intend to trace the growth of the popular element in England,—we leave that to the student of history. Nor do we intend to maintain that the people are the *all in all*,—we leave that to the political trimmer or popular declaimer. We do not propose to hold forth on the omnipotence—the justice—the infallibility of public opinion—we leave that to others whose mission is different from ours. Contrary to the generally received belief, we submit that public opinion, that *is*, the opinion of the people,—of the whole people, is not in all cases the origin of legislation. So far from this being the case, in few instances only can we trace the origin of our most useful statutes to popular clamor or popular demands. The bulk of legislation—all that it is really practical in legislation—is composed of a number of unpretending statutes which issue silently from the Queen's Printers and are scarce known, except by those whom they directly affect. The birthplace of this extensive class of laws is not to be discovered in public opinion. Society at large, it has been well said, is too selfish to provide for society in detail, and if no legislation took place as to parts, except what is demanded by the whole, society would perish in detail, while it kept up a *noisy and showy existence in front. It is a fallacy then to* assert, as some persons do, that a particular measure is not needed because the people have not petitioned for it. The people though having a great interest in, do not at all times formally ask for legislation.

Still no part of the community, no class, no individual can obtain a law without the assent of the whole community. This assent is given by parliamentary representatives. Each member of Parliament is not only a representative of a particular constituency, but of the whole people. The absurd practice mentioned by De Tocqueville in his "Old Regime" of members of the third estate receiving *cahiers* or written instructions from their constituents no longer exists even in France. Nay more in the United Provinces of the

Netherlands and of the Swiss Cantons, where it was in vogue when De Lolme wrote, it no longer can be found.

The writ from the monarch for the holding of parliament recites that it is to be "for certain arduous and urgent affairs, &c." The members summoned are "to treat and have conference." They are to be authorized "to do and consent to those things which by the Common Council of the Province (by the blessing of God) shall happen to be ordained upon the aforesaid affairs." The indenture executed and given by the electors to the person elect, confers upon him "ample and sufficient power for them the said electors and the commons of the said County, &c., to do and consent to such matters and things as in the said Parliament by the Common Council of the said Province shall by the favour of God be ordained." Here we have the contract between the electors and the elected. It is by this that all parties are bound. The spirit and intention of it is to govern. The members are sent "to treat and have conference," and after this conference "to consent for" the electors. An implied right of discussion is conceded. What would be the use of discussion, if before voting an appeal were in every case made to the will of the electors? The constituency imposing confidence in the man of their choice, consent to be bound by his acts. The effect is as if the following were added to the indenture "hereby ratifying and confirming all that our said representative may do in the premises." The appointment of course is not irrevocable. When the representative presents himself for re-election, which he will not it is presumed do, if unfaithful to his trust an opportunity is given of re-appointing him, or of cancelling the appointment.

The great fact is that a legislator, though elected by a section, in a more or less degree represents the whole community. He is not chosen to make laws for the Riding of C. D., but for the Province of Canada. By his act conjoined with others, laws are imposed—not on his constituents only, but on the inhabitants of the Province at large.

Now, it is of importance to know that legislation is not properly speaking a science. Mathematics is a science. So is Chemistry. So is Natural Philosophy. Why? Because each has its self-evident truths—its general principles—unchangeable and unchanged. When we enunciate the proposition that any two angles of a triangle are together less than two right angles, we enunciate an absolute truth in mathematics. When we enunciate the proposition that heat is always evolved when a fluid is converted into a solid form, we enunciate an absolute truth in Chemistry. When we enunciate the proposition that salt water never freezes till the surface is cooled down 25 degrees below freezing point, we enunciate an absolute truth in Natural Philosophy. So of the many other abstract truths in the different sciences, which when placed together or opposed to each other give forth myriads of other truths. But what abstract truths have we in legislation? True, we have a few general axioms, such as liberty of conscience, freedom of the press, right of locomotion; but what are these compared with the self-evident truths of science? Nothing. There can be no science without system, and there is no system in legislation. Laws are essentially practical things—expediencies. There is little legislation on broad principles. Society is not stationary but progressive, and every year in consequence add to the bulk of the Statute book. Old Statutes are repealed and new Statutes substituted. New pieces are inserted in old garments. Everywhere there is patchwork. A law of to-day looked upon as the embodiment of perfection, is in a year hence repealed as being a crude absurdity. Each law has a different direction, and all the statutes of a session are as so many stragglers twisting and twirling about without a common centre. Law is, in a word, the creature of a day; but science, like truth, is eternal.

CONSOLIDATION OF LAWS OF UPPER CANADA.

On 7th February, 1856, J. Hillyard Cameron, Skeffington Connor, Joseph C. Morrison, Oliver Mowat, and David Read were appointed Commissioners "to examine, revise, consolidate, and classify the public general Statutes of Upper Canada, and in conjunction with the Commissioners appointed for Lower Canada, to examine, revise, consolidate, and classify the public general Statutes of the Province of Canada."

Though the "personnel" of the Board was afterwards from time to time changed, the *object* of its creation has ever remained the same. Before proceeding further we may notice the individual changes effected. The first resignation was that of Joseph C. Morrison, whose place was supplied by the appointment, on 14th December, 1856, of S. H. Strong. The second resignation was that of J. Hillyard Cameron, whose place was supplied on 26th January, 1857, by the appointment of Hon. James B. Macaulay. More recently Dr. Connor and Oliver Mowat, with a view to Parliament, resigned their places which have since remained vacant. It will be seen that the only person who is now a commissioner, and has been so from the first, is David Read, the indefatigable Secretary of the Board.

The duties of the Commissioners as defined when the Board was organized, are two-fold; *first*, to examine, revise, consolidate, and classify, the *public* general Statutes of *Upper Canada*; and secondly, in conjunction with the Commissioners previously appointed for Lower Canada, to examine, revise, consolidate, and classify the public general

Statutes of Canada. The materials in either case were "*public* general Statutes," and the work to be done was "to *examine, revise, consolidate,* and *classify*" them.

The limits set to the powers of the Commissioners, deserve attention. No power to *amend* law was conferred. The only power given was to do certain things with a particular class of Statutes, viz., *public* general Statutes. No *local* or private Acts are at all to be interfered with. The things to be done are to examine, revise, consolidate, and classify. No power to codify is given.

Two years after the organization of the Board, a volume intitled "The Public General Statutes which apply exclusively to Upper Canada, as revised by the Commissioners for that part of the Province," is at length issued. This appears to be the first instalment of the great work of consolidation. The next, will be a similar volume from the Commissioners appointed for Lower Canada. The third and last will be the joint work of the two Boards, or public general Statutes applying to the whole Province.

The volume before us—the product of 14 volumes reduced—is a very creditable performance. It has not yet been, we are informed, generally distributed. The only copies yet issued have been to Judges and those in authority. When distributed generally among the profession, which we presume it will be ere long, we shall endeavor to gather the feeling of the profession and pronounce more at length upon the merits or demerits of the work done. We shall then take the opportunity of examining the powers delegated to the commissioners, and the manner in which the delegated powers have been exercised. In all probability the whole subject of consolidation and codification as applied to the laws of Canada, will then receive our attention.

CODIFICATION OF THE LAWS OF NEW YORK.

In 1848, Arphaxed Loomis, David Graham, and David Dudley Field, were appointed, by the State of New York, Commissioners to revise, reform, simplify and abridge, the rules and practice, pleadings, forms and proceedings of the Courts of Record of the State, and to report thereon to the Legislature, subject to their adoption and modification from time to time, &c.

In 1849, two codes—the one on civil procedure, and the other on criminal procedure—were reported by the commissioners to the Legislature.

On 6th April, 1857, the State passed an Act "for the appointment of Commissioners under the seventeenth section of the first Article of the Constitution, to prepare a Civil Code."

The three Commissioners appointed are David Dudley Field, William Curtis Noyes, and Alexander W. Bradford. It is made their duty to reduce into a written and systematic code the whole body of the law of the State, or so much and such parts thereof as shall seem to them to be practical and expedient, excepting always such portions of the law as have been already reported upon by the commissioners of practice and pleadings, or are embraced within the scope of their reports.

The commissioners are, by this Act, directed to divide their work into three portions; one containing the political code, another the civil code, and a third the penal code. The political code to embrace the laws respecting the government of the State, its civil polity, the functions of its public officers, and the political rights and duties of its citizens. The civil code to embrace the laws of personal rights and relations of property, and of obligations. The penal code to define all the crimes for which persons can be punished, and the punishment for the same. No portion of either of the codes to embrace the Courts of Justice, the functions or duties of judicial officers, nor any provisions concerning actions or special pleadings, civil or criminal, or the law of evidence. It is expressly declared that the commissioners are to receive *no compensation whatever.*

A preliminary duty made incumbent on the commissioners, was to report to the legislature, at its annual session in 1858, a general analysis of the codes projected by them, and the progress made by them therein.

This preliminary duty has been performed with great ability and dispatch; and we have to thank Mr. Field, the Tribonian of New York State, for a copy of the Analysis. We learn from the Introduction to the Analysis, that the political and penal codes are already far advanced; and that of the civil code only a small part has yet been written.

The commissioners state that immediately upon their appointment they entered upon the performance of the duties committed to them, impressed with the magnitude of the undertaking, the difficulty of its accomplishment, and the necessity of caution and deliberation in every step they should take; but with a determination to recoil from no obstacle possible to be overcome by their efforts, and to submit to any amount of labor and sacrifice necessary for the preparation of a code for the whole body of the law.

With such an appreciation of this stupendous undertaking, and with such a determination to carry it through to completion, there can be little doubt that the whole will be successfully performed.

It is not a little singular that within the past ten years simultaneous efforts have been made in Great Britain, Canada, and the State of New York, for the consolidation or codification of law. In Great Britain the most strenuous efforts have been made for the *consolidation* of the whole *Statute* law of the kingdom—so far, however, with only

partial success. In New York State efforts are being made apparently with more success, for the *codification* of the *whole body of the law*. In Canada, an Act has been passed for the *codification* of the laws of Lower Canada *relative to civil matters and procedure*; and in both Upper and Lower Canada, commissioners are engaged in *consolidating the Public General Statutes* of each section of the Province, and of the two sections united. Consolidation or codification is the order of the day. Each has its advocates. We, for the present, reserve the expression of our opinion as between these two mighty reforms.

LAW REFORMS OF THE SESSION.—GENERAL REVIEW.

(*Continued from page* 108.)

The bill "to protect the employés of the Government of this Province in certain departments of the Public service from being compelled to work on the Lord's Day," has a very laudable caption. It is apparently designed to *protect* a class of the community who at present are compelled or liable to be compelled to work on the Lord's Day. It is surpassing strange, that the persons, to whose aid the introducer of the bill comes, have not, by petition or otherwise, asked for relief in the premises. We do not undertake to pass judgment on the bill. It legislates on a subject which is too often choked with fanaticism. It is just one of those bills that will be blindly supported and as blindly opposed. Men are not to be made religious by Act of Parliament—nor is mere profession, religion. The progenitor of this bill may be found in the Act of Charles the Second, inflicting a fine upon any person following his usual calling,—driving a cab for instance, on a Sunday. How far the law is obeyed in this respect, we need not say.

The bill "to define the Elective Franchise, to provide for the registration of voters, and for other purposes therein mentioned," is one of the most useful of the Session. We pointed out as long since as February last, in the number for that month, the necessity for a registration of voters, and endeavored to lay down not only the principle, but the details of a measure. The bill before us, though differing in details is in principle the same as the measure recommended by us. It begins by declaring *what* shall be the qualification of voters, and then proceeds to demonstrate *how* that qualification is to be ascertained. No person except a registered voter is to be entitled to vote. The foundation of the system of registration of voters in Upper Canada is made to consist of the assessment roll. After the final revision of the assessment roll it is declared to be the duty of the Clerk of the Municipality "to make a correct alphabetical list of all persons entitled to vote at the election of a member of the Legislative Council and Assembly, &c. "together with the number of the lot or part of lot, or other description of the real property in respect of which each voter is qualified." To the correctness of this list the Clerk of the Municipality is to testify under oath. He is then to deliver a duplicate original of the list certified by oath or affirmation to the Clerk of the Peace. The list is to be made out and delivered in duplicate on or before 1st October in each year. Then, prior to use, it may be subjected to a final revision by the Judge of the County Court. It appears to us there is a defect in the bill—it does not provide for the publication of the list, nor name certain and defined times and places for application to the County Judge by persons aggrieved. Great is the power entrusted to Municipal Clerks. We fear that in order to save a slight expense in the adoption of wholly different machinery, the machinery now proposed will be clogged with corruption, and in times of party strife be anything but reliable. More of this anon. The bill concludes by a long list of penalties, each calculated to frighten somebody or other into the performance of his duty. The law in this respect cannot be made too strict.

The bill "to render the salaries of public officers liable to seizure by judgment creditors" is not bad in principle. Public officers receive salaries to support themselves in life by paying tradesmen, grocers, and all others who minister to their wants. When, through fraud or other bad motives, these officers neglect or refuse to do so, an inquiry into "the ways and means" ought to follow. No doubt tradesmen are much to blame for giving, as they too often do, unlimited credit to men whose only recommendation is a good coat and a few hundred pounds per annum in the public accounts; but so long as competition is keen, credit will be given. Still, men who give it are not to be placed without the pale of the law. A system of laws which protects idiots and lunatics ought not to refuse protection to foolish tradesmen. It is upon the strength of an officer's salary that he receives credit. That salary is the fund to which the creditor looks for payment. Of course it would never do to allow creditors to seize the whole of it, and so reduce the nominal recipient to starvation point. Hence, the bill before us wisely provides that "the amount of such salary so applied shall not exceed one-fourth of the salary of such public servant, and no greater proportion than one-fourth of such salary shall be liable to such seizure." The seizure of money is not evolved as a principle for the first time in this bill. The principle is formally recognized in the provision of the Common Law Procedure Act which admits of the seizure of "debts owing" to a judgment debtor. The difficulty will be to treat the Go-

vernment as an ordinary creditor of an ordinary judgment debtor. If one-fourth of a salary instead of being paid over to the officer who earns it is to be distributed among thiry, forty or fifty of his hungry creditors, there will be no end of trouble in the paying department. The bill before us does not approach the difficulty. The drawer of it has affirmed a principle without venturing to create machinery. So far he resembles the enchanter who raised the evil spirit and could not allay him. Much better not to touch the subject unless it be efficiently handled.

The bill "to amend the Municipal Law of Lower Canada by restricting Municipal taxation upon real estate to five per cent. on the value in any one year," we mention because it contains a principle which we desire to see applied to Upper Canada. Some limit must be placed on Municipal taxation, or else bankruptcy will stare us in the face. This bill recites that when the Municipal law was introduced into Lower Canada the intention was not to expose individuals to excessive and ruinous taxat' n at the caprice of any Municipal authority. So say we. Where men of straw may be elected Municipal Councillors, men of property—not to say wealth—will be plucked. It is the duty of every good government when it delegates power to see that the power delegated is not abused. The power delegated by the Legislature to Municipal bodies in Upper Canada has been in more than one instance disgracefully abused. The power to raise money ought not to exist without restriction. In Upper Canada at present there is no restriction, and for this reason we think our law as well as that of Lower Canada demands amendment.

A bill "to amend the Division Courts' Act of Upper Canada" next presents itself. What act is known as "The Division Courts' Act of Upper Canada?" The Act of 1850 is denominated "The Upper Canada Division Courts' Act of 1850." The Act of 1853 is denominated "The Upper Canada Division Courts' Act of 1853." The author of this bill either has no clear idea of what he has written or else the Queen's Printer has taken the liberty to mystify him. Between them be it. The object of the bill, however clumsily worded, is a good one; it is to increase the remuneration of Clerks and Bailiffs of Division Courts. We have in the columns of this journal admitted the necessity for this step. With jurisdiction to $100, Division Courts assume a marked position among us. Better to pay officers sufficient remuneration and have them good and tried men, than to employ bunglers at a reduced rate, and in the end bring the Courts into disrepute.

"The Fishery Act" is a model of legislation. Its language is clear and its object is equally clear. It is to protect the fisheries from waste and in the spirit of true economy if possible to turn them to profitable account. The Statutes, 18 Vic., cap. 114, and 20 Vic., cap. 21 are repealed and consolidated in this bill. The clauses number no less than seventy-two, and appear to be very comprehensive in details. It is not expected of us to enter into the details of such a measure, and therefore we shall not do so.

The bill "to consolidate the laws relating to the *inspection* of Fish," is very properly made a distinct measure. It repeals the act of Lower Canada 2 Vic., cap. 65, the act of Upper Canada 3 Vic., cap. 24, and the act of Canada 13 & 14 Vic., cap 43. This, like the preceding bill, is elaborately drawn, and yet not so much as to be inconsistent with perspicuity The interests involved are important. The measures designed to protect these interests are worthy of their object, and very creditable to their framer.

The bill "to consolidate and provide for the extension of the practice of Vaccination," is as its name imports, one more allied with the science of medicine than of law. It is designed to secure in places the most accessible a supply of vaccine matter, and indirectly to prevent small-pox. There are five clauses in the bill, the fourth of which is in our opinion of doubtful propriety. It enacts that when a case of small-pox shall occur in any house, &c., it shall be the duty of the tenants and occupants, &c., forthwith to place on the outer door thereof a written or printed notice to the effect that small-pox exists therein, in default of which a fine of not less than five nor exceeding twenty dollars is imposed. It appears to us that this oversteps the necessity of the case. It is we think a provision partaking of unnecessary cruelty and so might well be omitted.

The bill "to amend the law relating to Emigrants," has a two-fold object; the one to raise a fund for defraying the expenses of emigration, the other to protect the emigrant from imposition. So far as these objects are concerned the bill appears to do all that it professes to do. Those who take it up with the expectation of finding in it provisions for the encouragement of emigration will be disappointed.

