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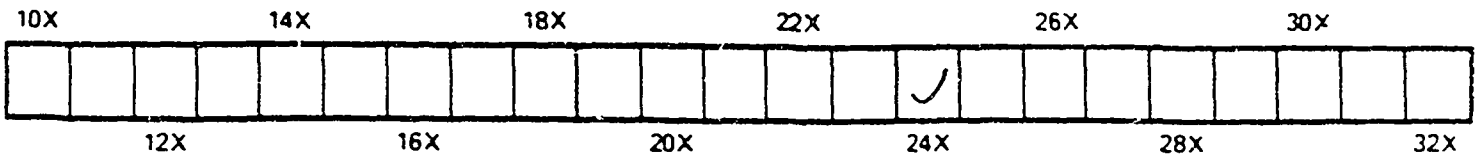

THE

UPPER CANADA LAW JOURNAL,

(NEW SERIES.)

VOLUME I.

FROM JANUARY TO DECEMBER, 1865.

EDITED BY

W. D. ARDAGH, ESQ., ROBT. A. HARRISON, ESQ., B.C.L., & HENRY O'BRIEN, ESQ.,

BARRISTERS-AT-LAW.

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OF THE

CASES REPORTED IN THIS VOLUME.

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3. Thur.. York and Peel Winter Assizes commence.
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8. SUN . 1st *Sunday after Epiphany.*
9. Mon ... Election of Police Trustees in Police Villages.
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THE

Upper Canada Law Journal.

JANUARY, 1865.

TO OUR READERS.

Ten years ago the first number of the *Upper Canada Law Journal, and Municipal and Local Courts' Gazette* was published. With this number will commence the eleventh year of a publication for which even our best friends anticipated but a short life.

The result has assured us that the undertaking was based on a proper foundation. Commenced with many interests in view, and embracing subjects of value and interest to various classes, the conductors from the first hoped to make the *Law Journal* "generally useful, as well to the profession as to county officers, officers of division courts, magistrates, coroners, and municipal functionaries;" indeed it was only by such a combination that a sufficient support could have been obtained to meet the expenses of a law periodical.

At first a very large measure of support came from county and division court officers; latterly this somewhat changed, and now professional men and county and division court officers stand nearly on a par as to numbers in the subscription list. We have continued to enlarge and improve upon the original design, but with little return beyond the current expenses and abundant and flattering testimony to the value of the publication.

It has been represented to us that if the subscription were reduced one-third, the circulation would at once be doubled; but, according to the present arrangements, this would not be possible without a positive loss. We have also been made aware that clerks and bailiffs of division courts, and suitors in the remote divisions, and also magistrates and municipal officers, object to pay four dollars a-year for a publication in which so much matter for the lawyers appears, the same being of little value to them; and, on the other hand, professional men say that they are made to pay for matter devoted to the information of division court and other officers, magistrates, &c., and which they care little or nothing about. And some again contrast the price of the *Law Journal* with the newspapers; but such a comparison is most unfair, as the subscription lists of the leading journals are forty or fifty times larger than ours—and this must always be the case. With a publication confined to a particular subject, and limited to a few classes, the circulation *must* be limited. After the first thousand, the expense of printing is little beyond the cost of the paper, and herein lies the ability of journals with a large circulation to sell at a low rate.

In order to meet the views and wishes of all our supporters the conductors have decided on publishing separately *The Upper Canada Law Journal* and *The Local Courts' and Municipal Gazette* at greatly reduced prices: the former to contain the matter intended more particularly for the profession, the latter to include subjects of special importance to county and division court officers and suitors, magistrates, municipal officers, &c. In this we follow a similar plan acted on in respect to the English *Law Times* and *County Courts' Chronicle*, both which periodicals are published at the same office, a portion of the matter appearing in both.

Under the new arrangement, it is not proposed to curtail the amount of matter usually given to the profession in the *Law Journal*, whilst the matter for the other classes of our readers will be increased. The cash subscription to the *Law Journal* will be reduced to $3 yearly, and the cash subscription to the *Local Courts' Gazette* will be $2; and as a portion of the matter suited to both publications may be transferred from the former to the latter, to persons taking both publications the charge will be $4 yearly. If not paid within one month, the charge will be —for the *Law Journal*, $4; for the *Local Courts' & Municipal Gazette*, $3; for both, $5.

Both publications will be sent to our present subscribers among the profession, unless immediately after receiving the first number of each, they express a desire to subscribe for the *Law Journal* only. The *Local Courts' Gazette* only will be sent to our non-professional subscribers, unless immediately after receiving the first number, any of them express a desire to take both publications, when the back number of the *Law Journal* will be forwarded to such persons, at the reduced rate of $4 a-year.

Our early friends must see in this new arrangement proof of our appreciation of the support received, and a desire on the part of the conductors to bring their publications within the reach of all.

The *Law Journal* is now divested of all matter that cannot be called strictly professional or of professional interest, and appeals for support solely *to the profession*. The legal fraternity in Upper Canada are now of such numbers and influence, that they may well expect to have a publication peculiarly devoted to their interests; and if so entitled, they are also able to support it. To a certain extent, the profession have had such an organ in the *Upper Canada Law Journal* for ten years past; but, under the new arrangements, the *Law Journal* will be wholly and solely devoted to the assistance, information and advancing the interests of the profession generally.

The attention of practitioners is particularly directed to the number of Common Law Chamber cases that appear in each issue. These cases are reported expressly for this journal, and can be nowhere else obtained—their value is too well known to the profession, to need any further comment.

We trust that the changes that have been made will be appreciated, and that the decrease in the price, the fact that the publication is now exclusively devoted to the services of the profession, the more convenient size and shape of the volume and the complete arrangements that have been made for the future, will induce such an increase to our subscription list, as will enable us to persevere in our exertions to make the publication of benefit to the class to which we belong, and creditable to the country in which we live.

The judges of the county courts, county officials and division court officers, could with a very little effort double the number of our subscribers for the *Local Courts' Gazette*, and the *Law Journal* will now be at so low a price that not only every practitioner, but every law student should give us their support. Unless great additions be made to the subscription list, we shall sustain a loss in publishing, and the business of this year must determine whether or not it will pay to continue both publications.

Very complete arrangements have been made to carry out satisfactorily the new arrangements, and the Editors have pleasure in stating that Henry O'Brien, Esquire, one of the editors of Harrison and O'Brien's Digest, and who has for some time past been assisting, is now joined with the present Editors.

We crave the indulgence of our readers for the delay in the issue of this number. It was unavoidable, owing to the changes that have been made, but will be remedied in the future.

OUR NEUTRALITY.

The right of every independent state to remain at peace, while other states are engaged in war, is undeniable.

The chief obligation which rests on the neutral nation is that of impartiality. No favor must be shown to either of the contending parties. No use for purposes of war of neutral territory should be allowed to either of them. Hostilities cannot be lawfully exercised within the territorial jurisdiction of the neutral state. Not only are all captures made by belligerent cruisers within the limits of the jurisdiction absolutely illegal, but it has been held that captures made by armed vessels stationed in a bay or river, or in the mouth of a river, or in the harbor of a neutral state, for the purpose of exercising the rights of war from this station, are also illegal. Thus when a belligerent ship, lying within neutral territory, made a capture with her boats out of neutral territory, the capture was held to be invalid; for though the hostile force employed was applied to the captured vessel lying out of the territory, yet no such use of neutral territory for purposes of war is to be permitted. (*The Two Gebroeders*, 3, C. Robinson's Admiralty Cases, 162.) No use of a neutral territory for purposes of war is to be permitted. An act of hostility is not to take its commencement on neutral ground. Many instances have occurred in which such an irregular use of a neutral

country has been warmly resented. Every government is not only justified, but bound to discourage the commencement of such a practice; for, says Sir William Scott, in the case to which we have referred, "the inconvenience to which the neutral territory will be exposed is obvious; if the respect due to it by one party is violated, it will soon provoke similar treatment from the other also, till, instead of neutral ground, it will soon become the theatre of war."

Great Britain, by the passage of the Foreign Enlistment Act and other statutes of a similar character, has done more than any other state in Europe to prevent her own citizens from taking part in foreign war. These, with our extended frontier, in the present crisis, are scarcely adequate to our wants. Our danger arises from the acts of those who abuse the right of asylum extended to them, by plotting war upon those with whom we are at peace. Men so far void of the plainest dictates of gratitude deserve not our protection.

It is clear that a state may prevent the entrance of strangers within its territory. This being so, the right to regulate their conduct while within the territory, or to drive them out of it in the event of misconduct, is equally clear. People resident within the jurisdiction of any sovereign territory are subject to its laws while receiving its protection, and a violation of the law of neutrality in times of war should be made to work a forfeiture of protection. Nay more, there should be a power to prevent violations of neutral territory, by the removal of those likely to violate it. Self preservation is the first law of nature, as it is of nations. During periods of revolutionary disturbances, both on the continent of Europe and in Great Britain, acts were passed by parliament authorizing certain high officers of state to order the departure of aliens from the realm within a specified time, and their imprisonment in the case of refusal. This is a power which, according to Canning, had undoubtedly been exercised by the Crown sometimes without the assent of parliament. (Canning's Speeches, 225.)

The first act of the kind of which we find any trace on the Statute Book is 33 Geo. III. cap. 4, passed in 1793. It was followed up by Lord Grenville's note, dismissing Monsieur Chauvelin. He was informed that the King could no longer permit his residence within the kingdom, and required him to retire from the kingdom within the term of eight days. (State Papers on War, p. 245.) The 33 Geo. III. cap. 4, was followed up by 38 Geo. III. caps. 50, 70; 41 Geo. III. cap. 24; 42 Geo. III cap. 93; 43 Geo. III. cap. 155; 51 Geo. III. cap. 155; 55 Geo. III. cap. 54; 56 Geo. III. cap. 86; 58 Geo. III. cap. 96; 1 Geo. IV. cap. 105; 3 Geo. IV. cap. 97; 5 Geo. IV. cap. 37; and as late as 9th June, 1848, we find "An Act to authorize for one year, and to the end of next session of Parliament, the removal of aliens from the realm." (10 & 11 Vic. cap. 20.)

The latter being the most complete act of the kind of which we have any record, it may be well to advert to some of its provisions. It enacted that when and so often as one of her Majesty's principal Secretaries of State should have reason to believe, from information given to him in writing by any person subscribing his or her name and address thereto, that for the preservation of the peace and tranquility of any part of the realm, it became expedient to remove therefrom any alien or aliens, it should be lawful for such Secretary of State, by order under his hand, to be published in the *London Gazette*, to direct that any such alien or aliens should depart within a time limited in such order. It was enacted that if any alien should knowingly and wilfully refuse or neglect to pay due obedience to such order, or be found in the realm or any part of it, contrary to the order, after publication thereof, and after the expiration of the time limited in the order, it should be lawful for any of her Majesty's principal Secretaries of State, or for any Justices of the Peace, to cause every such alien to be arrested and to be committed to the common gaol of the county where he or she should be arrested, there to remain without bail or mainprize until he or she should be taken into charge for the purpose of being sent out of the realm. Besides, it was provided that every alien knowingly and wilfully refusing or neglecting to pay due obedience to any such order should be guilty of a misdemeanor, and liable to be imprisoned for any time not exceeding one month for the first offence, and not exceeding twelve months for the second or any subsequent offence. Provision was made for the conveyance of the alien out of the kingdom; but in the event of the alien alleging an excuse for not complying with the order, power was given to the Lords of the Privy Council to

judge of the sufficiency of the excuse, and to allow or disallow the same, either absolutely or on such condition as they should think fit. There were other provisions as to details, too long to be here repeated.