The bill "to provide for the Registration of Debentures issued by Municipal and other Corporate bodies," is a practical and statesmanlike measure. It will have the effect of causing security where hitherto there has been uncertainty. Municipal debentures, as much as land, have become a marketable commodity among us The object of this bill is to establish a registration of such debentures, and of the by-law under which passed, with the proper County Registrar. The person last registered as owner is to be prima facie taken as owner. The effect of this will be as much to exhibit the affairs of a Municipality to an intending purchaser of debentures as to make him safe in his purchase. Purchasers at home, by which we mean Canada; and abroad, by which we mean England, must be benefited by this measure. Moreover, the regis-

tration of debentures is made to constitute a lien on the real estate of the Corporation, having priority according to the date of registration. Assuredly such a system of registration will, as the preamble suggests, "tend greatly to the increased value of debentures issued under the authority of by-laws of Municipal and other Corporate bodies passed for the purpose of raising moneys, and also for the better security of the holders of the same." The bill deserves the greatest support, and the greatest praise. It is pleasing to find men in the position of legislators alive to the requirements of their age, endowed with sagacity to contrive and ability to perform that which is for the public good. Of this class of legislators the introducer of the measure under consideration is becoming one of the most useful and distinguished.

APPEALS TO PRIVY COUNCIL.

In other columns we present our readers with a report of the decision of the Privy Council in the case of *Supple* v. *Gilmour*. The judgment of the Court of Error and Appeal of Upper Canada confirming the judgment of the Court of Common Pleas, (5 U. C., C. P., 318,) is upheld.

It has always appeared to us strange that the defendant Gilmour resisted the demand of the plaintiff in this cause. The delivery before the loss of the timber, the subject matter of the sale, was as perfect as could be the delivery of a raft of timber. The raft was, pursuant to defendant's instructions conveyed to his boom and there moored. Nothing more remained to be done by either party to complete the delivery. Afterwards the raft was destroyed by a storm. The question was upon whom, vendor or purchaser, the loss should fall. By the contract the right of property in the timber passed from vendor to purchaser. By the delivery at defendant's booms the possession also passed. From this time the raft ceased to be the raft of Supple and became that of Gilmour. The loss of it after much litigation, it is now finally decided, is the loss of Gilmour and not of Supple,—a decision which accords alike with common law and common sense.

We think there ought to be some check on the right of appeal to the Privy Council. Were the plaintiff in this case, Supple, a poor man, the result might have been that sickened and cruelly impoverished by protracted litigation, he would have been too glad to have accepted anything, however small, offered to him by the defendant, one of a wealthy and extensive trading firm. It so happened that the plaintiff is a man of considerable wealth as well as defendant, and rather than be baffled fought from Court to Court until the final conflict in the presence of Royalty. There ought to be in all suits equal justice to rich and poor—and equal justice there cannot be where it is in the power of one party by means of his riches needlessly to protract litigation.

The section of the Error and Appeal Act, (20 Vic. cap. 5,) which provides that in all cases of a motion for a new trial upon the ground that the judge has not ruled according to law, if the rule to show cause be refused or if granted be afterwards discharged or made absolute, the party decided against may appeal, *provided* any one of the Judges dissent from the rule being refused, or when granted being discharged or made absolute as the case may be, or *provided* the Court in its discretion think fit that an appeal should be allowed, &c., (s. 15) is sound in principle. The principle of it might, we believe, with much advantage to suitors be extended to appeals to Privy Council contemplated by s. 46 of 12 Vic. c. 63.

MUNICIPAL LAWS.—DISSOLUTION OF UNIONS.—EFFECT ON COUNTY OFFICERS.

In our number for April last, we pointed out a conflict of decisions on this branch of law. We showed that while the Court of Common Pleas had expressed one opinion, the Court of Queens Bench, apparently without being aware of the opinion of the Common Pleas, expressed one wholly different. We declared our inability to reconcile the decisions,—the one being that of *Carter* v. *Sullivan et al.*, 4 U. C. C. P. 298, and the other being that of *Glick* v. *Davidson et al.*, 15 U. C. Q. B. 591. We are as much as ever unable to do so.

We have now a still more recent case in the Queen's Bench, wherein *Glick* v. *Davidson* is upheld, and *Carter* v. *Sullivan* commented upon and doubted. This case is reported elsewhere. While in reference to *Carter* v. *Sullivan*, the Chief Justice of Queen's Bench thinks the question was not much "gone into," Mr. Justice Burns does not hesitate to say, "I have attentively considered the case of *Carter* v. *Sullivan*, on the construction of those statutes but confess my inability to take the view adopted in that case." Thus the conflict of authority as much as ever exists and the breach if anything is widened. Until the question is either settled by a Court of Appeal or the legislature, our remarks made in April must stand as they are written.

We have examined the New Municipal Bill, but cannot find that it proposes to help us out of the difficulty. Indeed we cannot discover that s. 37, of 12 Vic., cap. 78, is with or without amendment, to be re-enacted. Probably the commissioners deeming it a temporary provision have omitted it. If they have done so they have done wrong. Not only as to Counties already disunited, but as to Coun-

ties to be disunited, (York and Peel for instance) a provision of the kind is required. We trust that having drawn attention to the omission, the enactment omitted will be supplied,—and supplied in a form calculated to remove existing doubts upon a point of a very grave description.

ELECTIONS.—BRIBERY.—TRAVELLING EXPENSES.

We are indebted to one of our English exchanges, *The Solicitor's Journal and Reporter* for the case of *Cooper* v. *Slade* in other columns. It has long been doubted whether the *bonâ fide* payment of travelling expenses, or the promise thereof, is, under any circumstances, bribery. It will be seen by a perusal of the case we have mentioned, that although there be no intention morally to do wrong, yet the offence of bribery may be committed. The decision being that of the highest court in the Realm, House of Lords, is the more important and more deserving of attention. It is now settled that the payment of expenses, or the promise thereof if made in order to *induce* an elector to vote for a particular candidate is bribery. This we believe to be the law of Canada as much as the law of England.

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

Shortly after the discovery of this continent the attention of European States was directed to it as a field for colonization. Great Britain and France, as leading maritime powers, were foremost in the enterprise. The greater part of what now constitutes the United States of America became colonies of Great Britain; while the territory now constituting Canada was colonized by France. For more than two hundred years, with little interruption, Canada remained subject to the government of France, and was peopled through the efforts of trading companies invested with great privileges, seconded by the zeal of the age to propagate the Christian religion in foreign parts.

The first attempt of the French to colonize Canada appears to have been made by Jacques Cartier, a navigator who earned for himself a distinguished reputation. He was first sent to this continent in 1534, by Francis I. of France.* He reached the mouth of the St. Lawrence, and having, in the name of the King, his Master, taken possession of the surrounding country, returned to Europe. In 1535, he again sailed for Canada. It was during this year that he penetrated the St. Lawrence as far as Quebec and Montreal, then the sites of Indian villages. He returned in 1536. In 1540, having been appointed commander of a fleet,* he once more sailed for Canada, and on the 23rd August reached Quebec. Before he sailed, Jean François de la Rocque, Lord of Roberval, had been appointed Lieutenant-Governor of Canada, Hochelaga, Newfoundland, Labrador, and the adjacent country,† but for some reason did not accompany Cartier. In 1542, when the latter was returning to Europe, he met Roberval at St. John's, Newfoundland, then on his way to Canada. Cartier never returned to Canada. Before his death he published an account of his first two voyages, and of his discoveries in the colony. Roberval proved an unwise and severe ruler. While he was Governor one man was hanged, several were placed in irons, and both sexes alike were, by public authority, subjected to the discipline of the whip.‡

The attempts of Cartier and of Roberval to colonize the country ended in failure. The idea was abandoned. Nor was it revived for nearly fifty years. In 1598, the Marquis de la Roche, a gentleman of Brittany, obtained letters patent, in many respects similar to those previously granted to Roberval.§

We have a record of his commission ;|| and as it is not only remarkable in itself, but the prototype of many that followed, we purpose noticing it. It bears date at Paris on 12th January, 1598. It is granted by King Henry of France, and recites that his predecessor, François I., had been informed that the islands and country of Canada, Sable Island, Newfoundland, and parts adjacent, were very fertile and rich in material resources. It proceeds to say that these lands were peopled with races of men who, though of sound mind and understanding, had no knowledge of God; and further recites, that for the conquest of this country ample powers had been previously given to Jean François de la Rocque, Sieur de Roberval, but that these had not been fully exercised. For him it substitutes le Sieur de la Roche, whose titles, many and great, are set in heraldic array. The duty of spreading the Catholic Faith is especially enjoined; and as second and next to this, the commission commands him to acquire more of the country, but directs that this shall be done if possible, by peaceable, rather than warlike means. Incidentally to these, power is given to make laws—to enforce obedience to them—to punish or pardon delinquents—and generally to exercise legislative and executive functions. Power is also given to bestow upon deserving noblemen or gentlemen, fiefs, seigniories and baronies, according to the tenure of land then existing in France. To those of more humble rank there was power to make lesser dona-

* I. Garneau, 18.

* III. Edits et Ordonnances, 6. † Ib. ‡ 1 W. Smith, 13.
|| III. Edits et Ordonnances, p. 7.

tions. Provision was then made for the distribution of the fruits of the voyage. All judges, officers and subjects were enjoined obedience in the ordinary form.

Lord de la Roche sailed for Nova Scotia with a number of convicts that had been taken out of the gaols of France. It is not certain that he ever reached the continent. He abandoned part of his force on Sable Island and shortly afterwards returned to Europe.

Fate seemed to oppose all attempts at colonization; and notwithstanding, there were many adventurers. M. de Chauvin applied to the King, and obtained for himself privileges like those of the Marquis de la Roche. In company with M. de Pontgravé, a trader, he made a trip to the St. Lawrence, where having collected a large supply of furs he returned to France, sold them, and died.*

His successor was De Chaste, who organized a company of traders from among the merchants of Rouen.† An expedition sailed in 1603, under the command of Champlain, a naval officer, who had previously served in the East Indies. This expedition having penetrated as far as *the Falls of St. Louis returned to France, when it was* found that De Chaste was dead, and that a new patent had issued to M. de Monts.‡ This gentleman was appointed Governor of the territory lying between the fortieth and forty-sixth degree of North latitude, with certain privileges of trade. Under him, Champlain, ever active, made explorations in different parts of the country. The years 1604 and 1605 were spent in exploring the country along the Banks on each side of the St. Lawrence, and in 1607 he went to Tadousac.§ He formed settlements at Saint Croix and Port Royal, and on 3rd July, 1608, began to build houses at Quebec, of which he must be considered sidered the founder. So soon as the St. Lawrence was free of ice he went up the river with a view to exploration, and on his way southward crossed a Lake, to which he gave his name, a name that it now bears.‖ It was during the autumn of this year that he repaired to France, leaving Peter Chauvin in command. In the following year he returned to Quebec full of hope, with the intention of pushing his discoveries. In the meantime de Monts lost his privileges of trade, and Champlain, feeling the want of a powerful protector, revisited France. He then learnt that Count Soissons had obtained the Vice-Royalty, and in him found all that he desired. From Count Soissons Champlain received a commission, appointing himself Lieutenant-Governor of the colony.¶ In this commission the colony was for the first time officially styled New France. Champlain was instructed to proceed "to a place on the St. Lawrence called Quebec." Officers for the administration of justice and maintenance of police were assigned to him; and general authority was given to him to make treaties and alliances with foreign powers. The most remarkable part of the commission is that wherein he is expressly commanded to discover the route to China and the East, through America.*

Shortly afterwards Count Soissons died, and the Prince de Condé received the supreme appointment. He continued Champlain as his lieutenant. An extensive Canada Company, upon the application of merchants of St. Malo, Rouen, and La Rochelle, was incorporated. Through this company Champlain succeeded in having four Recollect priests sent out, and they it is said were the first of their order who ever entered Canada. The lieutenant-governor still devoted all his exertions to secure the prosperity of the colony while the Recollect fathers did their best to spread their religion among the Indians. In 1620 the Prince de Condé sold the Vice-Royalty to the Marshal de Montmorenci,† *by whom Champlain was continued as lieutenant-governor.* About this time Champlain revisited France, for the purpose of impressing upon the trading company and the Crown the wants of the Colony, but his appeals were coldly received. Being possessed of an indomitable will, he, though denied the aid he so earnestly implored, returned to the scene of his labors. The Five Nations of Indians growing uneasy began to give trouble. They seized Father Poulain, a Recollect pries., and fastened him to a stake in order to burn him alive. He was only released from this peril in exchange for an Indian Chief whom the French had taken prisoner.‡ A convent which had been erected on the banks of the River St. Charles, near Quebec, was afterwards invested by the Indians but not attacked. The state of the colony, consisting only of fifty persons, men, women and children, was now deplorable in the extreme. Not only was it at the mercy of surrounding savages, but, owing to the neglect of the trading company, actual want began to manifest itself. A special agent was despatched by Champlain to France. The result of his journey was that the Crown suppressed the trading company and granted an exclusive privilege to two brothers named De Caen. §

Champlain erected a stone Fort for the better protection of the colony, and with his family sailed for France. There he ascertained that the Duke de Montmorenci had disposed of the Vice-Royalty to his nephew the Duke de Ventadour,

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* I W. Smith, 15.
† I. Garneau, 38 et seq.
‡ I. Lescarbot, 417.
§ Hawk's Cyl. Biog. Champlain.
‖ I W. Smith, 17.
¶ III. Edits et Ordonnances, 11.

* "Pour essayer de trouver le chemin facile pour aller par dedans (Saint Laurent) le dit pays au pays de la Chine et Indes Orientales ou autrement tant et si avant qu'il se pourra, le long des côtes et en la terre ferme."—III. Edits et Ordonnances, p. 12. † I. Garneau, 53 et seq. ‡ I. W. Smith, 19. § I. W. Smith, 19.

who had taken holy orders, and whose chief aim in the acquirement of the colony was the conversion of the Indians. Champlain was by him continued as lieutenant-governor.* He returned to Canada, accompanied by the Jesuit fathers L'Allemand, Masse and De Brebeuf, and two lay brothers of reputed piety. Upon their arrival they were well received and lodged in a small house built by the Recollect fathers, then standing where now stands the General Hospital of Quebec.†

The brothers Caen, who were Huguenots or Protestants, were charged with fomenting religious differences among the settlers, and in consequence deprived of their privileges by Cardinal Richelieu. The colony was in a measure ceded to the "Compagnie des cents Associés," who on 29th April, 1627, received a Charter, containing most extensive powers of government.‡ Still Champlain continued lieutenant-governor. The colony was not, however, destined to be free from trouble; a new foe presented itself.§ War having been declared between France and England, William de Caen, chagrined at the loss of his privileges, in 1628 conducted an English armament, under the command of Sir David Kirk, to Tadousac, and thence sent a summons to Champlain to surrender. This the latter with great spirit refused to do, and at once prepared to meet the enemy. Sir David Kirk having encountered a French convoy under de Roquement, captured it and made sail for England. In the following year, 1629, his brothers Lewis and Thomas Kirk having suddenly appeared before Quebec demanded its surrender. The demand was complied with, owing, it is said, to the threatened attack of the hostile Indians, and—the ship which was bringing the supplies having been captured—it may be added, the danger of starvation. Champlain having capitulated, was conveyed by the English commanders to France.‖ The population of Quebec at this time did not exceed one hundred persons, men, women and children. At Montreal there were only three or four log huts. There were about the same number at Three Rivers and Tadousac. ¶ There were not as yet any fixed laws or settled tribunals. Disputes appear to have been settled in a neighbourly manner; that is, by reference to friends or an appeal to the lieutenant-governor. Money was seldom seen, and litigation was upon the whole a stranger to the land.

By the treaty of St. Germain de Laye, Canada, Acadia, Newfoundland and Cape Breton, were in 1632 restored by England to France.** The company of the hundred associates received a renewal of their former privileges. Champlain was re-appointed Governor; and after his appointment, in company with two Jesuits, arrived in the colony. The offers of Protestants to settle in the colony was expressly refused.* A few years afterwards Champlain died. He bid adieu to this world in 1635, amid the sorrow of the whole colony. Shortly before his death he published a history of the colony from its discovery to 1631. In it he minutely narrates his several voyages and faithfully portrays the rise and progress of the colony.

(*To be continued.*)

* III *Edits et Ordonnances, 13.* † I. W. *Smith, 20.* ‡ I. *Edits* et Ordonnances, 1. § I. Garneau, 169 et seq. ‖ 1 W. Smith, 22. ¶ 1 W. Smith, 24. ** I. Garneau, 80.

DIVISION COURTS.

OFFICERS AND SUITORS.

ANSWERS TO CORRESPONDENTS.

To the Editors of the Law Journal.

London, May 4th, 1858.

GENTLEMEN,—I hope you will excuse me troubling you with this letter. I do so with a view to obtain your opinion with regard to the present law limiting Division Court executions to thirty days. It seems to me that it would be far better to have them returnable the same as executions issued from the Sheriff's office—viz., immediately after execution. We then could make a great many executions that we cannot at present; for instance, suppose an execution issue from a Division Court office on June 1st, and levy on crops. An execution issues from the Sheriff's office on June 10th, and levy on the same crops: the crops are not available until July 2nd, and then the Sheriff is first, because the Division Court execution has run out. Again, suppose an execution issues from the Sheriff's office on January 1st, against the goods of John Jones, for the sum of £100: on January 10th, an execution issues from a Division Court for £25, against the same goods; on January 20th, another execution issues from the Sheriff's office against the same goods—on Feb. 15th, John Jones pays the first execution of £100 to the Sheriff; it will thus be seen that the Sheriff is still first, and that the Division Court execution cannot be collected, because it has run out before the first execution had been paid to the Sheriff. It will thus be seen that if the Division Court executions could have been kept in force, they would have been made in both the above cases.

In a great many cases, plaintiffs would be very willing to give poor unfortunate defendants time, if they could do so safely—that is, if the execution did not run out so soon. One objection to altering the words 'thirty days,' to 'immediately after execution,' might be, that bailiffs not being limited to any particular time to make a return might delay the return too long, but that might be remedied by giving plaintiffs the power, by filing a notice with the clerk, to compel a return within thirty days.

Answers to the following questions would very much oblige your humble servant.

First,—Can a Sheriff hold an execution against a person's goods for a year or more, and during that time hinder a Division Court Bailiff from seizing and selling the same goods? I have often served notices on the Sheriff requesting him to sell—if he does not sell after being served with a notice, can I sell? If it is legal to serve a notice, what would be the proper form? If I hold an execution against a person in an adjoining division in any County, and he come into my division with goods, can I seize, advertise, and sell such goods, in my

* I. Smith, 25.

division; or would it be necessary for me to advertise and sell the goods in the division in which the defendant resides? Can I, lawfully, after having seized goods, remove them to another division for safe keeping, provided I take them back to the division in which I seized them on the day of sale, and sell them there.

J. T.

[The above involves questions of general law, which we do not profess to answer; but we hope to notice some of the subjects referred to, in our next issue.—EDS. *L. J.*]

To the Editors of the [illegible] Journal.

[illegible]rantford, May 18th, 1858.

GENTLEMEN,—In the Act 13 & 14, Vic. ch. 53, sec. 77, it is enacted that "if any Clerk Bailiff or other officer, employed in putting this Act or any of the powers thereof into execution, exact, take or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid, for or on account of anything done or to be done by virtue of this Act, on any account whatsoever, relative to putting this Act into execution; every such person so offending shall, upon proof thereof before the said Court, be forever incapable of serving or being employed under this Act, in any office of profit or emolument, and shall also be liable in damages to the party aggrieved."

I submit the following case:—

A, Clerk of———Division sent B, Clerk of———Division, several transcripts with instructions to issue Summonses after Judgment, and send A the bill of costs—the summonses were issued, B sent A a bill of costs amounting to £15 8s. A. asked for a bill of items which was not given. B sued A for the amount and on making affidavit that the claim was correct, judgment was entered for the amount. A, on arriving at the Court, applied for a hearing and claimed that the costs charged were too high; the Judge, after comparing the charges with the tariff, gave judgment in favor of B for £11 17s. 6d., thus striking off £3 10s. 6d. Question, did B in claiming the £3 10s. 6d. excess of costs, render himself liable to be dealt with under the above section, and if so, what are the necessary steps to be taken in the matter?

D.

[The clause is a penal one, and must be construed strictly. It cannot be said that B took or accepted excessive fees. He *made claim* by suit, and did not eventually recover—that's all. His conduct was most objectionable, and we presume the Judge not only disallowed the costs to him, but made A. a liberal allowance for his loss of time. We know at least one Judge who would have removed him from office if the claim were designedly fraudulent.—EDS. *L. J.*]

To the Editors of the Law Journal.

Preston, May 29th, 1858.

GENTLEMEN:—Allow me to bring to your notice some of the unavoidable evil consequences that will arise if the proposed Division Court Bill to exclude merchants from being competent to fill the office of Clerk of Division Courts, as proposed by Mr. Benjamin be passed. In thinly populated sections of the country, the office of a Division Court Clerk is not a very remunerative one, the annual fees amounting to from £50 to £75. The parties that are suited to fill such an office are not very numerous, and Judges even now where they have the privilege to select from among all the settlers, do often find it difficult to obtain a competent person. It frequently happens that the only competent person in a Division is the Postmaster, who at the same time most invariably has a small store, a farm, or other trade, and if therefore the merchants were excluded the Judges might be obliged to employ an incompetent person.

Again, looking at the object of the bill as mentioned in the Preamble, that object will not be obtained even if it become Law, and my grounds for this assertion are as follows:—

The Bill as it is proposed only affects Division Court Clerks in rural districts, since in cities and towns there are no Division Court Clerks that are at the same time merchants. If, however a Division Court Clerk feels disposed to take *undue* advantage of certain plantiffs and favor other plaintiffs he *can* do so although he is not a merchant, but in so doing he may have as great an interest in the suits as if he were the plaintiff himself. Take for instance the Clerk of a large Division, where there are a number of merchants, and where the assignees of several of these merchants place in the hands of that Clerk all the books, accounts, and plaintiff's notes of them, (which is done frequently,) the Clerk receives these claims on commission, he collects them through the Court, and since he has an interest in the claims, he may favor the one plaintiff in preference to the other, just as a country merchant when Clerk might favor himself in a certain suit by taking undue advantage of other plaintiffs. The country merchant's interest may be £5, while the interest of the other clerk is £20. However, it is a pleasing fact, that complaints against Clerks for taking undue advantages are so rare, if any there be. The Bill is uncalled for; but should it be passed, a number of respectable persons will lose their situations as Clerks, and in many instances no person fully qualified can be obtained, and the business of the office will be done improperly. The public will suffer more on that account, than by leaving the law as it now stands,

My principal reasons for writing to you at present is the notice I received respecting that Bill, it having been brought up in Committee and the majority being in favor of it. There having been two or three letters from Judges produced and read, speaking in favor of the measure. The Judge of this County is decidedly opposed to the Bill, and his own words are that if it passed, it will affect four of his Clerks, and that he would not know how to refill their place. The matter is delayed until the Judges have been communicated with.

Believe me to remain,
Respectfully yours,

O. K.

[The views of our correspondent are our views. We have so expressed ourselves in reference to Mr. Benjamin's Bill on more than one occasion. The *imaginary* evil to be remedied by his bill, will, in our opinion, if the bill be passed, be supplanted by greater and more numerous evils. The difficulty of procuring suitable men for the office, now great will be increased ten-fold.—EDS. *L. J.*]

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

(*For the Law Journal.*—BY V———.)

[CONTINUED FROM PAGE 110, VOL. 4.]

Bailiffs are fully protected in the just discharge of their lawful duties, and the provisions for their punishment in case of negligence or misconduct are not less ample.

The sections imposing penalties will now be noticed: the remedy by action against the officer and his sureties will be examined in its proper place.

The enactments contained in the 101st, 76th and 77th sections of the D. C. Act affect the Bailiff alone, and are mainly directed to the punishment of misconduct. The action given against the Bailiff and his sureties by another clause will in every case give the party aggrieved all the *remedy* he is entitled to when loss is occasioned by neglect,

and as a general rule the proceeding by action is preferable. *First*, because proceedings under the clauses mentioned being in their nature penal, require to be conducted with great nicety, and the evidence must be conclusive, as in case of doubt the benefit of that doubt would be given in favor of the accused. *Second*, because such a proceeding is directed against the officer alone, whereas in an action his sureties may be joined as defendants; and *Third*, because the remedy by action is more speedy.

Considerations of this kind probably presented themselves to the committee of judges when framing rules, for no form has been given under these penal clauses. It seems sufficient then briefly to notice their provisions. Section 101 provides, that a Bailiff who shall by "neglect or contrivance or omission lose the opportunity of levying any execution" against goods and chattels, may be ordered to pay such damages as the plaintiff has sustained by the misconduct; and that upon refusal of the Bailiff to pay, the payment may be enforced as in ordinary cases of judgment recovered.

The complaint under the section must be by the party aggrieved, and should properly be in writing. The Bailiff will then be called upon to answer, and if he denies the charge, and is not prepared to enter on his defence, the matter will be adjourned to enable him to do so. The facts alleged and disputed, must at the trial be proved by at least one credible witness. If the matter of the complaint be proved to the satisfaction of the judge, he will make an order on the Bailiff to pay a sum sufficient to cover the damage sustained. As to subsequent proceedings the enactment is not very clear, but it would seem that the order must be *served* on the Bailiff, and on his refusal to obey it, an application may be made for execution to issue, but nothing is said as to costs. Section 76 provides, that if any Bailiff acting under colour or pretence of the process of a Division Court shall be guilty of extortion or misconduct, or shall not duly pay or account for monies levied or received by him under the act, he may be ordered to pay back the money extorted, or to pay over monies levied or received by him, together with damages and costs to the party aggrieved; and in default of payment the amount may be levied under judge's warrant; and in default of distress (or summarily in the first instance) the Bailiff may be committed to gaol for a period not exceeding three months.

Great care must be taken in acting on this penal enactment that every proceeding is regular and sufficient. The complaint must be made by the party aggrieved, and must be committed to writing; it must be made at a sittings of the court, and the facts alleged be fully sustained by proof, as under the 101st section, the Bailiff will be entitled to an adjournment to prepare his defence.

The order of the judge is enforceable only on a warrant under his hand and seal.

The 77th Section provides that if any Bailiff or other person employed in putting the Division Court Act or any of the vers thereof into execution, shall exact, take or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed for anything done by virtue of the act or on any account whatsoever relative to putting the same into execution, the offender shall on proof before the court be forever incapable of serving or being employed under the Division Court Act in any office of profit or emolument, and shall also be liable in damages to the party aggrieved.

The offence must be clearly proved before the court, and an order in the nature of a conviction made by the judge. This punishment under the section is clearly in addition to the remedy by action, for it is provided that the offender "shall also be liable in damages to the party aggrieved." The complaint should be specific and in writing that the officer may be clearly informed of the nature of the charge against him.

In proceedings under any of these three sections the complainant will not be allowed to go beyond the particular acts specified as constituting the offence, and the evidence must be confined to such acts, and they must be shown clearly to be within the terms of the particular enactment.

THE MAGISTRATE'S MANUAL.

BY A BARRISTER-AT-LAW.—(Copyright Reserved.)

[*Continued from page* 111, Vol. IV]

III.—Summons or Warrant.

Discretionary.—The information having been exhibited, the next thing to be done is to compel the appearance of the accused to answer the accusation. This may be done either by the issue of a Warrant or Summons, in the first instance in the discretion of the magistrate.* It is for him to judge of the probabilities of escape. If the crime charged be one of enormity, involving heavy punishment or at all events disgrace of character, the probability of escape is great. Most crimes as to which magistrates act ministerially, are of this discription. Hence the warrant is more usual than the summons in such cases. No warrant ought to issue in the first instance unless the information be on the oath or affirmation of the informant or some witness or witnesses in that behalf.†

Warrant.—The warrant, if issued, must be under the hand and seal of the magistrate or magistrates issuing it. It may be directed to all or any of the constables or peace officers of the County or United Counties within which it is to be executed, or to a particular constable and all other constables and peace officers in the territorial division within which the magistrate or magistrates issuing it has jurisdiction. It must state shortly the offence on which it is founded. It must also name or otherwise describe the offender. It must also order the person or persons to whom it is directed to apprehend the offender and bring him before the magistrate or magistrates for the same territorial division to answer the charge contained in the information, or otherwise be dealt with according to law. It remains in force until executed.‡

Form of Warrant.—The warrant may be in this form—

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

To all or any of the Constables or other Peace Officers in the (*County or United Counties, or as the case may be,*) of ——.

* 16 Vic. c. 179, s. 1.

† 16 Vic. c. 179, s. 4.

‡ 16 Vic. c. 179, s. 6.

‖ 16 Vic. c. 179, sch. B.

Whereas A. B. of ——, (*laborer,*) hath this day been charged upon oath before the undersigned, (*one*) of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be,*) of ——, for that he, on ——, at —— did (*&c., stating shortly the offence;*) These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B., and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be,*) of ——, to answer unto the said charge, and to be further dealt with according to law

Given under (*my*) Hand and Seal, this —— day of ——, at ——, in the (*County, &c.,*) aforesaid.

[L. S.] J. S.

No objection can be taken or allowed to any warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution. If any such variance appear to be such that the party charged has been thereby deceived or misled the magistrate may adjourn the hearing of the cause to some future day and in the meantime remand the party charged or admit him to bail in the manner which we shall hereafter describe.*

How executed.—The offender may be apprehended at any place within the territorial division of the magistrate or magistrates who issued the warrant, or in case of fresh pursuit at any place within the next adjoining territorial division and within seven miles of the border thereof. Where the warrant is directed generally to *all* constables or other peace officers of the division *any* constable or peace officer for any place within such division may execute the warrant. If the offender be not found within the jurisdiction of the magistrate who issued the warrant, or if he escape, or be suspected to be in any place in Canada whether in Upper or Lower Canada, out of the jurisdiction of such magistrate, any magistrate of the Division where the offender shall be found or supposed to be upon proof on oath of the handwriting of the magistrate who issued the warrant may back it. The indorsement ought to be in this form.

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

Whereas proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be*) of ——, that the name of J. S., to the within Warrant subscribed, is of the hand-writing of the Justice of the Peace within mentioned; I do therefore hereby authorise W. T. who bringeth to me this Warrant, and all other persons to whom this Warrant was originally directed, or by whom it may be lawfully executed, and also all Constables and other Peace Officers of the said (*County or United Counties, or as the case may be*) of ——, to execute the same within the said last mentioned (*County or United Counties, or as the case may be.*)

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

J. L.

This indorsement is sufficient authority to the person producing the warrant, to all persons to whom the same is directed, and to all constables and other peace officers of the territorial division where the warrant is so indorsed. It is made sufficient authority not only for the apprehension of the offender, but to carry him before the magistrate who issued the warrant, before some other magistrate of the same division, or before some magistrate of the division wherein, according to the warrant, the offence is alleged to have been committed. But in case the prosecutor or any of his witnesses be in the division where the arrest is made, the offender, if so directed by the magistrate who backed the warrant, may be conveyed before such magistrate or some other magistrate of his division.* The accused ought not to be handcuffed, unless there is reason to believe that he meditates violence or an escape.†

Summons.—The magistrate may, as we have already stated, instead of issuing a warrant issue a summons for the appearance of the party accused. The summons ought to be directed to the party charged in the information, and not to constables, &c., like a warrant. It ought, however, like a warrant to state shortly the matter of the information, and then require the person accused to appear at a certain time and place to be mentioned therein.‡

Form.—The summons may be in this form—

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

To A. B. of ——, (*laborer*):

Whereas you have this day been charged before the undersigned (*one*) of Her Majesty's Justices of the Peace in and for the said (*County* or *United Counties, or as the case may be,*) of ——, for that you on ——, at ——, (*&c., stating shortly the offence*); These are therefore to command you, in Her Majesty's name, to be and appear before (*me*) on ——, at —— o'clock in the (*fore*) noon, at ——, or before such other Justice or Justices of the Peace for the same (*County or United Counties, or as the case may be,*) of ——as may then be there, to answer to the said charge, and to be further dealt with according to law. Herein fail not.

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

[L. S.] J. S.

No objection can be allowed to any summons for any alleged defect therein, or for any variance between it and the evidence adduced for the prosecution, except as already noticed in regard to warrants.

How served.—The summons ought to be served by a constable or other peace officer upon the person to whom it is directed by delivering it to the party personally, or if he cannot be met with then by leaving it with some person at his last or most usual place of abode.‖

Warrant if party summoned fail to appear.—It is the duty of a constable who serves the summons to attend at the time and place mentioned in it to depose, if necessary, to the service. If the party summoned do not then and there appear, the magistrate may issue a warrant for his arrest in this form:—

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

To all or any of the Constables, or other Peace Officers in the, said (*County* or *Counties, or as the case may be*) of ——:

Whereas on the —— day of —— (*instant or last past*) A. B. of the ——, was charged before me or us, the undersigned, (*or name the Magistrate or Magistrates, or as the case may be*) (*one*) of Her Majesty's Justices of the Peace, in and for the said (*County* or *United Counties, or as the case may be,*) of ——, for that

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* 16 Vic. c. 179, s. 6.

† 16 Vic. c. 179, Sch. K.

* 16 Vic. c. 179, s. 7.

† Wright v. Court, 4 B. & C., 596.

‡ 16 Vic. c. 179, s. 5.

§ 16 Vic. c. 179, Sch. C.

‖ *Ib.* s. 5.

¶ *Ib.* Sch. D. 1.

(*&c. as in the Summons*); And whereas (I, he, the said Justice of the Peace, we, *or* they, the said Justices or the Peace) then issued (my, our, his *or* their) Summons to the said A. B. commanding him, in Her Majesty's name, to be and appear before (*me*) on ——, at —— o'clock in the (*fore*) noon, at ——, or before such other Justice or Justices of the Peace as should then be there, to answer to the said charge, and to be further dealt with according to law; And whereas the said A. B. hath neglected to be or appear at the time and place appointed in and by the said Summons although it hath now been proved to (*me*) upon oath, that the said summons was duly served upon the said A. B; These are therefore to command you, in Her Majesty's name, forthwith to apprehend the said A. B. and to bring him before (*me*) or some other of Her Majesty's Justices of the Peace in and for the said (*County or United Counties, or as the case may be*) of ——, to answer the said charge, and to be further dealt with according to law.

Given under (*my*) Hand and Seal, this —— day of —— in the year of our Lord ——, at —— in the (*County* of —— aforesaid.

[L. S.] J. S.

U. C. REPORTS.

QUEEN'S BENCH.

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

HILARY TERM, 21 VIC.

FLEMING v. MCNAUGHTEN.

Commissioner for taking affidavits—Appointment for district—Continuation of authority in counties.

Held, affirming Glick v. Davidson, 15 U. C. R. 591, and dissenting from Carter v Sullivan, 4 C. P. 298, that a commissioner appointed in 1840 for the districts of Gore and Wellington, might, after the passing of 12 Vic., ch. 78 and 14 & 15 Vic. ch. 5, continue to take affidavits in Galt, which was formerly within the Gore district.

Interpleader issue to try whether certain goods and chattels were the property of one James H. Williams on the 1st of July, 1857.

The trial took place at Berlin, before *Burns*, J., and it was admitted that the execution debtor, Williams, had executed a chattel mortgage to the plaintiff upon the goods in his possession, dated 7th June, 1857, to secure the payment of the sum, of £118 16s. 9d. on the 9th of June, 1858, and that the affidavit of execution and the debt being due was duly attached, and the instrument was filed in the office of the clerk of the county court on the 10th of June, 1857. No attempt was made to impeach the debt as not being *bona fide* due to the plaintiff, but it was contended that in law no proper affidavit of execution, or of the debt being due, was attached to the instrument, because it was proved that the commissioner before whom the two affidavits were made had no legal authority to administer the oath.

The authority under which the commissioner acted was a commission signed by the Chief Justice of this court, Mr. Justice Macaulay, and Mr. Justice Jones, dated 5th of August, 1840, authorising him to administer oaths for the districts of Gore and Wellington. The affidavits were sworn before the commissioner at Galt, in the county of Waterloo, on the 9th of June, 1857. At the date of the commission, 5th of August, 1840, Galt was in the district of Gore, being in the township of Dumfries. The first change from districts into counties was made. The next change was made by statute 14 & 15 Vic., ch. 5; and under that act North Dumfries, in which township Galt was situated, was attached to the county of Waterloo, and the whole tract which previously composed the county of Waterloo was divided into three counties—namely, Wellington, Waterloo, and Grey—the town of Galt being in the county of Waterloo, and the three being united for judicial purposes, with Wellington as the senior county. In the month of January, 1853, the county of Waterloo became disunited from the union of counties under the provisions for enabling junior counties to separate from the union of counties. No new commissions for administering affidavits were issued, but the commissioner who administered the oath in this case, with others, acted on the former commissions.