Some act of this kind is needed in Canada. There are men living in our midst who it is well known are here for no purpose of good. They are crafty, but their purpose and business are known. Evidence it is true cannot at present be had sufficient to lead to their conviction on a criminal charge, but there is no moral doubt of their guilt. Are we to remain inactive until these men, by some overt act, embroil us in trouble with our neighbours? As the law stands, we must do so. Were it in our power to compel their quitting Canada we should prevent mischief. Certainly prevention, in a case like this, is better than punishment. When danger stares us in the face, we are not to be influenced by mere sentimentalism. It may seem inhuman to shoot a man, but if that man be in our house at midnight for purposes of plunder we wait not to weigh feelings of sentimentality. Our feelings of pity are roused when we see the young and the profligate sentenced to imprisonment, but no one who has a duty to perform is influenced by considerations of pity in such cases. We owe a duty to ourselves. That duty is to keep peace with our neighbours, a duty which cannot faithfully be performed so long as we shelter with immunity those whose aim it is to do acts that will have a tendency to plunge us into war.

But while admitting to the fullest extent our duty to preserve neutrality, and to enforce its obligations upon those who seek our protection, we cannot concede the right of any foreign power to invade our territory, except under circumstances of paramount necessity, and then only at the peril of war. An unguarded passage in Phillimore is often cited by those whose respect for territorial inviolability is not so great as it ought to be. It is as follows: "A rebellion or civil commotion it may happen agitates a nation; while the authorities are engaged in repressing it, bands of rebels pass the frontier, shelter themselves under the protection of the conterminous state, and from thence with restored strength and fresh appliances renew their invasions upon the state from which they have escaped. The invaded state remonstrates. The remonstrance, whether from favor to the rebels or feebleness of the executive, is unheeded, or at least the evil complained of remains unredressed. In this state of things the invaded state is warranted by international law in crossing the frontier and in taking the necessary means for her safety, whether these be the capture or dispersion of the rebels or the destruction of their stronghold, as the exigencies of the case may fairly require." General Dix, acting upon the authority of this passage as he understood it, on 14th December last, promulgated an order authorizing "military commanders" on the frontier to shoot down raiders from Canada, or, if necessary, with a view to their capture, "to cross the boundary between the United States and Canada" and "to pursue them wherever they may take refuge." Before promulgating this order, assuming the passage from Phillimore to be law, General Dix also assumed either that we favored the Southern Confederacy or that our executive was too weak to prevent aggressions from our territory into that of the United States. At the time, there had only been two raids—the raiders in the one case (St. Alban's) having been discharged after deliberation by a judge having jurisdiction in the premises—and one of the raiders in the other (Lake Erie piracy) being at the time under examination by a judge having full jurisdiction over the case. These facts were wholly insufficient to warrant either the conclusion of favoritism or of weakness, and the consequence was that the government in Washington two days afterwards caused the obnoxious part of the order to be cancelled. But let us see the views which the government of the United States have already expressed through their ablest statesman, Daniel Webster, on this subject.

During the rebellion in Canada, the rebels found many sympathizers in the United States. Intelligence was received that an American vessel (the Caroline) was in United States waters, destined to aid the rebels. On the night of 29th Dec. 1837, it was said, Alexander McLeod, a Canadian subject of Her Majesty, headed a party, who in American waters seized the vessel and subsequently fired it and sent the burning vessel over the Falls of Niagara. For this he was apprehended and imprisoned at Lockport, in the United States. Great Britain demanded his surrender, on the ground that if he had any concern in the destruction of the Caroline, he had acted therein as a soldier under the order of superi-

ors, in a military expedition planned and authorized by the Government of Canada, and afterwards avowed and sanctioned by the Imperial Government. The reply was, that his military status under the circumstances could not be acknowledged, and that under any circumstances the Executive Government of the United States could not interfere with the administration of justice by the lawfully constituted tribunals of the country. McLeod afterwards obtained a writ of *habeas corpus* from the Superior Court of the State of New York, but that court would not acknowledge his military status, and refused to discharge him (25 Wendell 483). Subsequently he was, we believe, tried by a jury of the United States, proved an alibi, and acquitted. Thus ended, what at the time appeared to be, a certain cause of war.

Mr. Fox, acting for the British Government, formally demanded "the immediate release" of McLeod, and intreated the President of the United States to take into his most deliberate consideration, the serious nature of the consequences which must ensue from a rejection of the demand. Speaking of the right of invading foreign territory for the purpose of defence, Daniel Webster said, "It is admitted that a just right of self-defence attaches always to nations as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged by the circumstances of each particular case; and when its alleged exercise has led to the commission of hostile acts within the territory of a power at peace, nothing less than *a clear and absolute necessity*, can afford ground of justification." * * * "It will be for Her Majesty's Government to show upon what state of facts and what rules of international law the destruction of the Caroline is to be defended. It will be for that Government to show *a necessity for self-defence, instant and overwhelming, leaving no choice of means and no moment for deliberation.* It will be for it also to show that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it. It must be shown that admonition or remonstrance to those on board the Caroline, was impracticable or would have been unavailing. It must be shown that day light could not be waited for, that there could be no attempt at discrimination between the innocent and the guilty, that it would not have been enough to seize and detain the vessel, but that there was a necessity present and inevitable for attacking her in the darkness of the night while moored to the shore, and while unarmed men were asleep on board, killing some and wounding others, and then drawing her into the current above the cataract, setting her on fire, and careless to know whether there might not be in her the innocent with the guilty or the living with the dead, committing her to a fate which fills the imagination with horror. A necessity for all this the Government of the United States cannot believe to have existed."

People so sensitive to foreign aggression on their territory as our neighbours appear to have been, should be slow to authorize anything of the kind on the territory of others. It must not be left to ordinary soldiers or even to generals, to say when the necessity arises for the invasion of foreign territory. The very act is in most cases, a declaration of war. And we are at a loss to understand what right any general, be his position ever so high, has to issue general orders similar to that promulgated by General Dix, without reference to his Government, and when known only known to be revoked. Generals are no more than the servants of the governing power, and when acts affecting foreign powers are contemplated, the knowledge, if not the command of the Government, should be shown to exist. General Fremont was reprimanded for liberating slaves in a portion of territory under his command. How much more was General Dix, who presumed to authorize encroachment by armed men on a territory not only not under his command, but not subject to the rule of his Government, deserving of censure. No doubt it was done in the excitement of the moment in receipt of the intelligence of the discharge of the St Albans' Raiders. If men high up in authority in the army, are so subject to emotion as to transgress the boundaries of duty, how dangerous would it be to leave to commanders under them and other subordinates, the power to decide in what cases it would be necessary to violate neutral territory. We trust the order of General Dix will be the last as it is the first of its kind.

Our neighbours must have confidence in us. They should not lend a ready ear to those whose aim, if not business, it is to embroil Great Britain and the United States. Let them listen to the memorable words of their great statesmen, to whom we have already referred. "That on a line of frontier, such as separates the United States from Her Britannic Majesty's North American Provinces, a line long enough to divide the whole of Europe into halves, irregularities, violences, and conflicts should sometimes occur against the will of both Governments, is certainly easy to be supposed. All that can be expected from either Government in these cases, is good faith, a sincere desire to preserve peace, and do justice, the use of all proper means of prevention, and that if offences cannot be always prevented, the offenders shall still be justly punished" (Works of Daniel Webster, vol. VI., p. 256).

These are words that ought at the present juncture, to be treasured in every heart. The discharge of the St. Albans' Raiders was a hasty act, and one which all right thinking men deplored; but it was not the act of the Government. It was the act of a judge in the conscientious discharge of his duty, however erroneous may have been his view either of the law or the facts. The Government, instead of adopting it at once, as they might in good faith have done, repudiated it and in good earnest set about the re-arrest of the raiders. The result has been the capture of several of them, and not only this, but the Government has appointed stipendiary magistrates and at great expense sent armed forces to the frontier, for the sole purpose of preventing lawless bands annoying our neighbours from our territories. Burley, the Lake Erie pirate, has been committed by the Recorder of Toronto for extradition under the Ashburton treaty. This decision has since been sustained by four judges of the Superior Courts of law, including two Chief Justices, the most eminent lawyers in Upper Canada. Everything that can be done, has been done or is being done, to demonstrate to the world that we are alive to what is due to our neighbours, with whom we have so long been at peace and with whom we desire so to continue for all time to come. Still more, this action of our Government receives the hearty support of the entire body of our people, who are influenced not merely by motives of self-interest, but of impartiality and right as between the contending parties across the lines.

EXTRADITION TREATY.

Our readers will find in this number two decisions of great importance under the extradition clause of the Ashburton treaty. The one a decision of Mr. Justice Hagarty (*In re Warner*, p. 16,) and the other a decision of Mr. Recorder Duggan, (*In re Burley*, p. 20). The latter has since been sustained by four of the judges of the Superior Courts of Common Law on an application for the prisoner's discharge under a writ of *habeas corpus*. We shall publish the judgments of the Superior Courts Judges in our next issue.

JUDGMENTS.

QUEEN'S BENCH.

Present: Draper, C. J.; Hagarty, J.; Morrison, J.

Monday, December 19, 1864.

Elmore v. *Hind*.—Judgment for defendant to 2nd plea to 1st count; and judgment for plaintiff on demurrer to 2nd plea to 4th count; with leave to defendant to apply to amend

Dennison v. *Knox*.—Appeal from the decision of the judge of the county court of Huron and Bruce allowed. Judgment for plaintiff in the court below, on demurrer to plaintiff's replication.

Swales v. *Sinclair*.—Appeal from the decision of the judge of the county court of Middlesex dismissed with costs.

Leach v *Dunn*.—Judgment for demandant on demurrer to pleas.

McKinstry v *Furby*.—Appeal from the decision of the county court of Northumberland and Durham dismissed with costs.

Leith v *Freeland*.—Judgment for plaintiff, on demurrer to equitable plea of defendant.

Kerr et al. v. *Chapman*.—Rule *nisi* for new trial discharged.

Watson v *Northern Railway Co of Canada*.—Rule absolute for new trial on payment of costs.

Erothers v *Harris*.—Rule absolute for new trial. Costs to abide the event.

Young v *Elliot*.—Rule absolute for new trial without costs.

Riddell v. *Brown*.—Rule discharged.

Bletcher v. *Burn*.—Rule absolute for new trial without costs.

Bletcher v. *Marsh*.—Same facts: same decision.

Bank of Montreal v. *Scott*.—Rule for new trial without costs, unless plaintiff consent to the entry of a *stet processus* on the first count.

McDonell et al. v. *McDonald*.—Rule absolute to enter verdict for plaintiffs.

Cox v. *Jones*.—Rule discharged.

Sullivan v *King.*—Rule absolute to reduce verdict by $30 discharged as the rest; and as each party fails on a material part of the rule, no costs to either party.