The learned judge reserved leave to the defendant to move to enter a nonsuit, or a verdict for defendant, if the commissioner was not legally authorised to administer the oaths, and directed the jury to find a verdict for the plaintiff.

Freeman, Q. C., during last term, obtained a rule to shew cause why the verdict should not be set aside, and a verdict entered for defendant, pursuant to the leave reserved, or why there should not be a new trial on the ground of misdirection. He cited McWhirter v. Corbett et al., 4 U. C. C. P. 203; Carter v. Sullivan et al., Ib. 298.

M. C. Cameron shewed cause, citing DeForrest et al. v. Bunnell, 15 U. C. Q. B. 370: Glick v. Davidson, Ib. 591.

Robinson, C. J.—As to the legal exception taken to the authority of the commissioner to administer the affidavits, it would be sufficient, as I suppose, in the first instance to shew that the person who administered the oath was in the usual exercise of the office of commissioner, without giving evidence of his appointment. That would be the course, if the person making the affidavit were indicted upon it for perjury, but still it would open to the defendant on such a trial to shew that in fact the person who acted as commissioner had not authority, either generally or in the particular case; and therefore I conclude that it was open to the defendant in this cause to prove that the oath was not lawfully administered, because the person who acted in the matter had not in fact proper authority. The statute in force when this affidavit was sworn required that the oath should be administered by a commissioner of the Queen's Bench or Common Pleas, not adding "for the county in which the affidavit shall be sworn." The last statute, which however had not then been passed (20 Vic., ch. 3, sec. 3), does not leave room, I think, for such an objection as was taken in this case, for it directs that the affidavits required by that act shall be taken and administered "by any judge or commissioner of the courts of Queen's Bench or Common Pleas, or Justice of the Peace in *Upper Canada*." I am not quite clear that the former statute, 12 Vic., ch. 74, might not be held to mean the same thing in effect, for there were no restrictive words, and there are some acts merely ministerial which may be done by public officers wherever they may happen to be.

Without determining at present whether this is or is not one of such acts, we seem to have in effect determined this case by our judgment given in Glick v. Davidson (15 U. C. Q. B. 501). In the case of Carter v. Sullivan (4 U. C. C. P. 298) the Court of Common Pleas appear to have given an opinion unfavourable to the authority of the commissioner, under similar circumstances. The question, however, is not much gone into, and the learned Chief Justice of that court, who alone gave the judgment of the court, merely stated, after citing the different clauses of the statutes upon which the question turned, that he found no sufficient authority of the commissioners (to take bail) in that case as extended to or continuing in the county of Brant after its separation.

Whether it is a continuing authority or not, after the new organization of territory, depends on the intention and effect of the statute cited in that judgment, and on the case of Glick v. Davidson in this court. I infer from the argument of counsel in Carter v. Sullivan, that the reason why the authority of the commissioner was supposed not to be a continuing authority after the new arrangement, was that he was not a county officer, but an officer appointed by a court; but I do not think the 37th clause of 12 Vic., ch. 78, should receive so limited a construction. A commissioner for taking bail and administering oaths is certainly a person "holding office, and bearing lawful authority." And when we consider that the legislature made no other provision on the subject, and that they could not have intended to leave the want wholly unprovided for, which would have occasioned great injury and inconvenience to the public, we are bound, I think, to hold that the effect of the 18th and 37th clauses of the 12 Vic., ch. 78, and of 14 & 15 Vic., ch. 5, sec. 3, is to continue the authority of the commissioner in this case to act within that part of the former district of Gore within which he resided, and for which he was authorised to act while it formed part of the district of Gore.

BURNS, J.—With respect to the point which was reserved to the defendant at the trial, upon which to move to enter a verdict in his favour—that is, whether the person who administered the oaths as to the validity of the debt and the due execution of the mortgage had any authority to administer those affidavits—I am of opinion he had such authority. Mr. McCrume held a commission which gave him authority to administer affidavits in the districts of Gore and Wellington respectively. The 37th section of 12 Vic., ch. 78, enacts, that "Her Majesty's Justices of the Peace, and other persons holding commission or office or bearing lawful authority in the different districts in Upper Canada for which judicial and other proceedings are by this act transferred to the several counties and unions of counties in the same, as set forth in the schedule, shall continue to hold, enjoy and exercise the like commission, office, authority, power and jurisdiction, &c., to all intents and purposes whatsoever, as if their respective commissions or other authorities were expressed to be for such county or union of counties, instead of for such districts respectively." Now, although it may be argued that the words *commission* and *office*, as used in the act, must be constructed to mean a commission or office held under the great seal, or an appointment from the Sovereign, as distinguished from a commission from the judges of the different courts for taking affidavits, yet there are the words also, *persons bearing lawful authority*. I think it cannot be questioned that at the time the act 12 Vic., ch. 78, was passed Mr. McCrume was a person bearing lawful authority within the districts of Gore and Wellington, for he held an authority from the judges of the Court of Queen's Bench to administer affidavits by a commission signed by the judges, and which commission was itself authorised by act of parliament. It must be, either that the legislature intended, immediately upon the act 12 Vic., ch. 78, coming into operation, that all commissioners for taking affidavits should cease to have any authority to administer affidavits without new commissions taken out for the counties, or that words not comprehensive enough to preserve the authority have been used. I cannot imagine the first proposition can be maintained, namely, that the legislature, by dividing the districts which had formerly existed into counties and unions of counties, did so with any intention of thereby avoiding the authority of commissioners taking affidavits in the course of legal matters and proceedings. Then it appears to me the words are large enough to shew that the authority of all bearing lawful authority was preserved. The judge of the county court, the sheriff, and other officers, certainly did not require new commissions, and though such persons came under the words, "holding commission or office," yet the other words are much wider and embrace many others, namely, "persons bearing lawful authority." It appears to me that after the 12 Vic., ch. 78, came into operation Mr. McCrume's authority extended to take affidavits for the united counties of Wentworth and Halton, which had composed the Gore district, and were united for judicial purposes, and to the county of Waterloo, which composed the district of Wellington. The next change made was that of erecting the county of Waterloo into three counties, namely, Wellington, Waterloo and Grey, with Wellington as the senior county; and in this change North Dumfries, in which Mr. McCrume lived, was annexed to the county of Waterloo. The third section of the act making this change, 14 & 15 Vic., ch. 5, enacts that the provisions of the 37th section shall apply to changes made by the subsequent act. If Mr. McCrume's authority had been confined to the district of Gore, then possibly it might have been a question, when North Dumfries was attached to the county of Waterloo, whether his authority extended over the whole of that county, or of the united counties of Wellington, Waterloo and Grey, or only over North Dumfries, which had been detached from Wentworth and added to Waterloo; but that consideration is out of the question, for he held authority by his commission to administer affidavits in both territorial divisions, and it mattered not to which his place of residence was attached. Waterloo was authorised to dissolve the union, and subsequently did so; and the question therefore is simply this, whether Mr. McCrume retained his authority to administer affidavits within the county of Waterloo, in which he resided, without asking the judges of the superior courts to grant a new commission. I have attentively considered the case of Carter v. Sullivan (4 U. C. C. P. 298) on the construction of those statutes, but confess my inability to take the view adopted in that case. No reasons are given why it should be held that the legislature, by the alteration of the territorial divisions of Upper Canada, either intended to destroy the authority of commissioners to take affidavits, or have not used sufficiently comprehensive words to preserve the authority. It appears to me that Mr. McCrume's authority was preserved throughout these different changes.

MCLEAN, J., concurred.

CHAMBERS.

(*Reported for the Law Journal, by* C. E. ENGLISH, ESQ., *and* A. MCNAB, ESQ.)

BLEECKER v. CAMPBELL.

Ejectment—Judgment by default—Costs.

In ejectment, if judgment be entered for want of an appearance, costs cannot be taxed against the defendant Where the action is brought against defendant as tenant of the plaintiff for a forfeiture, the receiving of rent after the hab. fac. pos. has issued, is a waiver of the execution.

The summons in this cause was, first, to set aside the judgment in ejectment which had been signed for want of an appearance; or, second, to set aside that portion of the judgment which awarded costs to be paid by defendant to the plaintiff, and that defendant be admitted to plead and defend on grounds of bad faith, deceit, and misrepresentation practised by plaintiff's attorney on defendant; third, to set aside the hab fac. pos. and fi. fa., and to award a writ of restitution, and on the further grounds that plaintiff had no right to sign judgment for costs, and on grounds disclosed in affidavits and papers filed.

The summons in ejectment was issued on 15th August, 1857, and was served on the premises on the defendant's wife, and she delivered the copy of the writ to defendant the same evening.

She even swore she was told by the plaintiff's attorney that there were twenty-one days for defendant to appear. The plaintiff's attorney positively denied this; and he swore also that he saw the defendant on the following day and told him he had sixteen days from service to appear, and from the conversation so sworn to it would seem that defendant must have known the writ was a summons in ejectment, though he swore to the contrary. The plaintiff's attorney's statement was in fact materially corroborated by the affidavit of his clerk.

On the 31st August judgment was signed for want of appearance. No suggestion is offered by defendant that this was too soon. On that same day defendant paid plaintiff's attorney £4 5s., and took a receipt intitled in the Queen's Bench, and in the cause "on account of the judgment." It did not appear that there was any other cause.

The plaintiff's attorney issued a writ of possession on a judgment, signed in the form given in the schedule to the C. L. P. Act, 1856, which awards no costs.

It would appear, but it was not very distinctly shown, that there was a writ of fi. fa. also, but it was not denied that costs were taxed; nor that the bailiff levied them, professing to act on such writ; nor was it denied that such a writ issued.

It appeared that plaintiff's attorney always insisted on his right to recover the costs, and offered defendant to let him again into possession on payment of balance of rent and costs. The ejectment was brought against the defendant as tenant of the plaintiff for a term on account of a forfeiture, and the £4 5s., as well as £6, had been actually paid for attorney's and sheriff's costs, so that the £4 5s. must have been on account of the rent after this judgment was signed.

Thus treating defendant as a tenant in possession at that motion, plaintiff had expressed his readiness to restore defendant to possession on payment of the small balance of rent. The writ of possession was actually executed on 14th September.

DRAPER, C. J.—I am of opinion that under our C. L. P. Act and Rule 92, the plaintiff in ejectment may on an affidavit of personal service on defendant, or upon his wife on the premises, sign judgment without any order from a Judge. I am also of opinion that in such a case there is no warrant or authority for taxing costs on the entry of such judgment.

The judgment in this case is only for possession, not for costs, and unless judgment award costs they cannot be taxed as a part thereof. The judgment in this case is therefore regular. On the merits I am very doubtful whether the writ of hab. fac. pos. ought to have issued.

I think the charge of deception sufficiently answered. It is not clear to me that there need be any explanation of the nature and object of service of a writ of ejectment under the C. L. P. Act, any more than of an ordinary writ of summons. The writ is plain, explicit, and intelligible. I incline to the opinion that it is enough to serve it without explanation.

The 223rd section of our Act sanctions a service on the wife of the tenant in possession.

But though the judgment was regular, and in due form after the issue of the hab. fac. pos., the receipt of £4 5s. on account looks very like a receipt of the past rent, or a part of it, and so as waiving the forfeiture. The £4 5s. was no part of the costs, for they were all levied on the fi. fa. afterwards.

I think the fi. fa. for costs clearly irregular, and that it must be set aside with costs, unless the parties come to some arrangement. I think also the execution of the hab. fac. pos. should be set aside, on account of the conduct of plaintiff's attorney in receiving rent after it was issued. It was, I think, a waiver

The action of ejectment is called a mixed action, but it would seem that practically there is only one instance in which it can so be considered, viz.: in cases under the 267th section of the C. L. P. Act, 1856, and even then I apprehend if the defendant do not appear, and the claimant is not prepared with evidence of title he might waive going for mesne profits, and take a verdict under the 237th section of the Act. In all other cases I apprehend damages must be recovered in an action for mesne profits. Though the C. L. P. Act gives a right to recover costs where the plaintiff obtains a verdict, no section gives a right to costs where there is no appearance, and the form of such judgment given in the schedule to the Act does not contain any allusion to costs.

DUFFILL v. LAWDER.

Ejectment—Appearance—Amendment—Payment of Costs.

In an action of ejectment defendant will be admitted to amend his appearance on payment of costs, where he has omitted to file the requisite notice of title, but defendant must avail himself of leave to amend within a reasonable time, and if plaintiff refuse to *state or receive* the amount of costs of amendment then amendment may be made prior to payment of costs.

The Chief Justice of the Common Pleas granted a summons on defendant to show cause why the order granted to defendant for leave to amend his appearance should not be rescinded on the ground that the defendant had not availed himself of the said order although a reasonable time for so doing had elapsed; and why the appearance entered should not be set aside for irregularity with costs and the plaintiff be allowed to sign judgment, on the ground that the appearance was not accompanied by a notice of title as required by the C. L. P. Act, 1856.

The action was ejectment. The defendant had been allowed to amend his appearance by filing with it a notice of the grounds of his defence. He had made an affidavit of merits. This was on 30th September.

Plaintiff's attorney made the present application on 17th October. His affidavit set forth that the ejectment was for land in Thorold, County of Welland—that defendant had taken out no appointment to tax costs—that the costs of amendment had never been paid, but that defendant's attorney had written to him to learn the amount and that in reply he, plaintiff's attorney, proposed to him to allow the case to be entered for trial at the Assizes in Hamilton. That the writ was served 5th September, and that the Assizes were over in Welland—that he believed defendant had no title to the premises; that he had sold and converted the stock and property on the farm belonging to the plaintiff, to the amount of several hundred dollars—that the defence was vexatious; that plaintiff had been put to great expense and loss by defendant's misconduct, who was servant of plaintiff's brother, under whom plaintiff claimed. That defendant after disposing of the property absconded, leaving his wife in possession who wrongfully refused to give up possession, and that great loss would be sustained by plaintiff if she were prevented from trying this cause during the then Assizes.

Another affidavit was filed on plaintiff's part on 21st October, to the effect that no appointment or notice of taxation of costs of plaintiff's application to set aside appearance as irregular, had been served on the agents of plaintiff's attorney in Toronto, nor had such costs been taxed or agreed upon by said agents, or paid or tendered to them.

On the other side defendant's attorney made affidavit, (28th Oct.) that immediately on being advised (not saying when that was) that the summons to set aside his appearance was discharged, and that he was allowed to amend on paying the costs of plaintiff's application, he wrote to the plaintiff's attorney stating what the nature of the defence was and begging to know the amount of the costs, that he might pay them and make the amendment which he could not regularly do without paying the costs. That plaintiff's attorney sent an answer refusing to receive the costs, and stating that he would oppose the amendment unless defendant's attorney would consent to change the venue to Hamilton; that he refused this—that he has since made the amendment by filing the requisite notice; that he is ready and willing and always has been to pay the costs as soon as he could find out their amount, and the proper person to receive them.

ROBINSON, C.J.—The Assizes for the County of Welland commenced on 5th October. The summons of Draper, C. J., to set aside the appearance was discharged by him on 30th September, on condition of defendant paying the costs of application and amending. I see no terms imposed as to defendant's taking short notice of trial.

It was then too late for plaintiff to give notice of trial for the County of Welland where the land lies and where the venue was necessarily laid. So it was plaintiff's own application for irregularity that threw him over the Assizes. He might have waived that and gone to trial taking the same chance that plaintiff always had before in ejectment of being able to meet any defence that might be set up on the trial.

He wishes now, it seems to me, to repair this consequence which he has brought upon himself by coercing the defendants to agree to change the venue, and to that end applies to discharge the order made on 30th September allowing defendant to amend, and to have the defendant's appearance set aside as irregular, which will enable him to sign judgment, and that will render a trial unnecessary.

But plaintiff should either have allowed the irregularity to pass as it was on the eve of the Assizes, rather than run the risk of having the cause thrown over, or should have seen that defendant was placed under terms of short notice of trial when he was allowed to amend. I am not inclined to encourage the attempt of the plaintiff to gain his end by management, viz., by refusing the reasonable request to know the amount of his costs, and declining to receive costs, and then complaining that they were not paid or tendered to him.

But on the other hand, if the defendant having asked for the amount of costs and offered to pay them, considered that he was relieved by the answer he received, from the necessity of following the ordinary practice of taking out an appointment to tax he should then, without delay, have amended his appearance, and so the cause would have been at issue and the plaintiff would have been in a condition to make such further application to the Court as he might be advised in regard to the plan of trial, and it may be that the Court under the circumstances of the case would have acceded to his application.

No notice has been taken of the plaintiff's affidavit which charges him with wasting the property upon the place while this action is pending.

As it stands, the amendment seems to have been made, but nearly a month after it was allowed, and not regularly made as plaintiff alleges for want of payment of costs. But I cannot allow that plaintiff, after what has passed respecting the costs, can complain of that.

If defendant could have paid them in time after the order to *admit* of plaintiff's giving proper notice of trial, then plaintiff's case would be different, but that was impossible; so on the whole, I shall order that defendant pay the costs of the amendment within ten days, otherwise this summons to be made absolute.

Order accordingly.

BARBER ET AL ASSIGNEES OF SHERIFF OF ESSEX, v. ST. AMOUR, WOODBRIDGE, AND ELLIS.

Bail to the limits—Allowance of bond—Staying proceedings against Bail.

Bail to the limits had been given under sec. 302, C. L. P. Act, 1856. The bail omitted to have the bond allowed by the County Court Judge within thirty days, as required by section 25 of C. L. P. Act, 1857, and plaintiffs took an assignment of the bail bond and brought an action upon it. The bail applied to stay proceedings upon their getting the bail bond allowed and on payment of costs. Stay of proceedings refused but leave given to apply to full court after verdict.

Summons issued 9th March, 1858, on plaintiffs to shew cause why further proceedings in this cause should not be stayed upon condition that the bail bond sued upon be allowed by the Judge of the County Court of Essex, and why further time should not be given to get such bail bond allowed on payment of costs and such other terms as to the Judge may seem proper.

On 20th November, 1857, these plaintiffs had the defendant St. Amour arrested on a ca. sa. issued on a judgment obtained by them against him, and on the same day the sheriff admitted him to the limits, having taken a bond from him, and these two other defendants in this cause as his securities, that he would not depart the limits, and "also (in the usual form) that he would within 30 days of the delivery of said bond to the sheriff cause and procure the said bond, or that to be substituted for the same according to the provisions of the C. L. P. Act to be allowed by the Judge of the County Court of Essex, and such allowance to be endorsed thereon by the said Judge." And the defendants were charged with a breach of the conditon of the bond in this,—"That the defendants did not within thirty days from the delivery of the said bond to the sheriff cause and procure the said bond, to be allowed by the Judge of the County Court," and did not procure such or any allowance of said bond to be indorsed upon said bond by the said Judge as required by the condition, &c.

The declaration then stated the assignment of the bond by the sheriff.

The defendants' attorney made affidavit that the declaration in this cause was served 26th Feb., 1858. That when the bail bond was given he was instructed by the defendants in the original action as their attorney to have the bail bond allowed within the thirty days according to the Statute. That he was shortly afterwards obliged to be absent from his office, and that while he was so away, the time for procuring the same to be allowed elapsed, and his clerks had omitted to attend to it. That this action was in consequence brought that the defendant, St. Amour, abided by all the other conditions of the bond, (and no other breach is alleged.) That the plaintiffs had not been in any way damnified by the failure and neglect of the defendants' attorney. That he was not fully aware of the plaintiffs' course until the service of the declaration in this cause, and has taken no steps since such service before making this application. That the application was truly made on the part of the bail at their expense and for their indemnity only and without collusion with the other defendant.

The ca. sa. was endorsed to levy, £195 1s. 8d. The bail bond was assigned 5th Feb., 1858. This action was commenced the next day and declaration filed 22nd Feb., 1858.

The plaintiffs' attorney made affidavit, that on the 20th Feb., 1858, he received a letter from the defendants' attorney saying that he supposed the plaintiffs were bringing this action for not having the bond allowed within thirty days—that it was his neglect—that if his clients had not been damnified as he thought they had not, he hoped he would not put him to the costs of a judgment in which the plaintiff would only get nominal damages; in answer to which he stated that he considered the bail would be liable to to the sheriff for the whole debt. And that on the 8th March, 1858, the defendants' attorney again wrote to him (the declaration having in the meantime been served) that he had been so busy that he found he had omitted to plead, and asking him to give time—saying that he would take any notice.

ROBINSON, C. J.—The defendants in this cause were very remiss in taking no step to have the bond allowed: from 20th Nov., when it was given to 5th Feb., when it was assigned, and in making no effort as it appears to stay proceedings for some time after process served against themselves, nearly a month I think. Also the defendants' attorney asked for time to plead, and has offered to take any notice of trial. Under these circumstances I shall not interfere with the action going on, because if the plaintiff should be held entitled to recover for the whole debt; and if the court or a Judge has under the last Act 20 Vic., c. 57, no discretion to stay proceedings the plaintiffs will have lost a trial by their action being stayed and might possibly lose their debt. What they are entitled to recover must be determined hereafter. It seems to me that our Act of 1857 places this matter on a singular footing. The limits are in the eye of the law a part of the gaol, and while the debtor is on the limits the plaintiff has no right to complain (or rather had not until the last Act was passed in 1857.) The provisions in the former Acts were to make the sheriff secure in allowing the limits immediately without keeping the debtor in close custody until the recognizance was allowed. But the statute of 1857 places the matter entirely on another footing by expressly directing it to be made a condition of the bond that the debtor shall within thirty days procure the bond to be allowed, and further in making the breach of that condition a ground for assigning the bond to the plaintiff in the action and gives him the same remedy upon it as in case of an assignment of the bond for any other breach. And the effect of this will probably be found to be that the plaintiffs may recover damages to the same extent as if the debtor had wholly escaped from custody: for the 305th section, cap. 43 19 Vic., relieves the sheriff from all responsibility for the prisoner's custody after he has assigned the bond.

I discharge this summons with costs to be costs in the cause; for I do not clearly see my way in interfering with the operation of the statute, but I allow the defendants to move after verdict to stay further proceedings upon terms. And the court will then determine whether they have any discretion in such cases, especially after the bond has been assigned. If they shall think they cannot, there will seem to be strong reasons for some modifications of the enactments on this subject.

Vide C. L. P. Act, 1856, sections 302, 303, 304, 305, 306; C. L. P. Act, 1857, section 25.

MEYER v. HUTCHINSON.

Costs—Security for—Attorney.

Where a Plaintiff is required to give security for costs, the Court will not allow his attorney, (or partner, or both) in the cause to give the security.

The Plaintiff's attorney and his partner gave a bond for the security of the suit, which bond was allowed by the Master of the Court of Common Pleas. The Defendant's attorney obtained a summons to set aside the allowance of the bond, on the ground that it was contrary to the practice of the Court.

McMicheal, In support of order contended that on the same principle that an attorney was not allowed as bail to the action, he should not be allowed to give security for costs. He referred to a decision of Macaulay, late Chief Justice which had not been reported, but was in favor of order.

S. M. Jarvis shewed cause.

RICHARDS, J.—There is no doubt that an attorney cannot justify as bail to the action; it is said in some places that this is to protect the attorney from the importunity of his client, &c., and if he choose to become bail and is not objected to, he is liable. I have no doubt he is estopped by his own act in becoming bail from denying his liability. On the other point however, the earliest rule which I can find on the subject was made by B. R. in Michaelmas Term, 1654; see 2 Douglas, 466. "It is ordered that for the *prevention* of *maintenance* and brocage no attorney be lessee in ejectment, nor bail for a Defendant in this Court in any action." It has been held that the rule extends to the partners and clerks of another attorney not the attorney of defendant as being within the spirit of the rule. If the object of the rule be to prevent maintenance it would extend as well to being security for costs as to being bail to the action. I am not aware of any express decision by the Courts of Common Law in England on the subject. On referring to the Master of the Court of Common Pleas he states that the subject was brought before Chief Justice Macaulay in a case in which Mr. Jarvis the Plaintiff's attorney was concerned, and that after taking time to consider, he prepared a written judgment in

which he came to the conclusion that the Plaintiff's attorney could not, if objected to, be approved as sufficient security for costs. Mr. Jarvis on being referred to recollected the case, and that this decision was against himself, stated that it ought not to bind as it had not been reported. The cases of Panton v. Labertouche, and Gauteaume v. same defendant, reported in 12 L. J. N. S. 433, and 7 Jurist 589, decided before the Lord Chancellor, shew that the attorney is not good security for costs in equity, and are decided on what is there assumed to be the rule at Common Law. It is is probable that the reason why we have no reported cases at Common Law on this point in England is that the masters there never approve of an attorney as security for costs. I think that the reason of the rule for excluding an attorney as bail to the action applies equally to his being excluded as security for costs in a suit in which he is attorney. And as the same principle would apply to Chancery, I think the cases referred to, as well as the decision of C. J. Macaulay are authorities on the point, and will therefore make an order to the effect required.

Allowance of sufficiency of bond set aside.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

GILMOUR v. SUPPLE.*

Contract—Sale of goods—Measurement—Delivery—Liability—for loss.

J. S., of Quebec, entered into a contract in writing for the sale to "A. G. & Co., of a raft of timber, the quantity about 71,000 feet, to be delivered at Indian Cove booms, price for the whole 7¾d per foot" Before the contract was signed, the raft was measured by a public officer, and a specification made by him showing the contents of each log, and making a total of 71,443 feet, was given to the buyer. The raft was towed to the appointed place of delivery, and notice of its arrival given to the servants of the buyer, who assisted in fastening it to the booms. A storm arose in the night, by which the raft was broken to pieces and dispersed. An action was brought by J. S. to recover the value of the raft.

Held, by the Judicial Committee, affirming the judgment of the Court of Error and Appeal of Upper Canada, that as no act remained to be done by the seller, on his own behalf or for the buyer, nor anything in which both were to concur, the property in the goods had wholly passed to the buyer, and the loss must be borne by him.

This was an appeal from the Court of Error and Appeal in Upper Canada. The facts of the case are fully stated in the judgment.

Sir F. Kelly, Q. C., Wede, Q. C., and *W. Murray*, for the appellant.

Hill, Q. C., and *Unthank*, for the respondent.

The following cases were referred to;—*Logan* v. *Lemesurier*, 6 Moore, P. C. C. 116; *Simmons* v. *Swift*, 5 B. &. C. 857; *Wallace* v. *Meyer*, 6 East, 614; *Acraman* v. *Morris*, 4 C. B. 449; *Shepley* v. *Davis*, 5 Taunt, 617; *Busk* v. *Davis*, 2 M & S. 397; *Tansley* v. *Turner*, 2 Bing. N. C. 151; *Rhode* v. *Thwaites*, 6 B. & C. 388; *Swanwick* v. *Sothern*, 9 A. &. E. 895 *Startup* v. *Macdonald*, 6 M. & G. 593; *Hansen* v. *Meyer*, 6 East, 614; *Rugg* v. *Minett*, 11 East, 522.

THE RIGHT HON. SIR C. CRESSWELL:—This was an appeal from the Court of Error and Appeal of Upper Canada. The action was brought originally in the Court of Common Pleas by Supple against Gilmour. The first count of the declaration alleged, that in consideration that the plaintiff would sell and deliver to the defendant a raft of timber, then lying at Carouge, containing about 71,000 feet, and deliver the same at Indian Cove booms, at the price of 7¾d. per foot, amounting to £2307 1s. 7d., defendant undertook to pay for the same one-third in cash, one-third at sixty days, and one-third at ninety days from the delivery. Averment, delivery at Indian Cove booms and non-payment.

Count for goods sold and delivered.

Plea, *non assumpsit*.

Secondly. To the first count that plaintiff did not deliver the raft.

At the trial the plaintiff gave in evidence that he was possessed of a raft of timber lying at Carouge, and that on the 20th of October, 1853, he entered into a contract in writing with the defendant in these words:—"Sold Allan Gilmour & Co., a raft of timber now at Carouge, containing white and red pine, the quantity about 71,000 feet, to be delivered at Indian Cove booms; price for the whole, 7¾d per foot; payments, one-third cash, sixty and ninety days' date.

"JOHN SUPPLE,
"A. G. & Co.

"Quebec, Oct. 20, 1853."

The contract was written by the defendant, and signed by him "A. G. & Co., and by plaintiff, "John Supple." He also proved that before the contract was made, the raft had been measured for him by an officer appointed under a Canadian Act, by whom a specification was made out showing the contents of each log, and making a total of 71,443 feet. That specification was given by the plaintiff to the defendant before the contract was made; he therefore knew what quantity of timber the seller would charge him with, notwithstanding the form of the written contract, which left it unascertained. The defendant retained the specification, and sent it over to Indian Cove, where he had booms and an establishment for receiving and storing timber. The evidence showed it to be usual for purchasers of rafts sometimes before, sometimes after they were placed within the booms, to check over the logs received with the specification previously delivered to see that they correspond with it, but there was no evidence of its being usual to measure the contents of each log to ascertain the number of feet contained in it. It was also proved that delivery at a boom, meant delivery outside the boom. The raft was towed down the river from Carouge, or Cap Rouge, to Indian Cove (about eight miles), by a steamboat employed by the plaintiff; one of his men went with it, and at Indian Cove gave notice to the defendant's servants there that it had arrived, and they together fastened it outside the booms. There was conflicting evidence as to whether possession of the raft was giving up by the plaintiff's servant, and taken by the defendant's. In the night a storm arose, the raft was broken up and dispersed, and a great portion of it lost. The judge told the jury that if there was an actual delivery to the defendants servants, and taking possession by them, the plaintiff was entitled to recover, but that otherwise they should find for the defendant. The jury found for the plaintiff. The defendant moved, in pursuance of leave reserved, for a non-suit, or verdict for defendant, on the ground that there could be no delivery or acceptance of the property sold sufficient to sustain the action, while anything remained to be done in order to ascertain the quantity or price; that, according to the terms of the contract, and the evidence, it was necessary that there should have been a counting or examination of the contents of the raft after its arrival at the defendant's booms, before there could have been such a delivery or acceptance as the plaintiff was required to prove, and that such counting or examination never having taken place, there was no delivery or acceptance. It was also contended that the verdict was against evidence, but it is not now necessary to consider that question, it being admitted that if the property was changed, the verdict must stand. A rule to show cause was granted, and, after argument, discharged. The defendant then appealed to the Court of Error and Appeal, but the judgment of the Court of Common Pleas was affirmed, and the appeal dismissed. From that judgment the defendant appealed to her Majesty in Council, and here, as in the Canadian Courts, it was contended that, by virtue of this contract, and the acts done in pursuance of it, the property in the raft did not vest in the defendant, but was still in the seller, and at his risk, when the loss happened.

It is impossible to examine the decisions on this subject without being struck by the ingenuity with which sellers have contended that the property in goods contracted for had or had not become vested in the buyers, according as it suited their interest; and buyers, or their representatives, have, with equal ingunity, endeavoured to show that they had or had not acquired the property in that for which they contracted; and judges have not unnaturally appeared anxious to find reasons for giving a judgment which seemed to them most consistent with natural justice. Under such circumstances it cannot occasion much surprise if some of the numerous reported decisions have been made to depend upon very nice and subtle distinctions, and if some of them should not appear altogether reconcileable with each other. Nevertheless, we think that in all of them certain rules and principles have been re-

* Before the Right Hon. T. Pemberton Leigh, the Right Hon. Sir E. Ryan, the Right Hon. Sir J. Dodson, and the Right Hon. Sir C. Cresswell.

cognized, by the application of which to this case we may be enable to arrive at a correct judgment upon it.

By the law of England, by a contract for the sale of specific ascertained goods, the property immediately vests in the buyer, and a right to the price in the seller, unless it can be shown that such was not the intention of the parties. Various circumstances have been treated by our courts as sufficiently indicating such contrary intention. If it appears that the seller is to do something to the goods sold on his own behalf, the property will not be changed until he has done it, or waived his right to do it. The case of *Hanson and another, assignees of Wallace* v. *Meyer*, one of the earliest reported on this subject, furnishes an instance of this kind. Meyer had a quantity of starch, weight unknown, lying in the warehouse of a third person. A broker employed by Wallace purchased the whole of the starch of Meyer, more or less, whatever it was, at £6 per cwt.; it was in papers; the weight was to be afterwards ascertained, at the price aforesaid. The mode of delivery, in such cases, was stated to be as follows: "The seller gives the buyer a note addressed to the warehouse-keeper, to weigh and deliver the goods to the buyer This note is taken to the warehouse-keeper, and is his authority to weigh and deliver the goods to the vendee." Such a note was given; and on two several days the warehouse-keeper, in pursuance of it, weighed and delivered 21cwt. 1qr. 6lb., and 15cwt. 1qr. 4lb. Before the residue had been weighed or delivered, Wallace became bankrupt, and Meyer then took it away from the warehouse, and the assignees of Wallace sued him in trover for it. The Court held that they could not recover, for that the particular terms of the contract made weighing a condition precedent to the absolute vesting of the property, and that the seller did not, by weighing and delivering part, waive the preliminary act of weighing in respect of any part of the commodity contracted for. The only authority given to the warehouse-keeper was to weigh and deliver, and unless he weighed he had no authority to deliver. But it would seem that if the warehouse-keeper had been authorized to deliver without weighing, and possesion had, under that authority, been given to the purchaser, the property would have vested absolutely in him, and the seller would have waived his right to weigh before delivery.

Another rule may be extracted from the case of *Rugg* v. *Minett*, viz., that where the seller is to do some act for the benefit of the buyer, to place the goods sold in a state to be delivered, until he he has done it, the property does not pass. In this case it was for the interest of the seller to contend that it did pass. The circumstances were as follows:—A quantity of turpentine, in casks, was sold by auction, for the defendant, in whose warehouse it was lying. The casks were marked as of a certain weight; and it was agreed that they should be taken at that weight; but it was further agreed that they should be filled up by the seller. The plaintiff bought thirty casks and paid money on account. Twenty casks were afterwards filled up by the warehouseman of the defendant; but before the other ten could be filled, the whole were consumed by fire. It was held that the property in the twenty passed, but not in the ten; and the loss must be borne by the parties respectively in those proportions.

So, also, if an act remains to be done by, or on behalf of both parties before the goods are delivered, the property is not changed; of which *Wallace* v. *Breeds*, 13 East, 592, furnishes an instance, where Lord Ellenborough observed, that the courts had frequently laid hold of such circumstances as existed in that case to retain the property in favour of an unpaid seller; and that rule was acted upon by the Court of Queen's Bench in *Simmens* v. *Swift*, 5 B. & C., 857, which was an action for the price of a stack of bark, sold at £9 5s. per ton of 21 cwt. It appeared that, after the sale, it was agreed between the parties that the bark should be weighed by two persons, one of whom was named by the seller, the other by the buyer. Part was weighed and delivered; the rest was much damaged by a flood before it was weighed, whereupon the buyer refused to take it. The Court held that, as the bark was to be weighed before delivery to ascertain the price, and that act had not been done, the property remained in the seller, and that he must bear the loss. There, by express agreement between them, both parties were, by their agents, to take part in the act of weighing. But the case of *Logan* v. *Lemesurier* was principally relied on by the counsel for the appellant. The contract was in these terms:—"Hart, Logan, and Co. of Montreal sell Le Mesurier, Routh, and Co. of the same place buy, a quantity of red pine timber, the property of Thomas Durrell, L. C., but under the control of the sellers, now lying above the rapids, near the Chaudiere Falls, Ottawa river, and stated by Thomas Durell to consist of 1391 pieces, measuring 50,000 feet, more or less, deliverable at Quebec, on or before the 15th of June next, and payable by the purchasers' promissory notes at 90 days' date from this date, at the rate of 9½d. per foot measured off. Should the quantity turn out more than above stated, the surplus to be paid for by the purchasers at 9½d. per foot on delivery; and should it fall short, the difference to be refunded by the sellers.—Signed, &c. To be delivered at Mr. B. Farlin's booms at Sillery Cove, Quebec." The raft was sent to Quebec and broken up by a storm before possession was given to or taken by defendant.