Young v. *O'Reilly*—Rule absolute for new trial, upon payment of costs, and bringing amount of verdict into court within six weeks, otherwise rule discharged.

Suart v. *Waddell, Sheriff, &c*—Rule discharged.

Rayson v. *Graham*—Judgment for plaintiff on demurrer to plea of defendant.

Graham v *Southwick*—Appeal from the County Court of Middlesex, dismissed.

Saturday, December 24, 1864.

Keating v. *Cassels*—To be re-argued.

Great Western Railway Co. v. *The Grand Trunk Railway Co*—Judgment for defendants, on demurrer to their plea to plaintiff's declaration.

Furman v. *White*—Rule absolute to rescind judge's order, and to set aside judgment and all proceedings had thereunder, without costs.

In re McDermott and the Buffalo and Lake Huron Railway Co—Rule absolute to rescind judge's order without costs.

In re Secord and the Corporation of the county of Lincoln—Rule discharged with costs.

COMMON PLEAS

Present: Richards, C. J.; Adam Wilson, J.; John Wilson, J.

Monday, December 19, 1864.

Mathewson v. *Henderson*—Rule absolute for a new trial. Costs to abide the event.

Betts v. *Farewell.*—Rule *nisi* for new trial as to interest

Oke v *Cowan.*—Rule *nisi* refused

McLaughlan v *McLaughlan*—Rule *nisi* granted.

Strowger v. *Bank*—Rule *nisi* refused.

Corporation of Thurlow v. *Bogart.*—Judgment for plaintiff on demurrer. Leave to defendant to apply to judge in chambers to amend within a month.

Wilson v. *Keys.*—Judgment for plaintiff on demurrer to plea, and for defendant on demurrer to new assignment bad

Canada Permanent Building Society v. *Mitchell.*—Rule absolute for new trial

Campbell v *Baxter*—Judgment for plaintiff on demurrer to ninth plea of defendant

Rayson v *Graham.*—Judgment for defendant on demurrer.

Crooks v *Dickson.*—Judgment for plaintiff on demurrer to plea

Soules v. *Donovan*—Rule discharged.

Thorne v. *Corporation of Mara and Rama*—Rule absolute to enter nonsuit

The Queen v *McPherson*—Judgment for the Crown. Leave to amend refused

The Queen v. *Parker*—Conviction affirmed, and judgment to be given thereon at next sittings of oyer and terminer for the counties of Huron and Bruce.

Crawford v *Bostwick*—Postea to defendant.

Bank of Montreal v *Taylor.*—*Held*, that a *fi. fa.*, tested 16th May, 1861, renewed on 16th May, 1862, was too late, and so had expired Rule absolute for entry of judgment for net proceeds of amount in dispute, without interest, viz., $3,894 70.

Miller v. *Beaver Mutual Insurance Co.*—Rule for revision of taxation discharged with costs.

Brown v. *Gossage.*—Rule discharged with costs to the plaintiff.

Hall v. *Goslee*—Rule discharged with costs.

In re MacGregor—Rule absolute to discharge applicant from his articles of clerkship

In re Munsie v *McKinley*—*Held* that a judge of a division court may, in an interpleader matter, adjudicate, although title to land be brought in question. *Held*, also, that the judge should, in such cases, adjudicate without the aid of a jury. Rule discharged without costs.

Saturday, December 24, 1864.

Pearson v. *Ruttan.*—Rule absolute to enter nonsuit. Leave to appeal granted.

Gottwalls v. *Mulholland*—Rule discharged J. Wilson, J., *dissentiente*, on some points Leave to appeal granted.

Campbell v *Kempt*—Judgment for plaintiff on demurrer. Leave to defendant to withdraw demurrer, rejoin issuably, on payment of costs in ten days.

Boulter v *Hamilton*—Rule discharged.

Reid v *Reid*—Stands

The Queen v. *McIlroy.*—Rule for new trial discharged

SELECTIONS.

THE CHIEF JUSTICE OF THE UNITED STATES.

Salmon Portland Chase, now Chief Justice of the United States, was born in Cornish, New Hampshire, January 13, 1808. His father having died, he was sent, at the age of twelve, to Ohio, and placed under the care of his uncle, Bishop Chase. After studying for a year at Cincinnati College, he entered Dartmouth College in New Hampshire, from which he graduated in 1829. He went to Washington, where he opened a school, at the same time studying law under the direction of William Wirt. Having been admitted to the bar, he went to Cincinnati, and entered upon the practice of his profession. To this, for some years, he applied himself exclusively, taking no prominent part in politics, although he belonged to the Democratic party. In 1841 he first took a decided part in politics. He was then a member of the Convention of those opposed to the further extension of slavery, and was the author of the Address unanimously adopted by that body. He took a prominent part in all the subsequent movements having this end in view, and was President of the Free Soil Democratic Convention at Buffalo in 1848. The Democratic party in Ohio had at this time assumed the position of hostility to slavery in the Territories. Mr. Chase was chosen United States Senator in February, 1849, receiving the votes of all the Democratic members of the Legislature, together with those of others who were in favor of free soil. Though elected as a Democrat, he declared that if the party withdrew

from its position in regard to slavery he should withdraw from it. This he did formally in consequence of the section of the Democratic Convention held at Baltimore in 1852. When the Republican party was organized Mr. Chase took the position of one of its acknowledged leaders. Soon after the close of his Senatorial term in 1855, he was elected Governor of Ohio. He was re-elected, his second term closing in 1860. He had in the mean time been again elected to the Senate of the United States, and had he taken his place would undoubtedly have been the leader in that body. But he resigned his seat in order to accept the position of Secretary of the Treasury—a position for which he was especially pointed out by the success of his financial policy while Governor of Ohio. Some difference of view between himself and leading members of Congress, led, on the 30th June 1864, to his resignation of this post: since when he had not held office, but has been frequently named by the Bar and country as a probable successor of Taney, C. J., in case of the demise of that aged magistrate. Mr. Chase, who thinks clearly, and writes well, enters upon the duties of his high office at the age of fifty-six, with a sound legal reputation, and with a physical vigor which gives reason to hope that he may be able to perform its duties for a period as long as that of his predecessor.—*Legal Intelligencer.*

ODDS AND ENDS.—CLAYTON'S REPORTS.

I am not conscious that Clayton's Reports—though declared on their face to have been useful for leaders at the Assizes in those times when Puritans, being uppermost, hung Cavaliers, and when Cavaliers, coming back in turn to power, repaid this favor to their Presbyterian friends—are of much practical use, in this day, to any one. The lovers of quaint records, however, may still enjoy them for other merits. A few examples may serve. Sheffield's case gives high ideas of constabularity greatness. Dogberry would have rejoiced in it. Thus it reads:

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

Usley's case records an interesting fact in the history of—turkeys. Thus it runs:

"Trespass. Plaintiff declares that the defendant did break his close, and eat his grass, &c., *cum averiis suis, scilicet*, oxen, sheep, hogs, *avibus, anglicé*, 'turkeys.' And the Judge in this case did not hold that turkeys are not comprised within the general word *averia*, which is an old law word, and these fowls came but lately into England. And upon this it was directed to cover the damages, for otherwise, if the damages shall be jointly given, and it be ill for this of the turkeys, for the reason above said, it will overthrow all the verdict."

Judges, too, it appears, were as decided in that day as they have ever been in ours: though they sometimes hastened, it would seem in such a way as may have recalled Sir Nicholas Bacon's counsel "Stay a little that we may the better speed." *Lee* v. *Sicille* is the illustration.

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

Attorneys, also, seem to have had great ideas of their dignity when walking in the Market-place; and to have been, perhaps, susceptible over much of its infringment. Certainly those gentlemen of the ancient English Bar ought, when they went into such places for a promenade, to have been content with neighbors' fare. Clayton the Reporter, seems to have rather been of this opinion, too. The case is given by him thus:

"Kerifford, an attorney, was plaintiff in battery, and the case was thus: He was walking in the market (as attorneys do too much), and the defendant and he had some angry words there; upon which the defendant did press to go by him; and in going, by reason of the throng of people there, he jostled the plaintiff, and for this he brought this action, in which, if an assault only be proved, it is sufficient. And holden it was no assault, for the touching him or jostle was to another end, namely, to get by in the throng, and not to beat him," &c.

The next case is a sad one, a melancholy warning to all persons who strive for the mastery in litigation. Attend to it all such!

"Memorandum. One Mr. Guye Faux, of the parish of Leathly, a cavalier, had a cause heard about a plunder, upon Monday this week after dinner, and was well in Court and damage against him a hundred pounds, and he was found dead next morning upon the conceit of it, as was supposed."—*N. Y. Transcript.*

UPPER CANADA REPORTS.

QUEEN'S BENCH.

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

IN THE MATTER OF DAVIDSON, SHERIFF OF, AND MILLER, CHAIRMAN OF THE QUARTER SESSIONS FOR THE COUNTY OF WATERLOO

Jury Act, Consol Stat U C, ch 31—Sheriff's fees—Mandamus—demand and refusal—Quarter Sessions—Order on treasurer, how to be drawn.

Where the sheriff travels to summon grand and petit jurors at the same time and serves both during the same journey, he is not entitled (under Consol Stat ch 31,) to charge separate mileage on each set of summonses, but only for the number of miles actually travelled in order to serve all the jurors.

He is entitled, under sec 161, sub-sec. 3, besides his mileage, to $12 for summoning the 48 petit jurors for the County County, and the same sum for the Quarter Sessions, though the same jurors are summoned for both courts, and served at the same time with both summonses.

On application for a mandamus to the chairman of the Quarter Sessions to sign an order on the treasurer for payment of the sheriff's account which had been audited and passed, the chairman stated in his affidavit filed on shewing cause, that he declined to mark the account as audited and passed, and said that he would not sign a check therefor. *Held*, that this removed all objection to the proof of a demand and refusal.

Semble, that such a mandamus could not properly be granted, for, 1, it is not essential that an order of the Quarter Sessions should be signed by the chairman; and, 2, he has no right to draw orders on the treasurer except when presiding in court, and then it is an order of the court, not of the presiding justice.

[Q. B., M T., 1864.]

In Easter Term last *Robert A. Harrison* obtained a rule calling on Mr Miller, chairman, &c, to shew cause why a rule or order of this court should not issue, directing him to sign an order for the sum of $148 60, being the amount of an account of the said sheriff audited and passed by the court of Quarter Sessions in March last; or why a writ of mandamus should not issue commanding the said chairman to sign such order: and why such order as to the costs of this application, and of subsequent proceedings, should not be made as to this court might seem meet.

By the affidavits filed on both sides, it appeared that the sheriff's account, amounting to $148 60, was presented on the 10th of March, 1864, to the Court of Quarter Sessions for the County of Waterloo, and the majority of justices present audited and passed the same, there being a difference of opinion as to two items, which were submitted to vote.

It seemed to be the practice, when an account had been audited and passed, for the chairman of the Quarter Sessions to mark it accordingly, and for the chairman also to sign a check or order upon the treasurer to pay the amount. The chairman stated in his affidavit that he declined to mark and indorse this account as audited and passed, and stated that he could not sign a check for the amount, though he was willing to sign one for the same less two items to which he objected as not warranted by law.

A check was however presented to the chairman for his signature in the following form:

"Quarter Sessions, Berlin, March 10th, 1864. Pay to the order of George Davidson, Esq., Sheriff, one hundred and forty-eight 60-100 dollars.

"To the treasurer County of Waterloo.

"Chairman"

The principal matter in dispute, and on which the refusal of the chairman was mainly grounded, was the right of the sheriff to charge separate mileage for travelling to serve grand jurors and petit jurors, when he travelled to serve both sets of summonses at one and the same time, and the two were served in the course of the same journey. There was a separate precept for summoning grand and petit jurors.

The other item to the allowance of which the chairman objected, arose out of these facts:—The sheriff has a right to charge a sum of $12 for summoning the panel of 48 petit jurors, exclusive of his mileage (Consol. Stat U C, ch. 31, sec. 161, sub-sec 3). He summons the same forty-eight persons to serve as petit jurors for the Court of Quarter Sessions and for the County Court, both courts opening at the same place and on the same day, and both being almost always presided over by the same individual, the judge of the County Court. There are separate summonses served on each juror for each court, though in practice served at the same time. The jurisdiction of one court is criminal, and of the other civil. Though held in the same court room and at the same time, they are as distinct as the courts of *Nisi Prius* are from those of *Oyer* and *Terminer* and General Gaol Delivery. The judge sits alone in the exercise of his civil jurisdiction, but he must have at least one other justice of the peace to sit with him in the Court of Quarter Sessions, and for the passing and audit of accounts he must have six to sit with him. The sheriff charged $12 for summoning 48 petit jurors for the Quarter Sessions and the same sum for summoning 48 jurors for the County Court.

S. Richards, Q C., shewed cause, citing "The Upper Canada Jurors' Act," Consol. Stats. U. C. ch 31, secs. 59, 69, 145, 161, 164; ch 119, sec. 7; ch 121, secs. 3, 4; *The Corporation of Haldimand* v. *Martin*, 19 U.C Q B. 182; *In re Keenahan and Preston*, 21 U. C Q B. 461; *Davidson and the Quarter Sessions of Waterloo*, 22 U. C. Q B 405; *Regina* v *Conyers*, 8 Q B. 999; *Rex* v *Robinson*, 2 Smith, 274; *Regina* v *Justices of Middlesex*, 12 L J. N S 36, M C; *In re Hamilton, Sheriff*, v. *Harris*, 1 U. C. Q B. 513

M. C. Cameron, Q C, and *Harrison* supported the rule, citing *Regina* v. *Law*, 7 E & B, 366; *The Queen* v. *The Board of Police of Niagara*, 4 U. C. Q. B 141; *Ex parte Bird*, 5 Jur. N. S 1009.

DRAPER, C. J.—It has been urged against this rule, first, that no sufficient demand is shewn to have been made upon the chairman to sign the check or order in question, so as to give the sheriff a right to claim the writ of mandamus. And, second, that the law does not impose a duty on the chairman of the Quarter Sessions to sign a check for the payment of money by the treasurer of the county, or at all events not such a check as is set forth in this case, which is on the face of it a mere negotiable draft at sight

Independently of these objections, the case has been argued on both sides on the right of the sheriff to be paid both or either of the sums in

dispute, and it is in my opinion better to express such conclusion as we have arrived at on the substantial matter in dispute, whatever view we may take of the preliminary difficulties.

After examining the clauses of the statutes to which reference has been made, and after carefully considering the opinions expressed in the case of *The Corporation of Haldimand* v. *Martin*, (19 U. C. Q. B. 182) I am of opinion that notwithstanding that there are two precepts, the one directing the bailiff to summon a grand and the other a petit jury, yet the plain intent of the statute is, that for summoning *all* the jurors required for any particular court the officer summoning shall only be entitled to mileage for the number of miles actually travelled. The officer is to be paid out of public funds a sum per mile which has been settled to be a proper allowance for mere travel. Mileage must mean this, and I do not see that it can mean more. For summoning jurors, the allowance is carefully limited by the statute to travel necessarily performed in going to effect the service of such summonses, and in the language of Sir J. Robinson, (19 U. C. Q. B., p. 183) "All that any of the statutes had given was 6d. a mile for the distance necessarily travelled from the county town to make all the services. It was never allowed, I think, to charge from the county town to the residence of each juror, as if the sheriff had made a new start from the county town to go to the residence of each person, though eight or ten jurors might be living near each other in a township thirty miles from the court."

It does not appear to me that the principle is inapplicable because the officer is travelling to serve summonses on twenty-four grand jurors at the same time that he is travelling to serve forty-eight petit jurors, all of whom are to attend at the same time and place for the transaction of business in the same court. When the service is completed he has a right to remuneration for every mile actually and necessarily travelled, but I fail to see why he should, after travelling ten miles and then serving a summons on a grand and another on a petit juror, be allowed to claim for travelling twenty miles; and this is the result of the contention.

The allowance for summoning the forty-eight petit jurors for the Quarter Sessions and County Court appears to me to rest on a different footing, and for the reasons given by Sir J. B. Robinson in the same case in support of allowing two panels of jurors, one for each of these courts. First, the legislature has allowed one panel for each court; next, the offices of the two courts are different, "and in order to make the panels conveniently accessible to suitors, it probably is expedient that there should be one in the office of each court." Then it appears very clear to me that without the legislature had so provided, a summons to attend as a juror at the court of Quarter Sessions would not be a summons to attend at the county court, nor would it subject a person so summoned to be fined for non-attendance at the latter court. As I understand, the jurors are distinctly summoned for each court, and a separate return of the jurors summoned is made to the precept issued by each court, and if required the sheriff must be prepared to shew that each juror was summoned to attend whichever court it may be in which such juror's attendance may happen to be required. It thus becomes, in my opinion, a distinct service, and may be charged for accordingly.

This expression of opinion will, I hope, put an end to the present difficulty.

Then as to the objection that there has been no sufficient demand shewn, the second paragraph of the chairman's affidavit in my opinion puts an end to it. He states that he declined to mark and indorse the sheriff's account, as "audited and passed," and stated that he would not "sign a check therefor." After this, the want of proof of a sufficient demand ought not to be set up. I am quite prepared to overrule the objection.

My present leaning is in favor of the other objection, first, because it does not appear to me necessary for the validity of an order of the court of Quarter Sessions that its orders should be signed by the chairman; and, second, because as a mere check or order of the chairman himself, he has not, that I am aware, any right to draw checks or orders upon the treasurer of the county unless when sitting in court, and as presiding in court; and then the instrument is an order of the court itself, and not an order of the presiding justice.

The auditing and passing of the accounts is the act of the court itself. The endorsing a memorandum of such auditing and passing is no more than an authentication for the guidance of the clerk of the peace in entering the account and its audit in the record of the proceedings, and for drawing up an order of court, when such order is signified, that the treasurer do pay such an account. It seems to me analogous to the granting a rule *nisi* or absolute by any court of record. The court grant or refuse, discharge or make absolute, the rule asked for. The clerk makes the entry in his book, and issues the rule so ordered to the party entitled to it. The judge presiding signs nothing. But for the words in the 3rd section section of chapter 121, Consol. Stat. U. C., I should have felt no doubt, and I am not disposed to construe them as meaning to enact that no order of the court of Quarter Sessions for the payment of money shall be obeyed unless a check or order for the payment of the sum be drawn and signed by the chairman. I should rather hold that the effect of this section is, that where the court of Quarter Sessions have established a practice for their own convenience, that a check or order must be signed by their chairman before an account approved and ordered by the court to be paid shall be liquidated by the treasurer, it must express the act of parliament by which the expenditure is sanctioned. I certainly do not think it was the intention of the legislature that after the court of Quarter Sessions have made a formal order, though erroneous or even illegal, the chairman of that court should have power or authority to delay the execution of or to nullify such order, by withholding his signature. The superior courts can quash an order of Sessions for the payment or appropriation of money, (*Rex* v. *Justices of Newcastle*, Dra. Rep. 204,) and such a mode of proceeding is a more satisfactory mode of disposing of such a question as the present.

* * * * *

(The learned Chief Justice here expressed his

strong disapprobation of the introduction in the affidavits of the parties of remarks impugning each other's motives and conduct.)

Both parties were wrong in suffering their feelings one towards the other to be mixed up with an application to this court for the enforcement of a legal right, and if the court felt that the matters so irregularly brought under their notice required any further notice or proceeding on their part, it might be that they would bring these criminations and recriminations under the notice of the government, who would have the power to apply some remedy if they found the administration of public justice injuriously affected.

In my opinion this rule must be discharged, and under the circumstances without costs.

Hagarty, J.—I agree with the learned Chief Justice. Mileage, as I understand it, is a recompense to the sheriff for the expense and labour of the travel which he has to perform in serving the process of the court. It can hardly perhaps be called a fee; it seems rather an equivalent or reimbursement for toil or travel actually undergone. The legislature has estimated the extent of the reimbursement. I think it must be actually, not constructively earned.

I agree also as to the panels.

* * * * *

(The learned Judge also commented strongly on the unseemly state of facts disclosed in the affidavits filed.)

Morrison, J., concurred.

Rule discharged, without costs.

COMMON PLEAS.

(Reported by S. J. Vankoughnet, Esq., M.A., *Barrister-at-Law, and Reporter to the Court.)*

Brown v. Gossage et al.

Action against maker and four indorsers of a note—Payment by two indorsers—Assignment of judgment under 26 Vic. ch. 45, sections 2, 3.

G. made a promissory note to S. who indorsed it. DeG., D. and W. also indorsed it. B. discounted the note which, not having been paid at maturity, was sued, and judgment and execution obtained against all the parties to it. W. satisfied the execution, whereupon G. and D. paid him (he having been a mere accommodation endorser). S. and DeG. contributing nothing towards the payment. G. and D., thereupon, applied to B., under 26 Vic. ch. 45, secs. 2, 3, for an assignment to them of the judgment so obtained by him, in order to levy from S. and DeG. their share of the liability. This B. refused. S. and DeG. having informed him that by agreement they were to be relieved of liability.

Held, on application by G. and D. for an order to compel B. to assign to them the judgment, that on the authority of *Phillipps* v. *Dickson*, 29 L. J. C. P. 223, decided under Imp. Act 19 & 20 Vic. ch. 97, *sec.* 5, which in this respect is the same as Can. Act, 26 Vic. ch. 45, secs. 2, 3, the court had no power to grant the order.

(C. P., M. T., 1864.)

On the 29th October, 1864, *McBride* on behalf of Gossage and Doyle, obtained a summons in chambers calling upon the plaintiff to shew cause why he should not assign the judgment in this cause to them, or to a trustee for them, on the ground that they, or Wood, one of the defendants, for them, had paid the judgment, and that Scott and DeGrassi, the two remaining defendants, were still liable to them for their just proportion of the debt.

It appeared, that Gossage had made a promissory note to Scott, who had endorsed it; that De Grassi and Doyle had also endorsed, all of them being desirous of obtaining the money upon it for a joint enterprise. Wood, the last endorser, had endorsed it for their accomodation. Being thus endorsed, the plaintiff discounted it, and not being paid at maturity, the plaintiff put it in suit, obtained a judgment and issued execution. Wood satisfied plaintiff, and Gossage and Doyle thereupon satisfied him, Scott and DeGrassi contributing no part.