On the one hand, it was contended that the property passed by the contract; on the other, that it was not to become vested in the defendant until the timber was measured off at Quebec. Lord, Brougham, in expressing the opinion of the Judicial Committee, gives the result of his observations on the contract in these words (6 Moore P. C. C. 133):—"Taking the whole of these terms together, it appears to us that until the measurement and delivery was made the sale was not complete, there being nothing in the terms to show an intention that the property should pass before the measurement; but, on the contrary, the intention rather appearing to be that the transfer should be postponed until the the measurement of the delivery." And again, at p. 134 he says "taking the whole of the terms together, it appears to us that the first part of the contract, selling an ascertained chattel for an ascertainable sum (and which, if it stood alone, would pass the property,) actually paid upon an hypothesis or estimate, is controlled by the subsequent part of the contract providing for the possession, carriage, measurement and delivery all by the seller" and further on "the measurement was to be made after the delivery at Quebec," and upon that clause in the contract the decision evidently turned.

That case differs very materially from the present. In this case the terms of the written contract do not show that any future measurement of the raft was contemplated. The seller had had the raft measured by a person whose position would be a voucher for his accuracy. The specification showing the exact measurement of each log was handed by him to the purchaser, and was in his hands at the time when the contract was entered into; he retained it and sent it over to his servants at the place where the raft was to be delivered, in order that they might check the raft delivered by it. There is nothing in these circumstances from which it can be inferred that the seller was to make any further measurement of the raft in order to ascertain the price, which would be computed from the measurement already made. The buyer might, for his own satisfaction, as was said in *Swanwick* v. *Sothern*, measure it when delivered, but the seller had no such privilege or duty; and after his servant had given up his possession, and the servants of the defendant had taken it, he could neither have claimed to resume possession of the raft as being his property, nor on the ground that he had a lien upon it for the price. Moreover, in this case the evidence showed that, according to the usage of the trade, neither party would have measured the timber at the place of delivery, so as to ascertain the amount to be paid for it. If the buyer had compared the logs delivered with the specification, still that document would have been referred to for the purpose of ascertaining their contents. There was, therefore, nothing more to be done by the seller on his own behalf; he had ascertained the whole price of the raft by the measurement previously made; nor was there anything to be done for him by the buyer: the seller had, according to his contract, conveyed the raft to Indian Cove, and, according to the finding of the jury, had delivered it there. Nor was there any thing further to be done in which both were to concur, as in *Simmons* v. *Swift*: the case, therefore, depends upon the effect of a contract for the sale of certain ascertained goods, without anything to limit or control its legal operation. By such a contract the property was changed, and the loss must fall on the buyer.

Their Lordships must therefore humbly advise Her Majesty to affirm the judgment appealed from, and to dismiss this appeal with costs.—*Weekly Reporter*, *April* 24th 1858.

HOUSE OF LORDS.

July 3. Feb. 15. April 17.

COOPER v. SLADE.

Writ of error—Corrupt Practices Prevention Act, 1854—(17 & 18 Vic. ch. 102, s. 2) —Parliamentary Elections—Travelling expenses of voters.

The payment of, or a promise to pay the travelling expenses of a voter within the meaning of the above statute, in order to induce him to vote for a candidate, is an offence within s. 2

But *semble*, the promise and the payment are not two distinct offences within the statute, but (where they both exist in a case) only one offence, exposing the offending party to only one penalty, under sec. 2.

This was a writ of error from the Exchequer Chamber, and raised the question whether a promise to pay or the payment of the travelling expenses of a voter by the candidate does not render him liable to penalties under the Corrupt Practices Prevention Act, 1854. The present plaintiff in error had sued the defendant in error, Mr. Slade, Q. C., one of the candidates for the borough of Cambridge, in August, 1854, for penalties under the statute. The material counts in the declaration were the seventh and eighth. The first count stated that on the 18th of August, 1854, a writ was directed to the Mayor of Cambridge, for the election of two burgesses to serve in Parliament, and that before the commencement of the said election of the said burgesses had been duly made and declared. The seventh count alleged that the defendant, after the passing of the Act, promised money to one Carter, who was a voter within the meaning of the statute, in order to induce him to vote at the election, contrary to the form of the statute, whereby the person so offending became liable to forfeit £100, and an action had accrued to the plaintiff to demand the same from the defendant. The eighth count charged that the defendant, after the passing of the Act, corruptly gave money to Carter, on account of his having voted at the election, contrary to the form of the statute, whereby he had forfeited a further sum of £100, and an action to recover the same had also accrued to the plaintiff. The defendant pleaded "never indebted." The action was tried at the summer assizes of 1855, at Cambridge, before Parke, B. It was proved that Carter was a voter for that borough, and that on the day before the election, while he was at Huntingdon, he received the following letter from the Committee conducting the election of Viscount Maidstone and Mr. Slade:—

"Mr. R. Carter.

"Cambridge Borough Election Committee Room,
"Lion Hotel, August 12, 1854.

"Sir,—The Mayor having appointed Wednesday next for the nomination, and Thursday for the polling, you are earnestly requested to return to Cambridge and record your vote in favour of Lord Maidstone and F. W. Slade, Esq., Q C.

Yours truly,
"CHARLES BALLS, Chairman.

"Your railway expenses will be paid."

The whole of this letter, with the exception of "Mr. R. Carter," and the words "your railway expenses will be paid," was printed. Carter, who returned to Cambridge and voted in favour of Lord Maidstone and Mr. Slade, was subsequently paid by the agents of the latter 8s. for travelling expenses. On behalf of the defendant it was contended that the evidence adduced by the plaintiff was not sufficient to entitle him to a verdict on the seventh and eighth counts, and ought not to be left to the jury. It was held that the evidence was sufficient, and the jury were directed to find for the plaintiff on the seventh count if they believed that the defendant, or any person acting on his behalf, promised money to Carter, though the sum was no more than Carter's fair and reasonable travelling expenses from Huntington to Cambridge; and also to find for the plaintiff on the eighth count, if the defendant or any person authorized by him paid the money to Carter, although he was not aware that he was thereby committing an offence. The jury found a verdict for the plaintiff for £100 on the 7th and £100 on the 8th count. The case was taken on a bill of exceptions before the Court of Queen's Bench, which held that the ruling of the learned judge in the court below was right, and on this judgment there was a writ of error; and in February, 1856, the Court of Exchequer Chamber reversed the judgment of the Court of Queen's Bench, and awarded a *venire de novo*. The plaintiff in error now contended that the promise to a voter of his travelling expenses with the view of inducing him to vote for a particular candidate at an election for a member of Parliament was illegal within the meaning of the second section of the Corrupt Practices Prevention Act, 1854; and that the payment to a voter of such expenses on account of his having voted for a particular candidate at such election was an illegal payment within the meaning of the statute.

Sir Fitzroy Kelley, O'Malley, Q.C., and *Lush* for the plaintiff in error.

The Attorney-General (Sir R. Bethell), *Couch* and *Kingdom* for the defendant in error.

Authorities cited: *Lord Huntingtower* v. *Gardner*, 1 B. & Cr. 297, *Bayntun* v. *Cattle*, 1 Moo. & R 265; *Bremridge* v. *Campbell*, 5 Car. & P. 186; *Hughes* v. *Marshall*, 2 C. & J. 118; *Carstairs* v. *Stein*, 4 Man. & Sel., 192; *Rex* v. *Nott*, 1 Dav. & Mer. 1; *Allen* v. *Hearn*, 1 T. Rep. 56; *The Durham Case*, 2 Peckwell, 170; *Bernard* v. *Young*, 17 Ves. 47.

At the conclusion of the argument, their Lordships left the following questions to the judges:—1st. Whether there was any evidence to go to the jury that the defenandant had been guilty of bribery, within s. 2 of the statute. 2nd. Whether there was any evidence to go to the jury that the letter in question was written and sent by the authority and with the knowledge of the defendant in error. 3rd. Whether there was any evidence that the defendant had corruptly paid money to Carter for his vote. The judges, having taken time to consider, delivered their opinion as follows:

CHANNELL, B.—I concur with the Court of Exchequer Chamber in thinking that a promise to pay a voter on condition that he votes for the party promising to pay is an offence within the Act. Was the letter set out in the bill of exception such a promise? I think it was. The plain meaning of the letter is this:—"Come and vote for the defendant, and then your railway expenses shall be paid." I am not able to find room for any doubt that this was the meaning of the particular promise. Assume that a promise to pay a voter his travelling expenses was legal; that no . ct of Parliament had, in direct terms or in language which might be contended to have that effect, invalidated such a promisee; assume a promise such as that stated in this letter; I enquire, could an action have been maintained on the promise by the promisee if he had not voted at all, or had voted against the defendant? It is, to my mind, impossible to come to such a conclusion; but such is, I think, the neccesary conclusion, if, there being some promise to pay, that promise is to be considered an unconditional promise to pay the travelling expenses of the elector coming to the town, irrespective of the question whether or how the elector voted. [His Lordship was of opinion that the defendant authorized the letter and the payment.] In a moral point of view there may have been nothing corrupt in the conduct of the defendant, acting on the belief that I think he did. But the defendant's conduct would have been corrupt within the meaning of the statute if the defendant had himself promised contrary to the statute, and had himself paid in fulfilment of his promise, after obtaining an advantage which the statute means he should not obtain. That would, I think, have been an offence within the meaning of the statute. The defendant did not do all these acts himself, but there was evidence that he did so by an agent or agents whom he authorized, so as to raise a case proper to be submitted to the jury.

I answer the first question by saying that, assuming the letter of the 12th of August, 1854, to have been written and sent to Carter by the direction and authority of the defendant in error, there was evidence for the jury that the defendant was guilty of bribery within the true intent and meaning of the second section.

To the second question, I answer that there was evidence for the jury that the letter in question was written and sent by the direction or authority of the defendant in error.

To the third, that there was evidence that the defendant corruptly paid money to Carter on account of his having voted at the election.

WATSON, B.—Assuming the letter to have been written and sent to Carter by the authority of the defendant in error, there was evidence for the jury that the defendant was guilty of bribery within the true meaning of the second section. It has been suggested that to bring a promise within s. 2 it must be a conditional promise to pay the travelling expenses if the elector vote for the promiser. It appears to me that it would be equally within the meaning of the Act if the promise was unconditional, simply to pay money on the elector voting at all, inasmuch as the candidate may have a full reliance (perhaps erroneously) how the vote would be given, and that such promise would be an inducement to vote whether conditional or unconditional. Be that as it may, the letter in this case requesting the voter to vote for Lord Maidstone and Mr. Slade, and adding a postcript, "Your railway expenses will be paid," is evidence of an offer of money in order to induce him to vote, on either construction of the statute. With respect to the proviso at the end of the section, it was argued at the bar, that the payment of *bona fide* travelling expenses is legal; this requires examination. No doubt, according to the interpretation put on Geo. II, c. 24, s. 7, in the case of *Lord Huntingtower* v. *Gardner*, the payment of travelling expenses, or indeed any other sums of money, after the election to a voter for having voted, without any promise to that effect before voting, is legal under that Act; whether a promise to pay travelling expenses to an elector, in order that he might vote for a particular candidate, was legal under the laws as it then stood, is not by any means determined thereby; certainly there is no such decision to that effect in the courts of law. The only two cases at law are *Bayntum* v. *Cattle* and *Bremridge* v. *Campbell*, in neither of which was it held that a payment, or an offer, or a promise to pay travelling expenses before the election, to induce an elector to vote, was not bribery under the then existing law. A candidate at an election for Members of Parliament is under no obligation, legal or moral, to pay the necessary travelling expenses of voters, any more than for the loss of the voter's time. The voter is called on to exercise his franchise for the public benefit, and a promise to pay would appear to be without consideration, not a *bona fide* debt, or any debt at all. Indeed, I am of opinion that such promise is illegal, according to the principle laid down in *Allen* v. *Hearn*, 1 T. R. 59.

Whatever doubts formerly existed, the last Act was passed because "the laws to prevent corrupt practices have been found insufficient;" and makes any promise to pay money to induce an elector to vote an act of bribery, and this no doubt, to prevent money payments to voters at all, more especially as they had been a colour and a pretence for wholesale bribery.

The proviso at the end of s. 2 provides, "It shall not extend or be constructed to extend to any money paid or to be paid for or on account of any legal expenses *bona fide* incurred at or during the election." No doubt this proviso refers to the various legal expenses incurred at elections, such as printing, messengers, hire of committee rooms, tavern expenses, and expenses of that nature; and to exempt cases where a candidate had paid such sums, or agreed to pay them, before the election, to keep the voter in good humour, or, in other words to induce him to vote.

In answer to the second question, I am of opinion that there was evidence for the jury that the letter in question was written and sent by the authority of the defendant in error.

To the third question, I am of opinion that there was evidence that the defendant corruptly paid money to Carter on account of his having voted at the election; as it appears to me, there was evidence of a promise amounting to bribery on the part of the defendant, and so found by the jury, the payment in pursuance thereof falls within the meaning of the word "corruptly" in the statute.

BRAMWELL, B.—I beg to refer to the judgment of the majority of the Court of Exchequer, by which, with one exception, I abide. In that judgment it is said, "It will be seen we attach no weight to the proviso at the end of section 2." I incline to think that is wrong, and that the reasons given for the opinion are not sufficient. The difficulty, with all respect, is the fault of the Legislature. (See *Clerk's Election Law*, 82.) The statute prohibits and so makes certain Acts illegal, and then excepts "*legal*" expenses. Necessarily, everything legal is excepted from or not within what is illegal, and the section therefore is open to the criticism cast in that part of the judgment I refer to. But it is not right to hold any part of an enactment nugatory or needless, if a meaning and purpose can be given to it. This was powerfully pressed by the Attorney-General in his argument before your Lordships, and I think that argument should prevail, in part at least. The whole provision may well read thus:—"Every person who shall promise, &c., money, &c., in order to induce any voter to vote, shall be guilty of bribery, provided that this enactment shall not extend to any money paid or agreed to be paid for or on account of any expenses *bona fide* incurred at or concerning any election; and provided such expenses are not illegal on some other ground than this prohibition." There may be such cases. For instance, the expenses of committee rooms and advertisements are not unlawful, and are not so, though incurred with a particular person to induce him to vote. This is the meaning given to this proviso by the defendant's counsel below.

Still it remains to consider whether travelling expenses are expenses incurred at or concerning an election, and are not otherwise illegal than as being within the terms of the general prohibition in s. 2. Now, I think they are not otherwise illegal; they are not in terms prohibited by this the only statute on the subject, nor were they, I think, within any definition of bribery at common law. But then are they expenses incurrred at or concerning an election? I think not. I think that means the necessary expenses of an election; those expenses that are incurred and would be incurred whether the candidate did or did not wish to induce any particular voter to vote. I still think, therefore, this provision does not help the defendant, and I think the judgment wrong only in saying that the proviso is nugatory, as I think it has a meaning, viz., that above mentioned.

But as I have said, I abide by the other part of the judgment I am of opinion the letter is not evidence of a promise to pay the expenses conditional on Carter's voting, and that if it is, there is no evidence that the defendant authorized it. I do not, as a fact, believe that the voting was made a condition of the payment. I doubt not that had Carter come, and it had been found that he had not a vote, or came too late to give it, or by some other accident was prevented voting, he would still have been paid. No doubt there was an expectation that he would vote for the defendant, but an expectation is very different from an engagement or condition. No doubt, also, he would not have been paid had he voted for the opposite candidate, but the penalty is sued for, not for offering money to induce him not to vote, but to vote, and indeed it was not offered to induce him not to vote. It ought not to be implied that a document means a particular thing, unless the contrary would be repugnant to it. Here, it is said, the document implies, "If you will vote for Lord Maidstone and Mr. Slade," but would there be any repugnancy had it run thus:—"You are requested to return and vote for Lord Maidstone and Mr. Slade; your railway expenses will be paid if you come in pursuance of this request, whether you vote or not?" I think not. It is also to be remembered that one construction makes the document innocent, the other makes it guilty. If the letter is evidence of a conditional, and consequently as I think, of an illegal promise, I cannot see what evidence there is that the defendant authorized it. He did not do so in terms, and all he did from which authority is inferred was to say it is legal to pay travelling expenses. In that opinion I agree and I cannot, therefore, see how it gives authority to make an unlawful promise, nor do I believe, for the reasons I have given, that a candidate would be likely to make a conditional promise. I presume candidates have a well-grounded expectation that voters in their interest will vote for them if they come, or if not, that they will not ask their expenses. I do not understand that this point was taken at Nisi Prius, though the form of the exception comprehends it. I do not understand, therefore, that an opinion was expressed on it there, so that I approach the consideration of this question without feeling that the ruling there is an authority against this opinion. And I think, with all respect, that those opinions now entertained to the effect that the promise was conditional, and that there was authority so to make it, are based on the supposed improbability of a candidate undertaking to pay the travelling expenses of a person who should not vote for him. This view I think a mistake, and that it confounds an expectation with a condition. I therefore answer all your Lordship's questions in the negative.

(To be concluded in our next.)

GENERAL CORRESPONDENCE

To the Editors of the Law Journal.

SMITHVILLE, May 22nd, 1858.

GENTLEMEN,—Permit me to trouble you with a few enquiries through the medium of the *Law Journal.*

1. Suppose a certain religious Society in the United States own as a body, a saw mill and other property in a given neighborhood in Canada: this Society appointed two trustees (A and B) in the States to hold the deed in trust concerning the above property for the said Society Trustees send to. Canada C, D, E, and F:

C to take charge of the saw mill,

D to take charge of a store,

E to take charge of a tannery.

An individual (*H*) draws logs to the said mill to be sawed on shares. In time C removes to the Western States to superintend business in behalf of said Society under the direction of the said Trustees, whereupon D proceeds to remove all the lumber at the saw mill, and offers to settle with H in two weeks or sooner if he could ascertain the size of the logs from C. D. afterwards refused to settle. As H can realize none of the lumber, the question arises, is D legally responsible, or whom may H prosecute, as all the rest live in the United States.

2. If it be not too much of a burden, I should also be glad to learn whether an indorser of a common promissory note is to be notified on the *third day after three o'clock*, or has the indorser the whole of the three days, and must be notified *on the fourth morning; where it is not to be done by a Notary Public.*

I am at a loss to determine whether the ordinary promissory note transactions come within the Statute of 14th & 15th Victoria relating to bills of exchange and promissory notes, where the notary public is required to give notifications.