The object of Gossage and Doyle was to get the judgment and execution assigned to them, that they or their trustee might levy from Scott and DeGrassi their share of the liability.

Moss, on behalf of Brown, shewed cause, and filed Brown's affidavit, stating that he had been paid, as he understood, through Gossage, Doyle or Wood; that on communicating this application to Scott and DeGrassi, they had informed him that by the arrangement they were to be discharged from their liability; and that a suit had been brought in August last by Gossage and Doyle against them on this claim. He expressed his willingness to abide the decision of the court as to whether he should, or should not, assign the judgment to them.

J. Wilson, J., being in chambers, enlarged the summons till the fifth day of term, when *McBride* moved a rule *nisi* as in the summons.

During term *Moss* shewed cause:—The case is not within the statute 26 Vic. ch. 45. It is not the case of a surety for the debt or duty of another, or a liability with another for any debt or duty; but it is the case of the maker and one endorser seeking to enforce payment from two other endorsers of an alleged share of a joint dealing with the plaintiff—a predicament not contemplated by the statute. He cited Imp. Stat. 19 & 20 Vic. ch. 97, sec. 5; 26 Vic. ch. 45 secs. 2, 3; *Phillipps et al.* v. *Dickson*, 29 L. J. C.P. 223.

McBride, in support of the rule:—The defendants were liable with one another for the debt to Brown, which Gossage and Doyle have paid. They can, therefore, avail themselves of the statute, without regard to their relationship to each other on the note; and are, consequently, entitled to the assignment asked for. Scott and DeGrassi cannot be injured, for these applicants cannot levy of them more than their just share; any attempt to levy more would be restrained by the court. He cited 26 Vic. cap. 45 secs. 2, 3; *Phillipps et al* v. *Dickson*, 29 L. J. C. P. 223.

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

The 5th section of the Imperial Statute (19 & 20 Vic. ch. 97) is like the Provincial Statute (26 Vic. ch. 45 sec. 2), on the authority of which this application has been made.

Two questions arise here: 1st. Are these applicants entitled to what they ask? and 2nd. Has the court the power to grant it?

If the court has not the power to grant this application it will be unnecessary to consider the first point.

The case of *Phillipps et al* v. *Dickson* was this: A. and B., two of the managing committee of a mining association, had been sued in separate actions by the solicitor to the association for £581 16s., the balance of his bill of costs. In the action against A. a verdict was taken by consent for £500, payable by instalments. Judg

ment was not to be entered unless A. made default. He did make default, upon which judgment was entered, and he paid the debt and costs. The action was stayed by a judge's order, on payment by B. of £550 by instalments, without prejudice to any rights the plaintiff might have against other persons in respect thereof. A having applied under the 5th section to have the judge's order assigned to him, the court held that they had no power to make an order under that act.

Willes, J., said—"Unless this act expressly gives the court jurisdiction to proceed by way of motion and order, we cannot help the defendant. He may apply to the plaintiffs to assign the order, and if they refuse he can bring an action."

Byles, J., said—"The defendant has his remedy to enforce contribution, without any assignment of the judgment." And *per curiam*—"*The court has no power to make the order.*"

On the authority of this case we refuse the order moved for.

Rule discharged with costs.

MUNSIE v. MCKINLEY ET AL.

Division court—Jurisdiction—Interpleader—Title to land—Jury—Prohibition.

The judge of a division court may, notwithstanding Con. Stats. U. C. ch. 19, sec. 54, subsec. 4, entertain an *interpleader* application to try the question of property in goods, even though the enquiry may involve the title to land. The judge himself must decide such application without the aid of a jury.

[C. P., M. T., 1864.]

In Trinity Term last, *O'Connor* had obtained a rule, calling upon the plaintiff and John Boyd, Esquire, junior judge of the county court of the united counties of York and Peel, to shew cause why a writ of prohibition should not issue to prohibit the said John Boyd, or other person authorized to hold the Sixth Division Court of the said united counties, from proceeding to try and determine, or from further proceeding in a certain interpleader summons issued out of the last mentioned court, whereby one Francis McKinley and the said William Munsie were called before the said division court, in order that the claim of the said Francis McKinley to certain property seized by one of the bailiffs of the said division court, under process issued by the said William Munsie, out of the said division court, against the goods of William McKinley and Sidney McKinley, might be adjudicated upon, upon the ground that the title to corporeal hereditaments came in question, and the said court had no jurisdiction: and why the sum of £20 18s 2d., which the said Francis McKinley had paid into the said division court should not be refunded to him.

The affidavits shewed that the property in dispute was the crops growing on the east half of lot number three, in the tenth concession of the township of King, which one Pottage, the bailiff, had seized in the month of June last, as the property of William McKinley and Sidney McKinley; that William McKinley had conveyed the said land to Francis McKinley for a good and valuable consideration; and that the crops belonged to the said Francis McKinley, who had *been in the continuous possession of the land* from the date of the conveyance; that after the seizure Francis McKinley gave notice of his claim to the bailiff who, thereupon, caused an interpleader summons to issue, calling upon Francis McKinley to appear, and prove and sustain his right to the said property; that on the first day of July last he did appear before *the said John Boyd, Esquire, the said judge*, and, by Mr. O'Brien, who acted for him, objected to the jurisdiction of the court, on the ground that the title to land came in question; that a jury which had been summoned at the instance of William Munsie was also objected to, on the ground that there was no provision of law for juries on such issues: that Mr. Boyd overruled these objections, and the case went to the jury, who found for Munsie; that afterwards a new trial was granted, on condition that the debt and costs should be paid into court, which was done.

During the present term, *Bull*, for Munsie and Boyd, shewed cause. He filed affidavits denying that the jurisdiction had been questioned, and cited, *Denton* v. *Marshall*, 7 L. T. N. S. 689; *Walsh* v. *Iondes*, 22 L. J. Q. B. 137; *The Queen* v. *Doty*, 13 U. C. Q. B. 398; *Richards* v. *Mardenhead Local Board of Health*, 27 L. J. Mag. Ca. 73; *Joseph* v. *Henry*, 19 L. J. Q. B. 369.

O'Connor supported the rule, and contended that in order to sustain his claim, Munsie attacked the conveyance to Francis McKinley, so as to show that the title to the land on which the crops were growing was still in William McKinley, and thus brought the title to the land in question; and that instead of deciding himself on the interpleader matter, the judge had summoned and sworn a jury, for which he had no authority. He cited *Marsden* v. *Wardle*, 3 El. & Bl. 695; *Thompson* v. *Ingham*, 14 Q. B. 710; *Kerken* v. *Kerken*, 3 E. & B. 399; Con. Stats. U. C. ch. 19, sec. 54, subsec. 4, sec. 55, subsec. 2, secs. 61, 175.

Hector Cameron (*amicus curiæ*), cited *Trainor* v. *Holcomb*, 7 U. C. Q. B. 548.

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

The 4th subsection of section 54 of the "Act respecting the Division Courts" provides, that these courts shall not have jurisdiction in actions in which the right or title to any corporeal or incorporeal hereditaments comes in question. But the 175th section provides, that "in case a claim be made to or in respect of any goods or chattels, property or security, taken in execution, or attached under the process of any division court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such process issued, then, subject to the provisions of the 'Act respecting Absconding Debtors,' the clerk of the court, upon application of the officer charged with the execution of such process, may, whether before or after the action has been brought against such officer, issue a summons calling before the court out of which such process issued, or before the court holden for the division in which the seizure under such process was made, as well the party who issued such process, as the party making such claim; and the county judge, having jurisdiction in such division court, shall adjudicate upon the claim, *and make such order* between the parties in respect thereof, and of the costs of the proceed-

ing, as to him seems fit; and such order shall be enforced in like manner as an order made in any suit brought in such division court, and shall be final and conclusive between the parties"

In this clause is embodied this important provision, "that thereupon" (that is, upon the bringing of the party who issued the execution and the party claiming the goods before the court), "any action which has been brought in any of Her Majesty's superior courts of record, or in any local or inferior court, in respect of such claim, shall be stayed; and the court in which such action may be brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels or property or security were so taken in execution, or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issuing of such summons out of the division court"

By the statute the jurisdiction is limited, first, in all personal actions where the debt or damages claimed do not exceed forty dollars, and, secondly, to all claims and demands of debt, account, or breach of contract, whether payable in money or otherwise, where the amount or balance claimed does not exceed one hundred dollars

If an action were brought in a division court to try the right or title to any corporeal or incorporeal hereditaments, or if a personal action, or an action for debt, account or breach of contract, or covenant or money demand, had been brought clearly beyond its jurisdiction, and attempted to be maintained, prohibition would have been granted. But in an interpleader matter, which is collateral to the action, is the jurisdiction limited? A quantity of goods, a single chattel, a piano or a horse, in value much exceeding one hundred dollars, may be the subject of dispute Is there any doubt of the jurisdiction of the division court judges to try whose they are, in an interpleader matter? But the jurisdiction is limited in regard to value to forty dollars in matters of tort, which a seizure of the goods of B for the goods of A must necessarily be The question of whose the land is, may arise on a claim of a landlord for rent from the bailiff, but the statute gives express jurisdiction; or it may arise, as in the case before us, on the question of whose the crops are; but it is a collateral question, arising in a matter collateral to the action Does it therefore, follow that the court has no jurisdiction? There is no express limitation of jurisdiction in the act in reference to interpleader matters; and we may gather the intention of the Legislature that none was intended from the fact, that to enable a bailiff to make one hundred dollars and the costs of the suit, goods to a much greater value must necessarily be seized. To enable the judge to adjudicate upon claims for rent, might involve the question of title, for two might claim for rent adversely to each other. The clause quoted, which stays proceedings in any court for the alleged wrong in seizing, implies the right in the judge to adjudicate upon rights to property and security exceeding in value one hundred dollars, and contains no provision to prevent the judge from proceeding in case the inquiry involves the title to lands

We, therefore, think the judge may, in interpleader, try whose the crops are, although the inquiry may bring the title to the land in question.

In regard to the question as to whether the judge alone is to adjudicate upon the claim in interpleader, or may summon a jury, or whether either party may summon a jury, we think the directions of the statute are plain: "The *county judge* having jurisdiction in such division court *shall adjudicate* upon the claim"

A new trial has been granted by the Division Court judge We cannot presume he will act contrary to the express directions of the statute, and throw off the responsibility cast upon himself But can we grant a prohibition on the statement that he has once improperly sworn a jury, and on the suggestion that he may do so again? We think not; and no doubt the opinion of the court in this respect will prevent the irregularity in future The rule will be discharged.

Rule discharged without costs.

In the matter of Malcolm Ogilvie McGregor, an articled Clerk.

Attorney's clerk.—Discharge from articles—Practice.

A clerk articled to an attorney, who during the continuance of the articles, absconds, will be discharged from his articles.

Delivery of a copy of the rule *nisi* to the town agent of the attorney, and leaving copies at his place of residence and at his office, held sufficient service.

[C. P., M. T., 1864.]

S. Richards, Q. C., obtained a rule to shew cause why an articled clerk, named McGregor, should not be discharged from his articles, by which he was bound to an attorney of this court, who resided at the village of Elora.