If the *notice must be on the fourth morning*, (as some Judges have ruled,) please to direct me to the *statute*, or if no statute am I to be guided by some rule of Court?

Hoping that you will excuse this rather lengthy epistle which I have endeavored to abridge, and wishing you continued prosperity in your cause,

I remain yours very truly,

J. B. C.

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1. On the statement of facts submitted, if we rightly understand them, D is not liable to H. It is impossible to say more without knowing more of the facts. The case ought to be submitted to counsel. It is not of sufficient general importance to demand further consideration from us.

2. The indorsers of a promissory note *may* be notified of non-payment on the day on which the note becomes due, which is the third day of grace, and if resident within the city, town or place where the note is presented for payment and payment refused, *must* be notified on the day following or fourth day. This is well understood law, though not Statute law. The notice need not of necessity be given by a notary. It may be given by the holder of the bill himself. The object of having it done by a notary is that his protest may be given in evidence as proof of the facts contained therein, so as to dispense with oral testimony.

[EDS. L. J.]

To the Editors of the Law Journal.

BEAMSVILLE, May 25, 1858.

GENTLEMEN,—I am instructed by the Municipality of Clinton to submit for your opinion the following question:—

Have Municipalities the authority under 20 Vic. chap. 69 to sell any original road allowance when no other lands have been ceded in lieu thereof?

An early answer is respectfully requested.

I have the honor to be, Gentlemen,

Your obedient Servant,

R. K.

Township Clerk.

[We doubt the power of Municipalities so to do.

EDS. L. J.]

To the Editors of the Law Journal.

———20th May, 1858.

Gentlemen,—I have heard it stated that there is a surplus in the Fee fund. The question will naturally be asked—what is to be done with it; can it be applied to general purposes? or is it the duty of the Ministry to reduce the scale of fees payable to the fund? The tax was imposed for the special purpose of paying the salaries of the Judges of the County Courts. It is payable by the suitors who resort for justice to the County and Division Courts, and not by the public generally. It is true that the deficiency in this fund has been made up from the Consolidated Revenue fund, but that is no reason why this deficiency should now be repaid, inasmuch as the whole province participated in the acknowledged benefits conferred by these Courts. I have only to refer you to the speech of the Attorney General West in the late debate on the Jury Law Amendment Bill, on the 7th instant, to show that the Judges of the County Courts are worthy of the consideration of the community. He declares them to be "the most *important judicial body in* Upper Canada—far more important than the Judges of the Superior Courts." Now, whether this opinion be correct or highly colored, or not, it certainly shows in what estimation these Judges are held by the first law officer of the Crown.

The Judges of the Superior Courts have a retiring allowance secured to them by statute, and why should not the Judges of the County Courts? If it be correct and just in the one case, why is it not so in the other? Is the Judge who has "the right of the poor, and him that hath no helper," in his keeping, less entitled to comfort in the decline of life than the Judge who decides the cause of the wealthy? If it be given for past meritorious services, why is the County Judge in his humble vocation not to be rewarded also?

The Judges of the County Courts are harder worked, and are more exposed to the inclemencies of the climate than their Superior brothers. Let, then, the surplus in the fee fund, *raised by their labours alone* when in health, be retained for providing them a retiring allowance, when, from their physical infirmities, brought on by their labours, "the grasshopper shall be a burden and desire shall fail," or "the silver cord be loosed or the golden bond broken."

The office cannot be performed by an aged man; the labour and exposure is too great. If, then, you provide a retiring allowance, you will induce young lawyers of talent to accept the situation, who *now* prefer retaining their practice with the expectation of laying up money, and then accepting the office when they are too old and infirm to perform its duties.

Your obedient servant,

——— JUSTITIA.

[In one particular we can scarcely agree with our respected correspondent. The costs in the Division Courts are, we think, as low as it is desirable they should be, and we do not think it would be wise in any view to reduce the small fees payable to the fee fund. Rather allow it to accumulate, either specifically or by going into the general Revenue, for purposes connected with the general administration of justice; and what purpose, we ask, could be better than that of providing a retiring allowance for those whose services have been spent in the public service and who are no longer able to perform the arduous duties required of them? In the suggestions contained in the latter part of the letter we heartily agree; and were we at liberty to name our correspondent, his age, character, and high standing, would add much weight to his remarks. But what he has said may well be put on its own merits. The office of County Judge is admitted to be a most responsible one, involving much labor and requiring trained intellect—the best the country can produce. As the salary is in itself by no means an adequate temptation to men of large business to leave the bar, all other inducements that could be offered should be held out to secure the desirable end.

And what more just—what more commendable—what more expedient—than a provision for those who spend their best days in the laborious discharge of important public duties?—EDS. L. J.]

To the Editors of the Law Journal.

Guelph, May 21st, 1858.

GENTLEMEN:—Please inform me through the medium of your valuable journal, whether it is correct practice to enter Records in County Courts before the first day of the sittings?

Yours, &c.,

X. Y. Z.

[We think it is. Sec. 154 of C. L. P. Act, 1856, is not extended to the County Courts, nor is 8 Vic., cap. 13, sec. 30 repealed. The latter says "on or before," &c.—EDS. L. J.]

To the Editors of the Law Journal.

MILLBROOK, 21st May, 1858.

GENTLEMEN:—I take the liberty to lay the following before you and ask your opinion thereon; and also to use your influence to put a stop to such proceedings in future in this country. The case is as follows:—

Some time since a small note of mine amounting to eight pounds thirteen shillings and six pence, became due, and was put into the hands of R. P. J., Esq., of B——, a Barrister-at-Law, who without delay sued me. I was advised to let it go to Judgment (if I was not prepared to pay it) and that there would be only *Division Court Costs* then; but imagine my surprise a few days since, when I got a bill of the matter and find that the costs alone amount to eleven pounds fifteen shillings and sixpence, making the whole debt £20 9s. 9d., the costs nearly one hundred and fifty per cent. on the principal. Now, gentlemen, what is the use of our Division Courts if a man can be sued for any trifling sum (a lawyer may get against him) in one of the Superior Courts, and costs put on him amounting to double the debt. Is it in the power of a Judge tax County Court costs in a Division Court case—and if it is not what remedy does the law provide? Now, gentlemen, as I have had to pay $81 80. for $33, I feel sore on the subject.

Your giving the above an insertion in your valuable paper will oblige a sufferer by the law as it now stands.

I am Gentlemen,

Your obedient servant,

R. W. E.

P. S.—I send you the bill of cash.

R. W. E.

STATEMENT.

March 27th, 1858.

Judgment	£9	16	6
Costs taxed	10	1	9
Certificate of Judgment	0	10	0
Fi. Fa	0	17	6
Return of nulla bona	0	2	6
	21	8	3
Less indorsed on note	1	3	0
	20	5	3
Paid for order	0	3	9
	£20	9	0

Note dated 1st March, 1858, at 3 months with interest.

Yours, R. P. J.

Please have the note executed at once and send me as I wish the matter settled.

[We do not feel at liberty to publish all that is contained in Mr. E's letter. The facts as put before us, appear to show a case of great hardship, and we confess our inability to see on what grounds the costs could have been taxed on the County Court Scale. If the facts be fully and correctly stated, the case should have been entered in a Division Court, and certainly the Clerk should not have allowed County Court costs on taxtion. Our correspondent should have applied for a Judge's order to revise the taxation, and the defendant is not we think in any case liable for the certificate of Judgment. It may be that Mr. J. can satisfactorily explain the case by stating facts of which our correspondent is in all probability ignorant.—EDS. L. J.]

To the Editors of the Law Journal, Toronto.

Etobicoke, May 20th, 1858.

GENTLEMEN:—I would respectfully request your opinion as to the legality of the following section of a By-law of our Municipality:—

"And be it enacted, that in cases where parties own or occupy property in two or more places in this Municipality, they shall perform the amount of labour chargeable against each division of such property under the Pathmaster in whose section or division it may be situated, or commute with said Pathmaster for the same."

You will perceive by this that the intention was that the scale of Statute Labor should be applied to each division of property, and not to the aggregate, and consequently increasing the amount of labour.

I remain, your's &c., on behalf of the
Municipality of Etobicoke,
W. A. W., *Deputy Reeve.*

[We are inclined to doubt the validity of the clause to which our correspondent refers us. There is nothing in the Assessment Act as to *divisions* of Townships. It is simply enacted that every male inhabitant of *any* township between the age of 21 and 60 years, assessed upon the assessment roll of any township, shall, if the property (*i. e.*, the aggregate property in the township), of such party less assessed, at not more than £50, be liable to 2 days' labor,

At more than £50, but not more than £100, 3 days' labor.
" 100, " " 150, 4 "
" 150, " " 200, 5 "
&c., &c., &c.

(16 Vic., cap. 182, s. 36). This, of course, applies to parties "assessed upon the assessment rolls," that is, resident proprietors. In regard to non-resident proprietors to whom commutation is contemplated, the charge is against *each* parcel of land owned in the township, and not against the proprietor himself, that is commutation, is to be charged "against *each* separate lot or parcel of land according to its value." (s. 38) The difference between the liability of a resident and of a non-resident proprietor deserves attention from Municipalities.—EDS. L. J.]

MONTHLY REPERTORY.

CHANCERY.

V. C. W. IN THE MATTER OF AITKINS' ARBITRATION. *Dec.* 9.

Arbitration—Common Law Procedure Act, 1854.

Courts of equity have clear jurisdiction under the Common Law Procedure Act, 1854, to remit back to arbitrators for their reconsideration the matters referred to them by agreement between the parties, there having been clear mistake on the part of the arbitrators in the award as made by them.

V. C. K. BUCKERIDGE *v.* WHALLEY. *Dec.* 9, 23.

Habeas Corpus—Prisoner under Common Law process—Attendance in Chambers.

Where a prisoner is in confinement under a common law process, and it is required that he should attend in Chambers under an order made by the chief Clerk, the Court will order a writ of *Habeas Corpus* to issue that he may attend in custody of the officer *de die in diem.*

L. C. WARDEN *v.* JONES. *Nov.* 7, 12. *Dec.* 17.

Husband and Wife—Creditor—Settlement—Statute of frauds—Part performance—13 Eliz., cap. 5.

Where husband promises wife before marriage to settle her property, and induces her to marry before settlement, on the representation that he is solvent and that a settlement will be as good after as before marriage, and a settlement of her property, consisting of stock in a Railway Company, is subsequently made, such settlement is void against creditors, under 13 Eliz., cap. 5, the husband being insolvent at the time of the parol agreement.

V. C. W. BEETSON *v.* STUTELY. *Jan.* 12

Specific performance—Compensation.

A. contracted to purchase a leasehold estate subject to an under lease, of which seven years were unexpired, to B's father. A. agreed with B., on having a surrender of this under lease, to grant him a new lease, and B. agreed to procure a surrender of the underlease from his father, and to accept such new lease. B's father refused to surrender the under lease.

Held, upon demurrer, that A. could not obtain specific performance of this agreement, there being no allegation that B. had professed himself legally competent to enforce a surrender; and the question as to compensation to A. being determinable by action at law for damages.

Held also, that B. could not be compelled to accept a lease in the terms proposed at the expiration of the under lease.

L. C. RE. DODD. *Jan.* 13

Habeas Corpus—Jurisdiction—Common Law Procedure Act.

A., a solicitor, issued a writ, as plaintiff, out of the Common Pleas in England against a resident in Jersey, where B., his clerk served it. A. himself was in custody in Jersey at the time. A. was detained, and B. arrested by the Court in Jersey for issuing and serving the writ.

Upon *Habeas Corpus* B. was ordered to be discharged, but A. was remitted to custody, not for issuing the writ, but because it appeared that otherwise he was properly in custody.

COMMON LAW.

Q. B. BEARD *v.* KNIGHT. *Jan.* 22.

County Court Act, 19 & 20 *Vic., cap.* 108, *sec.* 75—*Goods of third party seized in execution—Distress for rent.*

The goods of a third party improperly taken in execution on the defendant's premises, under the warrant of a County Court issued against the defendant's goods, are not distrainable under 19 & 20 Vic., cap. 108, sec. 75, that section applying only to goods of the execution debtor.

Q. B. JACKSON (*Administrator of Oliver Jackson, deceased,*) *v.* WOOLLY AND WIFE. *Jan.* 19.

Mercantile Law Amendment Act, 1856—*Retrospective effect—payments by one of two co-debtors—Knowledge and consent of other co-debtors.*

Part payment by one co-debtor within six years before the commencement of suit, and before the passing of 19 & 20 Vic., cap. 97, sec. 14, does not prevent the operation of the Statutes of Limitation in favour of another co-debtor, following the authority of *Kindersley V. C.* in *Thompson* v. *Waithman*, 3 Drew, 628; 5 W. R., 30.

Mere knowledge and consent by one co-debtor to payments made by another co-debtor, do not prevent the operation of these Statutes in favour of the non-paying co-debtor.

REVIEW OF BOOKS.

THE LAW OF VENDORS AND PURCHASERS OF REAL PROPERTY. By Francis Hilliard, Esq., Author of the Law of Mortgages, 2 Vols. in one, 8vo., price $6. Little Brown & Co., Boston.

This valuable work has just been issued by the eminent Law Publishers, Little, Brown & Co., to whom the profession in the United States and in Canada are already largely indebted for numerous and valuable Law publications. It more than equals previous issues by that firm, and in saying this we pay the highest compliment that can be paid to the mechanical execution of the volume. Indeed, it is faultless in every particular. A work on the law of Vendors and Purchasers of real estate, examined by an American writer in the light of American as well as English cases, will be of great and peculiar value to the Canadian lawyer. In the United States, as in Canada, land is a marketable commodity, and is the daily—hourly subject of sale. The tenure and nature of estates in both countries is very much alike. Indeed in several particulars respecting the sale and transfer of lands, the decisions in our own Courts and those of the United States are the only guides we have in investigating questions growing out of a condition of things that neither had nor has any existence in England.

We have looked over the work, and while alive to the responsibility which follows a recommendation by us as the organ of the profession in Upper Canada, we hesitate not to pronounce it a truly valuable production. We believe Mr. Hilliard, the writer, is a Judge of one of the Superior Courts. *That* under the American system *as it now is*, perhaps our readers may say is no guarantee of ability, but Mr. Hilliard's best reference is to the work itself. In every page of it may be discovered the mind of an able and learned lawyer, and the method of a careful and judicious writer. He has given us the law as it is in a lucid, concise and intelligible form. The head note of the subject to each chapter of the first vol., may give some idea of the extent and arrangement of the subject:—

CHAP. 1. Nature of the contract for a sale and purchase of lands.—2. What constitutes an agreement for the sale and purchase of lands—Distinction between a contract and a mere proposal, offer, &c.—3. Consideration of a contract of sale.—4. Interest.—5. Parties to contract.—6. Sales by auction.—7. Statute of frauds.—8. Parol Licence.—9. Part performance.—10. Construction of contracts.—11. Time of performing contracts.—12. Title of the vendor.—13. Title to the property sold—Partial failure of title.—14. Reference of title.—15. Title deeds.—16. Title to leaseholds.—17. Rescinding of sales.—18. Grounds for avoiding a sale.—Mistake.—19. Grounds of avoiding a sale—Fraud.—20. Implied or constructive fraud—Incapacity—Inadequacy of consideration, &c.—21. Sale of expectancies.—22. Constructive fraud.—23.—Notice.—24. Remedies of vendors and purchasers—Law and equity—General jurisdiction of Courts of Equity—Compensation—Rescinding—Lien, &c.—25. Specific performance.

MONTHLY CATALOGUE OF EFFICIENT AND RELIABLE LAWYERS' John Livingston, No. 128 Broadway, (American Exchange Bank Building) New York, $2 per annum.

This is a publication as useful as it is extraordinary. It is extraordinary in design, in execution, and so far as we can judge in reliability. It is useful to the lawyer, to the merchant, and in general to the man of business. Its design is monthly to furnish to its readers a revised catalogue of some efficient trustworthy lawyers in the principal cities, towns and villages of the United States and Canada. Its circulation we are informed is no less than 30,000. We have ourselves had occasion to make use of the catalogue and are delighted with the perfect success which attended our references. Besides the list of reliable lawyers, the number for May before us contains instructions for executing deeds and other insturuments in every state of the Union. So far as our knowledge extends we have been marvelously surprised at the fulness and withal accuracy of detail of the information given. We recommend the publication as being one deserving of extensive support.

THE LOWER CANADA JURIST FOR MAY. Montreal: J. Lovell, is received.

It is as usual replete with cases decided in the Courts of Lower Canada; and contains in addition, the judgments of Mr. Justice Badgley in the Montreal and Argenteuil Controverted Election cases. The judgment of Mr. Justice Meredith in the Lotbiniere Election case is also published. It is devoutly to be hoped that the Jurist will be more successful than its precursors in Lower Canada appear to have been. The Law Reports of Lower Canada are few and far between.

UPPER CANADA QUEEN'S BENCH REPORTS. By Christopher Robinson, Esq., Barrister at Law, and Reporter to the Court. Toronto: Henry Rowsell, King Street. No. 4, Vol. XVI.; Subscription $9 per annum, payable in advance.

It is scarcely necessary for us to say anything in recommendation of this admirable series of Reports. It has acquired a well deserved reputation, both for accuracy and despatch. The present reporter is a genttleman who does great credit to the trust confided to him. When we say that he gives unbounded satisfaction to the profession, we feel certain that we speak no more than the truth. The Law Reports of Upper Canada will compare favourably with similar publications of the kind either in Great Britain or the United States of America. This is no doubt saying a great deal; but we mean all that we say. No little share of the credit is however due to the enterprising and public spirited publisher —H. Rowsell. The mechanical execution of the Upper Canada Reports is the best advertisement that can go forth in praise of his establishment.

APPOINTMENTS TO OFFICE, &C.

JUDGES.

WILLIAM D. ARDAGH, of Osgoode Hall, Esquire Barrister-at-Law, to be Deputy Judge of the County Court of the County of Simcoe, under the Act 20 Vic cap. 58, sec. 14.—(Gazetted, May 8 1858.)

RICHARD CARNEY, Esquire, to be Stipendiary Magistrate for the Temporary Judicial District of Algoma, under the Act 20 Vic. cap 60.

THOMAS H. JOHNSTON, Esquire, to be Stipendiary Magistrate for the Temporary Judicial District of Nipissing, under the Act 20 Vic. cap. 60.—(Gazetted, May 15, 1858.)

NOTARIES PUBLIC.

ALFRED DRISCOLL, of St. Thomas, Esquire, Barrister-at-Law, and RICHARD T. WILKINSON, of Cornwall, Esquire, Barrister-at-Law, to be Notaries Public in Upper Canada.—(Gazetted, May 8, 1858.)

WILLIAM JOHN HARPER, Esquire of the City of Toronto, Attorney at-Law, to be a Notary Public in Upper Canada.—(Gazetted May 15, 1858.)

CORONERS.

JOSEPH MOTHERSILL, M.D., ALFRED P. TOULMIN, and JOHN H. CAMP BELL, M.D., Esquires to be Associate Coroners for the County of Lambton.

GEORGE HENRY BOULTEE, Esquire, M.D., to be Associate Coroner for the County of Hastings.

JOSEPH CARRIER, Esquire, M.D., to be Associate Coroner for the County of Es-

NORMAN BARER, Esquire, M.D., to be associate coroner for the United Counties of York and Peel.

HENRY BENTALL EVANS, Esquire, M.D., to be Associate Coroner for the County of Prince Edward.—(Gazetted May 8, 1858.)

THOMAS PYNE, Esquire, M.D., to be Associate Coroner for the United Counties of York and Peel.

HARCOURT P. BULL, Esquire, and JOHN WELLINGTON ROSEBURG, Esquire M.D., to be Associate Coroners for the City of Hamilton.—(Gazetted May 15, 1858.)

ROBERT McCRUM, Esquire, M.D., and JOHN MERRILS, Esquire, to be associate Coroners for the United Counties of Leeds and Grenville.

PETER GRASS, Esquire, to be Associate Coroner for the United Counties of Northumberland and Durham.

JACOB SMITH, Esquire, M.D., to be Associate Coroner for the County of Kent.—(Gazetted May 29, 1858.)

TO CORRESPONDENTS.

J. T.—D.—O. K., under Division Courts.

J. B. C.—R. K.—Justitia.—X, Y. Z.—R. W. E.—W. A. W., under general Correspondence.

W. S, Owen Sound; D., Hamilton,—too late for June No.

TO SOLICITORS.

A Member of the Bar about to visit Europe for a short period, would be happy to execute any commissions he may be favoured with. Apply to

Messrs. O'REILLY & JARVIS,
Masonic Chambers, Toronto and Hamilton.

Toronto, April 29th, 1858. 1-in.—pd.

J. RORDANS, LAW STATIONER,

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DEEDS Engrossed and Writings copied; Petitions, Memorials, Addresses, Specifications, &c., prepared; Law Blanks of every description always on hand, and printed to order; Vellum Parchment, Hand made Medium, and Demy ruled for Deeds, with Engraved Headings. Brief and other Papers, Office Stationery, &c. Parchment Deeds red lined rnd ruled ready for use. Orders from the Country promptly atrended to. Parcels over $10 sent ftee, and Engrossments, &c., returned by first Mail.

CROWN LAND DEPARTMENT.

Toronto, 21st Oct. 1857.

NOTICE is hereby given that the Lands in the Township of Barrie in the County of Frontenac, U.C., will be open for Sale on and after the 17th of next month, on application to the Resident Agent, Allan McPherson, Esq., at Kingston.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. McPherson.

ANDREW RUSSELL,
11—6 in. Asst. Commissioner.

CROWN LAND DEPARTMENT.

Toronto, Oct. 13th, 1857.

NOTICE is hereby given that the Lands in the Township of Rolph in the County of Renfrew, U. C., will be open for sale on and after the 11th next month, on application to the Resident Agent, William Harris, Esq., at Admaston near Renfrew.

For list of Lots, and the conditions of Sale, see the Canada Gazette, or apply to Mr. Harris.

ANDREW RUSSELL,
11—6 in. Asst. Commissioner.

FORMS OF CONVEYANCING

FOR SALE at Maclear & Co.'s, 16 King Street East, Toronto:—

DEEDS (FULL COVENANT), WITH AND WITHOUT DOWER
Do. SHORT FORM, do.
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MORTGAGES, WITH AND WITHOUT DOWER.
Do. WITH POWER OF SALE.
Do. INSURANCE COVENANT.
Do. SHORT FORM, UNDER STATUTE.
ASSIGNMENTS OF MORTGAGE.
CERTIFICATES OF DISCHARGE OF MORTGAGE.
CHATTEL MORTGAGES.
LEASES.
AGREEMENTS FOR SALE OF LAND.
ASSIGNMENTS OF LEASE.
BONDS TO CONVEY LAND ON PAYMENT OF PURCHASE MONEY.

Toronto, June, 1858.

INSPECTOR GENERAL'S OFFICE.

Customs Department.
Toronto, October 30, 1857.

NOTICE IS HEREBY GIVEN, That His Excellency the Administrator of the Government in Council has been pleased, under the authority vested in him, to direct an order that, in lieu of the Tolls now charged on the passage of the following articles through the Ottawa Canals, the Tolls hereinafter stated shall be hereafter collected, viz:

Iron Ore, passing through all or any portion of the Ottawa Canals, to be charged with a toll of *Three Pence* per ton, which being paid shall pass the same free through the Welland Canal.

Rail-Road Iron, to be charged *One Shilling* per ton, including Lachine Section, St. Ann's Lock and Ordinance Canals, and having paid such toll, to be entitled to pass free through the Welland Canal, and it having previously paid tolls through the Chambly Canal, such last mentioned tolls to be refunded at the Canal Office at Montreal.

The toll on Barrel Staves to be *Eight Pence* on the Ordnance Canals, and *Four Pence* on the St. Ann's Lock and Lachine Section, making the total toll per thousand, to and from Kingston and Montreal. the same as by the St. Lawrence route, viz: *One Shilling* per thousand.

By command,
R. S. M. BOUCHETTE
Commissioner of Customs.

NOTICE.

WHEREAS Twenty-five Persons, and more have organized and formed themselves into a Horticultural Society for the Village of Fergus, in the County of Wellington in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic., cap. 32, and have subscribe a sum exceeding Ten Pounds to the funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration, written and signed as by law required, to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of the said Society, as "The Fergus Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics.
Toronto, dated this 8th day of Feb., 1858.

CANADA
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With Agencies in all the Principal Towns in Canada.

☞ Toronto, January, 1858. 11

NOTICE.

PROVINCIAL SECRETARY'S OFFICE,
14th January, 1858.

TO MASTERS OR OWNERS OF STEAM VESSELS.

NOTICE IS HEREBY GIVEN, That on and after the opening of Navigation in the Spring of the present year, a strict compliance with the requirements of the several Acts relating to the inspection of Steam Vessels will be insisted on, and all penalties for any infraction thereof rigidly enforced. By Command,

E. A. MEREDITH,
Asst. Secretary.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Town and Township of Niagara, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds, to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the said Society as "The Niagara Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Hamilton, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof, in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture.

Therefore I, the Minister of Agriculture, hereby give notice of the formation of of the said Society as "The Hamilton Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture and Statistics,
Toronto, dated this 18th day of January, 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the City of Kingston, in Upper Canada, by signing a declaration in the form of Schedule A, annexed to the Act 20 Vic. cap. 32, and have subscribed a sum exceeding Ten Pounds to the Funds thereof in compliance with the 48th Section of said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture:

Therefore, I, the Minister of Agriculture, hereby give notice of the said Society as "The City of Kingston Agricultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agr.

Bureau of Agriculture & Statistics.
27th January: 1858.

NOTICE.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Village of Elora, in the County of Wellington, in Upper Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. cap, 32, and have subscribed a sum exceeding Ten pounds to the funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as the "Elora Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 10th March, 1858.

WHEREAS Twenty-five persons, and more, have organized and formed themselves into a Horticultural Society for the Parishes of St. Joachim, Ste. Anne and St. Fereol, in the County of Montmorency, in Lower Canada, by signing a declaration in the form of Schedule A annexed to the Act 20 Vict. Cap. 32, and have subscribed a sum of not less than Ten pounds to the Funds thereof, in compliance with the 48th Section of the said Act, and have sent a Duplicate of said declaration written and signed as by law required to the Minister of Agriculture;

Therefore, I, the Minister of Agriculture, hereby give notice of the formation of the said Society as "The St. Joachim Horticultural Society," in accordance with the provisions of the said Act.

P. M. VANKOUGHNET,
Minister of Agriculture, &c.

Bureau of Agriculture & Statistics,
Toronto, 9th March, 1858.

OPINIONS OF THE PRESS.

THE UPPER CANADA LAW JOURNAL for May is full of is interesting articles —instructive alike to the profession and the general public. The editorials, as usual, evince the sound knowledge and legal experience of the writers under whose management the journal is now published,—and the opening one, on the 'Power of a Colonial Parliament to Imprison for Contempt," embraces an amount of interesting record from opinions of high authorities, upon which the author is led to conclude that the power to commit for contempt cannot justly be exercised by the Provincial Parliament. The other principal articles are—"Remuneration to Witnesses in Criminal Cases;" "Law Reforms of the Session—General Review;" "University of Toronto—Law Faculty;" "Historical Sketch of the Constitution, Laws, and Legal Tribunals of Canada," &c. An original essay on the latter subject is to be commenced in the next issue, and continued monthly till completed, and it is promised that the aim of the writer will be to narrate—not to discuss. His materials are, we are informed, the best that can be had consisting of several French and English, manuscripts now out of print. To this may be added all the information that can be from *Edits. Arrets*, and *Ordonnances* of the French Government and of the Province of Quebec together with the *Ordonnances* and acts of Parliament of the Provinces of Upper and Lower Canada. No pains are to be spared, either in research or compilation, that can be made tributary to th object of the writer. The period embraced will be nearly three centuries—that is, from the settlement of Canada by the French to the present day. This is a subject so fruitful in details of a most interesting character, that if the promises referred to are carried out—(as we have every reason to expect they will, from the deservedly high reputation of the editors)—the *Law Journal* will considerably increase its popularity as a reliable record. —*Colonist May*, 14th. 1858.

The May Number of this very ably conducted Journal has been on our table several days. It is one of the most welcome visitors to our office. The original articles on "Law Reforms of the present Session," and "Remuneration to witnesses in Criminal Cases," are written with spirit and ability.—Turning to the general correspondence departments in which the questions of correspondents, together with the answers to the same appear, we found a very important point as to the time for re-filing a chattel mortgage to perpetuate its validity, settled. Such practical questions are discussed in every number of the Journal, and we can scarcely see how a business man can very well dispense with it. Every magistrate should take the Law Jonanal and study it. Every Coroner ought to be familiar with the Law Journal; in the number before us there is something that would, if acted upon, perhaps, put pounds in their pockets. Every Division Court Clerk, every Sheriff and Deputy Sheriff and Bailiff ought to read the Law Journal, for every new and important decision is immediately chronicled in it. Of course the Lawyers have it on their tables. It is a work of general usefulness and conducted with an ability that reflects credit upon the legal profession.—*Port Hope Gazette, May 22nd.* 1858.

The Upper Canada Law Journal for January, has been received. As usual, its contents are exceedingly valuable.—*Kingston Whig.*

This is a very useful monthly, containing reports of important law causes, and general information connected with the administration of justice in Upper Canada Although more particularly intended for the profession, yet every man of business may learn much from it that may be of real advantage to him. It has hitherto been published in Barrie, but will henceforth be in Toronto. We rejoice to see that Robert A. Harrison, Esq. B C L, is to be connected with the journal. He is a young gentleman that has already highly distinguished himself in his profession, and with literary talents of no ordinary kind, he will prove to be of great advantage to the Law Journal.—*Brampton Times.*

We are pleased to notice that this able monthly is, for the future, to be edited and published in Toronto, and that Robert A. Harrison, Esq., B.C.L., is become a joint Editor. His accession to the editorial staff must prove to the profession to whom he is now so well known as the author of so many works in general use, no small gain. With Mr. Harrison is associated W. D. Ardagh, Esq., who has for some time been favorably known as an Editor of the *Journal*. Notwithstanding the public caution of the *Journal* in Barrie, it has under the management of the Hon. James Patton acquired a very wide and extended circulation. Now that it is to be published in Toronto, it is reasonable to expect that its circulation will be increased. It is a paper which should be in the hands of every Judge, Lawyer, Coroner, Magistrate, Clerk, and Bailiff in Upper Canada. We hope, however, that the conductors will see fit to widen the list of their exchanges and so increase the circle of their usefulness.

It is a great mistake to suppose that Judges, Lawyers, Division Court Clerks, or Bailiffs are the sole persons interested in the administration of justice. The public at large have a deep interest in, and feel a lively sympathy with the sentiments of a writer who propounds measures of law reform calculated to advance the public good. No discussion however well attended upon subjects of legal interest, can be satisfactorily carried on by the lay press.

The public require to be informed not only as to the existence of an abuse which needs a remedy, but as to the nature of the remedy required. For such information the more proper and more prudent course is to turn to the columns of a newspaper conducted by men whose whole lives and training peculiarly befit them for the expression of sound views. The number of the *Journal* before us which is that for August is replete with legal lore. The Editorial Department bears marked evidence of knowledge and ability.—*Toronto Times.*

Somewhere it has been said that to know a people thoroughly, it is necessary to study their laws—to ascertain how life and property are protected. This ably conducted Journal tells us how the laws enacted by government are administered in Upper Canada. It tells us—what everybody knows—that law is expensive, and it adds that cheap justice is a curse, the expense of the law being the price of liberty. Both assertions are certainly truisms, yet a litigious and quarrelsome spirit is not invariably the result of that combativeness which belongs to such men as those who, under any circumstances, and at whatever cost, will assert their rights. It is not our purpose to review the *Journal*, but to praise it; seeing that praise is deserved The articles are well written, the reports of cases are interesting, and the general information is such, that the *Journal* ought not only to be read, but studied by the members of the bar, the magistracy, the learned professions generally, and by the merchant.

The *Law Journal* is beautifully printed on excellent paper, and, indeed, equals in its typographical appearance, the legal record published in the metropolis of the United Kingdom. $4 a year is a very inconsiderable sum for so much valuable information as the *Law Journal* contains.—*Port Hope Atlas.*

We have to return our thanks to the conductors (or publishers, we do not know which,) of this valuable publication for the present January number, together with an ample index for, and list of cases reported and cited in the second volume of these reports for the year 1857.

The ability with which this highly important and useful periodical is conducted by W. D. Ardagh and Robert A Harrison, B. C. L., Esquires, Barristers at Law, reflects the greatest credit upon these gentlemen, and shews that the esteem in which they are held by their professional confreres and the public, is deservedly merited and nothing more than they are entitled to. We have much pleasure in earnestly recommending the members of the bar for this section of the Province to support the Upper Canada Law Journal, by their subscriptions.—taking leave to assure them that it is well worthy of it, and that they will find it a valuable acquisition to their libraries as a legal work of reference and high authority. It is printed and published by Messrs. Maclear, Thomas & Co., of 16 King Street East, Toronto, and the typographical portion is very creditable to that firm.—*Quebec Mercury.*

The Upper Canada Law Journal, and Local Courts Gazette, is a publication of which the legal profession of the Province need not be ashamed The *Journal* has greatly improved since the removal of the office of publication to Toronto. It is edited with ability by W D. Ardagh, and R. A. Harrison, B C L., Barristers-at Law. The January number, which is the first of the fourth volume, appears in a considerably enlarged form. The fourth volume will contain at least one-third more reading matter than its predecessor. A very important question, "Shall we have a Bankruptcy Law?" is discussed at length in a well written editorial in the January issue, to which we shall refer on a future occasion. "License of Counsel," is an original article which probes barristers in many tender spots. The *Law Journal*'s circulation should not be confined entirely to the legal professsion.—the Merchant, and general business man would find it a very useful work. The price is $4 a year in advance, or $5 otherwise. Now is the time to send in orders.—*Port Hope Guide.*

In its first number of the fourth volume this interesting and valuable publication comes to us highly improved in appearance, with a much wider range of editorial matter than formerly. The *Journal* has entered upon a broader career of utility, grappling with the higher branches of law, and lending the strength of a full, fresh intelligence, to the consideration of some very grave wants in our civil code. The necessity of an equitable and efficient "Bankruptcy Law" is discussed in an able article, instinct with astute and profound thought, coupled with much clear, subtle, legal discrimination.

It is the intention of the Proprietors to institute in the pages of the *Journal* a "Magistrate's Manual;"—provided that that body meet the project in the proper spirit, and contribute an adequate subscription list to warrant the undertaking. To prosecute this contemplation, could not fail to be productive of incalculable advantage, as well to the community as to the Magistracy. We sincerely hope that this latter body will bestow a generous patronage, where so laudable an effort is made for their advantage.

The *Law Journal* is presided over by W D. Ardagh, and R. A Harrison, B C. L., Barristers-at-Law It is a periodical that can proudly compare with any legal publication on this Continent. We wish it every success. —*Catholic Citizen.*

This Journal which is published monthly, appears this week much improved in size, appearance and matter. It was formerly published in Barrie, but has for some numbers back been published in Toronto, and has acquired aid in the editorial staff by the addition of Mr. Harrison, who is well known in the profession from his numerous publications on legal subjects. Under the management of Mr. Ardagh and Mr Harrison, this Journal promises fair to become an important publication, not merely to the legal profession, but to other important classes of the community, as particular attention is given to Municipal affairs, County Courts and Division Courts; Magistrates' duties also receive a considerable share of consideration. It will contain original treatises and essays on law subjects, written expressly for the *Journal*, besides reports from the Superior Courts of Common Law and the Court of Chancery. Proper selections will also be made from English periodicals. To the profession the reports from Chambers of decisions under the Common Law Procedure Acts and the general practice, are of particular interest. These the *Journal* supplies, being formerly reported by Mr. F. Moore Benson, and latterly by Mr. C. E. English, M. A. We would advise all municipal officers, Division Courts officers, Magistrates, and particularly the profession, to patronize this publication as it cannot be sustained without their aid. The subscription is only $4 a year in advance.—*Leader.*

The January number of this valuable Journal has come to hand, and is as usual replete with legal decisions, articles on commercial law, &c., &c. We republish from this number, an able article on the subject of a Bankrupt Law for Canada.—*Canadian Merchants' Magazine.*