It appeared by affidavit, that on the 16th day of March, 1860, McGregor had articled himself to one Gilkison, a practising attorney; and in this and other affidavits it was shewn, that in September, 1864, he had sold his furniture and effects, and left this province for parts unknown, without any intention of returning.

The rule was moved absolute, on affidavits shewing that the rule *nisi* had been served by delivering one copy of it to the town agent of Gilkison, and by leaving another copy at his last place of residence, and also at his office

S. Richards, Q. C., moved the rule absolute, citing Con. Stats. U. C. ch. 35, sec. 15; 1 Arch. Prac. last ed. 40; *Ex parte Wilkinson*, 9 Dowl. 320; *Ex parte Hancock*, 2 Dowl. N. S. 54; *Ex parte Caruley*, 2 Dowl. N. S. 945.

No cause was shewn.

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

The Imperial Stat. 6 & 7 Vic. ch. 73, contains clauses substantially the same as the 14 & 15 sec. of the Con. Stats. U. C. ch. 35.

Before the passing of the Imperial statute, the Court of Queen's Bench had discharged the articles in the case of *Wilkinson* (9 Dowl. 320), which was one precisely like this Neither that statute, nor ours, provides in words for the present case, but they do provide for cases where the attorney discontinues or leaves off practice.

In this case, the affidavits shew that the attorney has virtually left off practice, and has absconded The statute provides for the former, the practice for the latter

The service of the rule being sufficient, we think it ought to be made absolute

Rule absolute accordingly.

COMMON LAW CHAMBERS.

(Reported by R. A. Harrison, Esq., *Barrister-at-Law.)*

Hubbard v. Milne.

Capias after action—Bail in one county—Filing bail piece in another—Defects in original writ and copy—Amendment—Costs.

Held, 1. That a copy of a writ of *capias* after action should like the original writ, *shew* the nature of the cause of action.

Held, 2. That in the note at the foot of the writ the word "*calendar*" *should precede the word* "months" and that the words "including the day of such date" should follow the words "from the date hereof."

Held, 3. That such defects as the foregoing both in the writ and copy served when produced by defendant, may be amended on payment of costs.

Held, 4. That in the warning it is proper to direct the bail piece to be filed in the office of the clerk or deputy clerk of the Crown and Pleas for the county from which process issued although a county different to that in which the arrest is made or bail given.

[Chambers, October 8, 1864.]

J. B. Read obtained a summons calling on the plaintiff his attorney or agent to shew cause why the writ of *capias* issued in this cause, and the arrest thereunder of the defendant, or the copy of such writ served on the defendant, or the copy and service thereof should not be set aside, and all proceedings under and by virtue of said writ of *capias* taken or had, with costs, and why the defendant should not be discharged from the custody of the sheriff of the county of Wellington, or his bail to such sheriff under and by virtue of said writ of *capias*, on the grounds following:

1st. That the bailiff arresting or professing to arrest said defendant, under and by virtue of said writ of *capias*, had not said writ of *capias* at the time of such arrest, or if he had, that such bailiff refused to shew the defendant such original writ at the time of his arrest, although the same was by the defendant requested.

2nd. That the copy of such writ served on the defendant did not, nor did the original writ, shew the nature of the cause of action, as required by the statute in that behalf.

3rd. That such copy of *capias* so served, and said original writ, were irregular, and contrary to the form of the statute in such case made and provided, in stating the *months* to be two *calendar* months from the date thereof, within which time the writ is to be executed, and in leaving out or striking out the words "including the day of *such date*" *from the notice stating* the time within which such writ is to be executed.

4th. That the said writ of *capias* and copy so served as aforesaid were irregular in the warning No. 2 to the defendant, endorsed thereon or subscribed thereto, in stating that the plaintiff should be at liberty to proceed in case defendant having given bail to the sheriff on his arrest, omits to file the special bail piece for his surrender to the sheriff of the county from which the capias issued in the office of the clerk or deputy clerk of the Crown and Pleas for the county of Ontario.

The defendant made oath, that on Saturday, the twenty-fourth day of September, A. D. 1864, *he was arrested by a bailiff of the sheriff* of the sheriff of the county of Wellington, by virtue of a warrant in his hands, purporting to be a warrant directed to the said bailiff, and commanding the said bailiff to take the defendant to answer the requirements of the writ after mentioned, or the supposed copy thereof; that his (defendant's) attorney demanded of the sheriff's bailiff a sight of the original writ of *capias* and a perusal thereof, and that the same was refused, on the ground that the bailiff had not the original writ, by virtue of which the warrant was granted; that defendant when arrested received from the sheriff's bailiff a paper annexed purporting to be a copy of the original writ of *capias*.

The following is a copy of the writ of *capias* as annexed to the affidavit, (the words between the brackets having been struck out):

Upper Canada, county of Ontario [L. S.]
Victoria, by the Grace of God, &c.
To the Sheriff of the county of Wellington, greeting:

We *command you, that you take Robert Milne*, if he shall be found in your county, and him safely keep until he shall have given you bail in the action on promises, which Isaac Brock Hubbard has commenced against him, and which action is now pending, or until the said Robert Milne shall by other lawful means be discharged *from your custody. And we do further command* you, that on execution hereof you do deliver a copy to the said Robert Milne; and that immediately after execution hereof, you do return this writ to our Court of Queen's Bench together with the manner in which you shall have executed the same, and the day of the execution hereof; *and if the same shall remain unexecuted*, [and shall not be renewed according to law] then that you do so return the same at the expiration of [six] two calendar months from the date hereof, [or of the last renewal hereof] or sooner if you shall be required thereto by order of the said court or a judge. And we do hereby require the said Robert Milne that within ten days after the execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our said court, according to the warning hereunder written or endorsed hereon; and that in default of his so doing, proceedings may be had and taken as are mentioned in the warning in that behalf.

Witness, the Honorable William Henry Draper, C. B., Chief Justice at Toronto, the twenty second day of September, in the year of our Lord one thousand eight hundred and sixty four.

N. B.—This writ is to be executed within [six] two [calendar] months from the date hereof, [or if renewed, then from the date of such renewal, including the day of such date, and] but not afterwards.

(Signed) Robert Stanton.

WARNING TO THE DEFENDANT.

1. This suit, which was commenced by the service of a writ of summons, will be continued and carried on like manner as if the defendant had not been arrested on this writ of *capias*.

2. If the defendant, having given bail to the sheriff on the arrest on this writ, shall omit to put in special bail for his surrender to the sheriff of the county from which the writ of *capias* issued, *and* to file the bail piece in the office of the clerk or deputy clerk of the Crown and Pleas for the county of Ontario, the plaintiff may proceed against the sheriff or on the bail bond.

Issued from the office of the deputy clerk of the Crown and Pleas, in the county of Ontario.

(Signed) J. V. Ham,
Deputy Clerk.

Robert A Harrison shewed cause. He filed an affidavit of plaintiff's attorney, shewing the original writ containing the proper cause of action, and explaining that the alterations in the printed form of writ had been made by the deputy clerk of the crown who issued the writ. He argued that there was nothing in the first objection as a ground for setting aside either the writ or the copy; that as the original writ produced shewed the cause of action, the copy also produced by defendant could be amended by it, so as to remove the second ground of objection; that the legal construction of the word "months" as used in the warning was "calendar months," and so the omission of the word "calendar" was immaterial, and that for a like reason the omission of the words "including the day of such date" was immaterial, and so there was nothing in the third ground of objection; that the writ and copy were good as against the fourth objection; and that under any circumstances amendments ought to be allowed on payment of costs, rather than allow the writ, copy or arrest to be set aside He referred to Con. Stat. U. C. cap. 22, schd. No. 6; Con. Stat. U C. cap 2, s. 13; Con. Stat U. C. cap 22, s. 222; *Wilson* v. *Storey*, 2 U. C Prac. Rep. 304; *Keefer* v. *Hawley*, 1 U. Prac. Rep 1.

J. B Read, in support of the summons, abandoned the first ground of objection, but contended for the second, third and fourth, and argued that no amendment should be allowed.

John Wilson, J.—I shall allow the plaintiff to amend the original writ and copy on payment of costs. In the original writ the cause of action is properly stated, and the omission of it occurs only in the copy. That can be amended. Now as regards the office in which the bail piece is to be filed The statute 2 Geo IV. cap. 1 sec. 40, which authorized the appointment of commissioners for taking bail, directed that all recognizances of bail taken before them should be filed in the office of the clerk of the crown in the district where the same were taken, together with an affidavit of the due taking, &c. But sec 8 of the Common Law Procedure Act enacts that all proceedings to final judgment in actions whether transitory or local, shall be carried on in the office from which the first process issues The Common Law Procedure Act must now be held to govern our practice. I think the rule broadly laid down in the act applies to this case, that plaintiff has given the proper warning to the defendant, and that the bail bond should be filed in the office from which the first process issues

Order accordingly.

In the matter of James McGinnes.

Mutiny act—Offence—Form of warrant of commitment. Held, that a warrant of commitment in which it was charged that the prisoner, on the 20th June, 1864, "and on divers other days and times," at the city of Kingston, did unlawfully attempt to persuade one James Hewitt, a soldier in Her Majesty's service, to desert, was bad, for it was impossible to say, upon reading the warrant, how many offences he had committed, or how the punishment was awarded.

[Chambers, October 10, 1864.]

This was an application by a prisoner, brought up under writ of *habeas corpus*, to be discharged from close custody, on the ground that he was in illegal custody.

The prisoner was in the custody of the gaoler of the United Counties of Frontenac and Lennox and Addington, on a warrant, signed by Thomas W. Robinson, police magistrate in and for the city of Kingston, and Jeremiah Meaghar, Esq., one of Her Majesty's justices of the peace of these United Counties, dated the 11th day of August, 1864, in which it was charged that the prisoner, on the 20th day of June, in the year of our Lord 1864, "and on divers other days and times," at the city of Kingston, did unlawfully attempt to persuade one James Hewitt, a soldier in Her Majesty's military service, to desert from Her Majesty's military service, and thereupon the prisoner was adjudged, for his said offence, to be imprisoned in the common gaol of the city of Kingston for the space of five months.

On the 29th Sept., 1864, the prisoner obtained the writ of *habeas corpus* and a writ of *certiorari*, directed to the said justices before whom he was convicted, and to the chairman of the Quarter Sessions of the Peace in and for the said United Counties.

The committing justices returned the proceedings had before them. The alleged conviction, which was written at the end of and immediately after the proceedings, was in these words:—"August 11, 1864, James McGinnes is convicted of attempting to persuade James Hewitt, an enlisted soldier, to desert from the city of Kingston, and is adjudged to be committed for five months in the common gaol" The justices certified that no record of conviction other than the foregoing had been had before them.

The chairman of the Quarter Sessions certified also that there was no record of any conviction of the prisoner among the records of the said court.

Gwynne, Q. C, on reading the writs of *habeas corpus* and *certiorari* and returns thereto, moved that the prisoner be discharged:

1st. Because there was no conviction to sustain the warrant of commitment.

2nd Because the commitment was bad on the face of it for charging the prisoner with the commission of divers offences, the whole of which were punished by five months' imprisonment in the gaol of the city of Kingston, whereas each crime ought to have had its separate punishment

3rd. Because the prisoner was sent to a gaol not known by the laws of this province, for the common gaol in the city of Kingston is the common gaol of the United Counties of Frontenac and Lennox and Addington.

4th. Because the warrant did not follow the conviction.

5th Because the conviction was void, for the proceedings upon which it was founded did not appear to have been held before two or more justices of the peace, in accordance with the Mutiny Act under which the proceedings were had.

S. Richards, Q. C., shewed cause.

John Wilson, J.—The prisoner is entitled to his discharge The commitment is bad on the face of it. The prisoner might have been imprisoned for the offence charged to have been committed on the 20th June, for any period not exceeding six months, and for each of the offences committed on "the divers days and times"

when the other attempts were made, he might have been imprisoned for a like period. I cannot tell how many offences he committed, or how the punishment has been awarded. If the prisoner were brought up again he would be unable to say whether he had been tried or not, for he could not tell for which attempt he had already been imprisoned.

Besides, on looking behind the warrant, no conviction is found to sustain it, nor in fact any conviction to sustain an imprisonment at all. For suppose the very words were used in the commitment which are cited in the alleged conviction, the commitment could not be sustained.

It is to be regretted that a proceeding like this should have been conducted so loosely, and with so little regard to the explicit direction of our own criminal procedure act, as to allow a prisoner to escape, who, but for want of ordinary care, might have suffered the legal punishment of an offence which there is no reason to doubt he committed.

I must, however, on the materials before me, discharge him, and shall so order.

Order accordingly.

In re Asher Warner.

Ashburton Treaty—Con. Stat. Can. cap. 89—24 *Vic. cap* 66 —*Who within the meaning of treaty—Second warrants—Review on the merits.*

Held 1. That a person convicted of forgery or uttering forged paper in the United States who escaped to Canada after verdict, but before judgment, is liable to be delivered over to the authorities of the United States under the Ashburton Treaty, and the Provincial Statute passed to give effect to that Treaty.

Held 2. That it is in the power of a magistrate acting under that treaty and statute after issue of a writ of *habeas corpus*, but before its return to deliver to the gaoler a second or amended warrant, which, if returned in obedience to the writ, must be looked at by the court or judge before whom the prisoner is brought.

Quære. As to the power of the court or a judge on writs of *habeas corpus* and *certiorari* to review the decision of the examining magistrate under the treaty and statute.

[Chambers, October 20, 1864.]

On the 6th October, 1864, a writ of *habeas corpus* was issued by Mr. Justice John Wilson, addressed to the keeper of the county gaol of Essex, to bring up the body of Asher Warner, with the day and cause of his being taken and detained.

On the 20th October, the gaoler produced the body of Asher Warner, and returned that he had been in his custody since the 5th September last, under a warrant from the police magistrate at Windsor, delivered to him that day, and that since the receipt of the *habeas corpus*, and since a former informal return made by him to said writ, setting forth only a copy of the warrant, and on the 15th October instant, the said police magistrate delivered to him the warrant of commitment also annexed; and that on said 15th October, the sheriff had handed to him a warrant under the great seal of the province, dated 1st October instant, and that said Warner was in his custody under said respective warrants

The first warrant stated that Warner was charged, on the oath of persons named, that he had on or about 7th January last, in Ohio, uttered, issued, &c., a certain forged paper (describing it), and directed prisoner to be kept "to be dealt with, and until he shall be delivered from your custody according to law."

The warrant received on 15th October set forth that Warner was charged on the oath of Earl Bell, with having committed within the jurisdiction of the United States of America, the crime of the utterance of forged paper, to wit, with having, on or about the 26th January, 1864, at Cleveland, Ohio, feloniously uttered, offered and disposed of, and put off as true, a certain forged paper, to wit, a certain forged and counterfeit fractional note, commonly called postage currency of the United States, given for the payment of fifty cents, and issued by the Secretary of the Treasury of the United States, with intent to defraud one Edwin E Besman, he the said Warner then and there knowing the same to be false, forged and counterfeit; that a warrant had been issued at Cleveland, and Warner had fled to this province; that he had been brought before the police magistrate on a warrant issued on such informations; that such evidence had been introduced as according to the laws of this province would justify the apprehension and committal for trial if the crime of which he is so charged, had been committed in this province. The warrant then committed him to gaol, "to remain until surrendered according to the stipulations of the treaty existing between Her Majesty and the said United States, ratified August 9th, 1842, and commonly known as the Ashburton Treaty, or until discharged according to law" It was dated 5th September, the same day as the first warrant.

S. Richards, Q C, for the Crown conceded that the first warrant could not be supported, as the conclusion was insufficient on the authority of *Anderson's* case, 11 U. C. C P. 1.

Gwynne, Q C., and *G D Boulton*, for the prisoner, objected, first, that the second warrant could not be resorted to, having been received after the receipt of the *habeas corpus*, and after the informal attempt to make a return. They also urged that, if receivable, it did not disclose an offence within the treaty; that the utterance of forged paper is not shewn in this warrant.

S. Richards, Q C, shewed cause, and cited Hurd on *Habeas Corpus*, 615; *In re Smith*, 3 H. & N. 227; Con. Stat. Can. cap 89; Imp. Act 6 & 7 Vic. cap. 76; 2 Hawk P C 524; *Ex parte Cross*, 2 H. & N. 354; *Regina* v. *Richards*, 5 Q. B 926; *In re Phipps*, 11 W. R. 730; *Ex parte Page*, 1 B. & Al. 572; *Rex* v. *Gordon*, *Ib.* in notes; *Ex parte Eggington*, 2 E. & B. 717.

Hagarty, J.—"A fractional note, commonly called postage currency, of the United States, given for the payment of fifty cents, and issued by the Secretary of the Treasury of the United States," may in my judgment, be fairly assumed to be a subject for forgery, and its utterance the utterance of "forged paper" Our own forgery statute applies to the forgery or uttering of any bill, note, undertaking or order for the payment of money, purporting to be the bill, note or undertaking, &c., of any foreign prince or state, or of any minister or officers in the service of any foreign prince or state, &c., or of any person or company of persons resident in any country not under the dominion of Her Majesty

But it is contended that the second warrant cannot be relied on. Several cases cited by Mr. Richards, and especially *Ex parte Page*, 1 B. & Al. 571; and the case of *Rex* v. *Gordon*, cited in

the notes (where the second warrant was received after the *habeas corpus* issued, and only the day before prisoner was brought up), seems to me to establish the right to rely upon it

Reg. v. *Richards* (5 Q. B. 926) recognizes the right to return and rely on a second warrant, lodged, however, before the *habeas corpus* issued. Lord Denman says, "It is impossible not to see that the gaoler has returned good warrants, upon which the parties may be lawfully detained" *In re Papps* (11 W. R. 730) is also to the same effect

The object of the writ of *habeas corpus* is to prevent illegal detention, and it requires the production of the prisoner, with the cause of his being detained I can see no reason why any valid commitment received by the gaoler up to the moment of his making his return may not be properly looked to. The object of the writ is attained. I do not see that the receipt of the commitment before or after the issue or receipt of the *habeas corpus* can make any difference.

Mr Gwynne objected, that as the magistrate had, after his first warrant, transmitted copies of the testimony to the Government, or even after committing prisonor in the first instance, he was *functus officio* It seems to me that if this objection prevail, it must be equally fatal to all cases in which second warrants or commitments have been so often allowed to be lodged and relied on.

I am therefore of opinion that the return to the *habeas corpus* shows a good cause of detainer on the face of it.

A writ of *certiorari* has brought up all the papers and proceedings before the police magistrate; and I am now asked to review his decision, and to decide that the facts show the case to be not within the treaty.

Assuming that I have the right to review the evidence, the facts are very peculiar

It appeared before the police magistrate that Warner was arrested on this charge in Ohio, by warrant dated 8th January, 1864. That an indictment of six counts, charging both forging and uttering, was found against him; and in the May term of the United States Circuit Court, he was arraigned, pleaded and tried. He was found guilty on the 2nd, 4th and 5th counts for the uttering, &c, and acquitted on the others. He then gave notice of motion in arrest of judgment, and was admitted to bail, to appear from day to day, to abide the order and judgment of the court. On the 23rd May there was an entry that the district attorney appeared; that Warner was then twice solemnly called to come into court and abide the judgment according to his recognizance; that he made default, as did his bail, and their recognizance was declared forfeited The motion in arrest of judgment, with all the reasons of counsel therefor, appear to have been filed on the 24th May. On the 2nd June, a warrant, tested in the name of Chief Justice Taney, issued, addressed to the marshall, to take Warner, and have his body forthwith before the United States Circuit Court, to answer on an indictment presented by the grand jury, "and now pending in said court against him" On the 15th July, it would appear that his surety paid $2,500, the amount of the recognizance; that on the 12th July (according to the clerk's certificate) Mr Justice Swayne, presiding judge, delivered an opinion overruling the motion in arrest of judgment; that no entry was made on the journal of the proceedings of said court, by direction of Hon H V Wilson, district judge, and one of the said Circuit Court judges, for the reason that an application was made for a certificate of opposition of opinion between said judges on the points made on said motion; and that no action has been taken by the court on said application, and that no motion for a new trial has been filed.

If it were necessary for me to review the decision of the magistrate, I should say that the evidence of criminality taken before him was sufficient within the meaning of the treaty and statute But the point chiefly pressed for the prisoner was, that as he had been tried and found guilty, his case was not affected by the treaty.

In addition to the evidence from official documents, the district attorney, who was examined, swore that the motion for arrest of judgment and a new trial had not been disposed of, and the accused had not been sentenced He also swore that the fractional currency was in general use as a circulating medium in the United States.

The general object of the treaty is declared to be, that each power should deliver up to justice all persons who, being charged with the crime of murder, &c, committed within the jurisdiction of either of the high contracting parties, should seek an asylum or should be found within the territories of the other, provided that this should only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged should be found, would justify his apprehension and committal for trial if the crime or offence had been there committed.

Our last statute provides that certain functionaries, on complaint on oath charging any person found within the limits of the Province with having committed any of the crimes mentioned in the treaty, may issue warrants for the apprehension of the person so charged, and may examine witnesses touching the truth of such charge; and then, if the evidence would justify his apprehension and committal (for trial if crime committed here), a warrant may go for his committal to gaol, to remain till surrendered under the treaty, &c. And section 4 provides that the Governor, by warrant under his hand and seal, may order the person so committed to be delivered up, &c, to the United States, to be tried for the crime of which such person stands accused, and such person shall be delivered up accordingly.

I am pressed now to decide that the treaty and statute do not provide for the case of a person against whom a verdict of guilty has been rendered, and who becomes a fugitive between verdict and judgment

I think this depends on the significance of the words, "charged with the crime of murder," &c. Our Sovereign contracts (and Parliament sanctions her contract) to deliver up any person who, being so charged, seeks an asylum on British ground. I do not feel pressed by the words in our local act as to the Governor delivering him up "to be tried for the crime." If he should be a proper subject for delivery, we have nothing to do with the subsequent disposition of the offender, and the words cannot, I think, affect the question.

In what sense, then, did the treaty make use

of the words, "being charged with the crime of murder," &c.—in a strictly technical or in a popular and wider sense? The object of the treaty was doubtless to prevent the ends of justice being defeated by the escape of an offender amenable to punishment. The contracting parties may, I think, be safely assumed not to have desired to deliver up persons suspected of or liable to be arraigned and tried for crime, and to extend complete protection to those actually proved to be guilty thereof. The murderer escaping from the dock immediately on hearing the verdict of guilty would thus find a sacred asylum in Canada, although perhaps a week before he had been delivered up under the treaty to await his trial. Technically speaking, after verdict of guilty, and certainly after judgment, a man is incorrectly spoken of as "charged with the crime." The charge may be said to be merged (at all events after judgment) in conviction. In the treaty it may not have so narrow a construction. As Tindal, C. J., says, in one of the cases cited (7 M. & G. 504), "The word 'conviction' is undoubtedly *verbum equivocum*. It is sometimes used as meaning the verdict of a jury, and at other times in its more strictly legal sense, for the sentence of the court. The question is, in which sense is it used in the statute under consideration? If the verdict of a jury or confession by the party were sufficient to satisfy the statute, a door would be equally open to fraud. So again the word 'acquittal' is *verbum equivocum*. It is generally said that a party is acquitted by the jury, but in fact the acquittal is by the judgment of the court."

It seems to me that I should not hold the words of the treaty to too narrow a construction; that if the words used to carry out a design of general utility can properly be construed so as to give effect to and not defeat that design, I am bound to adopt the larger construction.

In the very late case of *Regina* v. *Tunan et al* (10 L. T. N. S. 499), Chief Justice Cockburn used language worthy of note on this treaty: "It seems to me that the moment you say you will give up offenders with a view to promote the large interests of justice throughout the whole civilized world, as a matter in which all nations have a common interest, you must then look to see what is the extent and scope of the mischief you thus desire to counteract and to prevent. * * * If the language of the statute is large enough to comprehend both these kinds of mischief, it is highly inexpedient to restrict it to one only."

The Chief Justice was overruled by the rest of the court, on the broad question that as piracy on the high seas is an offence against all nations, and therefore triable in England as well as America, the alleged pirates could not be given up under the treaty, which only governs cases where persons had sought asylum in a country where the offence cannot be tried.

I have arrived at the conclusion that the words of the treaty are wide enough to comprehend at all events the case of an offender who has become a fugitive from justice before judgment given against him for the offence.

It is this prisoner's own act that judgment did not at once follow verdict. He tried to obtain a reversal, gave bail to appear, and then flew from justice. I think I may still hold him to be comprehended under the words "charged with the crime of the utterance of forged paper," and that none of the subsequent words used can narrow their meaning.

The provision as to the evidence of criminality, being sufficient to justify his apprehension and committal for trial, if the offence had been committed here, merely furnishes a test as to the kind of evidence required. I hardly think the plea of *autrefois convict* is proved by production of the record and verdict endorsed. Where the statute allows proof of former convictions by certificate, the certificate must state the judgment on it (*Regina* v. *Ackroyd et al*, 1 C. & K. 158, Cresswell, J.); and in *Regina* v. *Drury*, (3 C. & K. 196), the law as to this plea is discussed. Sir J. Coleridge reviews the opinion, and cites Starkie's words: "If defendant, after conviction, remains either without receiving judgment or praying his clergy, he may be indicted for any other offence, or even for the same." And again: "It is clear that in respect of the plea of *autrefois acquit* there must not only be the verdict, but judgment also, to make it of avail."

If my opinion had been favorable to the prisoner on the objections taken, I would have required further time to consider before directing his discharge on *habeas corpus*, if the warrant appeared sufficient. I share the grave doubts entertained by the late Sir John Robinson as to the right of the judges to interfere by this writ, except in the case specially provided by the 4th section of our Provincial statute, Con. Stat. C. cap. 89, when the person is kept over two months after conviction: "It may be a question, since the whole proceeding is founded on a public treaty between two sovereign powers, whether each party to that treaty cannot hold the other to a compliance with its terms without impediment from the exercise of a jurisdiction over the subject matter within either country, beyond what is provided for in the treaty" (*In re Anderson*, 20 U. C. Q. B. 156). I also refer to the same case in 1 U. C. C. P. 1.

Since *Anderson's* case, a statute has been passed here making some alteration in the words as to the judge or magistrate adjudicating on the sufficiency of the evidence (24 Vic. cap. 6); and it must be borne in mind that the last act, withdrawing the case from ordinary magistrates, appoints the judges of superior and county courts, recorders and police magistrates, as persons fit to perform the required duties.

I have to treat Mr. Caron's warrant precisely as that of one of my brother judges; and if the warrant be unexceptionable, I am not free from the doubts above suggested.

In England the judges seem to feel no difficulty on this head, but the machinery provided for carrying the treaty into effect is very different.

As my judgment proceeds on other grounds, I express no positive opinion on this point.

I direct the prisoner to be remanded to the custody of the gaoler of the county of Essex.

See also *Ex p. Bewett*, 6 Q. B. 481, and *Clinton's* case, Law Times, Nov. 1845, cited in Egan on Extradition, p. 48, and Hurd on *Habeas Corpus*, 615.

Order accordingly.

Stinson q. t. v. Guess.

Con. Stat. U. C. cap. 124, s. 2—Action for penalty—County court—Costs.

Held that a plaintiff suing a justice of the peace under Con. Stat. U. C. cap. 124, s. 2, for the penalty of $80, for not returning a conviction, is entitled to full costs without a certificate.

Held, that *O'Reilly* q. t. v. *Allen*, 11 U. C. Q. B. 526, until controverted by a decision of the full court, is binding on a judge sitting in Chambers.

[Chambers, Dec. 21, 1864.]

This was an action brought against defendant, a justice of the peace in and for the United Counties of Frontenac, Lennox and Addington, to recover the sum of $80, as a penalty, under s. 2 of Con. Stat. U. C. cap. 124, for not returning a conviction to the clerk of the peace as required by that statute.

The plaintiff recovered a verdict for the penalty of $80, but obtained no certificate for full costs, and afterwards taxed full costs in October last, before the deputy clerk of the Crown and Pleas at Kingston.

Defendant, in December last, appealed to the principal officer in Toronto, contending that plaintiff was entitled to recover county court costs only, but the master, on revision, affirmed the decision of the deputy clerk of the Crown.

Mr Justice Morrison on 14th December issued a summons, calling upon the plaintiff to shew cause why the master should not be directed to review his revision of the taxation, upon the ground that the plaintiff having obtained a verdict for an amount within the jurisdiction of the county court, the master should have taxed the bill on the county court scale, and not on that of the superior courts.

N. Kingsmill shewed cause, relying upon *O'Reilly* q. t. v. *Allen*, 11 U. C. Q. B. 526.

James Paterson supported the summons, and argued that *O'Reilly* q. t. v. *Allen*, was decided without reference to the Interpretation Act (Con. Stat. Can. cap. 5, s. 6, sub. s. 17), and that it has since been decided by the Court of Common Pleas here, on the authority of the *Apothecaries' Company* v. *Bart*, 5 Ex. 363, that the county courts have jurisdiction in actions for penalties (*In re Judge of Elgin and Widdifield*, 12 U. C. C. P. 111.) He also referred to Con. Stat. U. C. cap. 15, s. 16.

Adam Wilson, J.—I must take the case of *O'Reilly* q. t. v. *Allen*, 11 U. C. Q. B. 526, as a binding authority upon a judge sitting in Chambers. If the defendant think he can successfully controvert that decision, he must apply to the full court. In the meantime I discharge the summons for revision of costs.

Summons discharged.

In re Lemon and Peterson, Attorneys, &c.

Attorney and client—Order for delivery of bills—Costs.

Held, where an order, silent as to costs, was made upon attorneys for delivery of bills of costs to a client, and the bills were afterwards delivered, and a subsequent order made for the taxation of costs of the reference to abide the event, that the costs of the first order could not be taxed as part of the costs of the reference.

Held, also, that no order could be made upon the attorneys by a judge different to the one who signed the first order for payment by them of the costs of the first order.

Quære can attorneys properly be made to pay the costs of an order for the delivery of bills of costs?

[Chambers, Dec. 27, 1864.]

On 7th May, 1864, an order was made on Messrs. Lemon & Peterson, attorneys, to deliver their bills of costs to their client, Mr Clarke, and that they should give their client credit for all sums received for him on 22nd August, 1864.

The bills were accordingly delivered, and referred to the master for taxation, with directions to tax the costs of reference, to be paid "according to the event of such taxation."

The costs were taxed, and more than one-sixth of the amount disallowed. The master in taxing the costs of the reference, disallowed to the client the costs of obtaining the order for the delivery of the bills of costs made in May, 1864.

The client obtained a summons calling on the attorneys to shew cause why the order of 22nd August, 1864, should not be amended so as to give the costs of the order of May, 1864, to the client, or why a separate order should not be made respecting the same.

Paterson shewed cause.

Boyd supported the summons.

Adam Wilson, J.—I see no authority to compel the attorneys to pay the costs of delivering their bills. Such costs were no part of the costs of the reference to the master, for the delivery of the attorney's bill and the taxation of it are two very different proceedings. The statute makes the costs of the *reference* abide the event of taxation; and it is these costs which the master has to certify. I cannot now order the attorneys to pay the costs of delivering their bills; nor do I think the judge could properly have made such an order. But at all events it was for him to have disposed of them by an express direction or by reserving them; and as he has not done so, it must be assumed either that he did not think that the attorneys ought to have paid them, or else that he has adjudicated upon them in effect by having said nothing about them.

I must discharge the summons with costs, to be fixed at ten shillings.

Summons discharged.

CHANCERY CHAMBERS.

(Reported by Alex Grant, Esq., *Barrister-at-Law, Reporter to the Court.)*

Evans v. Evans.

Garnishee order—Costs.

A creditor applying for a garnishee order, is not entitled to the costs of the application.

Burns, for a creditor, applied for a garnishee order. The amount due by the garnishee to the debtor was amply sufficient to pay the amount due the creditor, besides the costs of the application.

S. H. Blake, for the garnishee, consented.

Hodgins, for the debtor objected to paying the costs of the application. He cited *Bank of Montreal* v. *Farrington*, 3 U. C. L. J. 185.

Spragge, V. C., after referring to the authority cited, said that the reason given there was, that the garnishee process was a new remedy, and that therefore the party taking advantage of it should not have his costs, and that, though he did not agree with the reason, yet, as it was the rule in a court of co-ordinate jurisdiction, it would be convenient that there should be a similar one in this court, and that

he should therefore follow it, until a different one should be established with the concurrence of the other members of the court.

Order granted without costs.

Pipe v. Shafer.

Final order for foreclosure—Occupation rent.

Where the plaintiff (a mortgagee) is in occupation of the mortgaged premises, the master should charge him with occupation rent up to the day appointed for payment, so, where it appeared that a mortgagee under such circumstances had been charged with occupation rent, only to the date of the master's report, and had since continued in possession, the final order was refused

This was an application for a final order for foreclosure. It appeared that the plaintiff had been, before the date of the report (February, 1864), and had since continued in the occupation of the mortgaged premises, but that the master had only charged him with occupation rent up to the date of the report. The day appointed for payment was in August, 1864.

Spragge, V. C.—The plaintiff has been in occupation from February till August, and has not accounted for any occupation rent for that time. You must take a subsequent account, and appoint a new day for payment, one month from the date of the order, according to the practice. The registrar can take the account, and he had better charge the plaintiff with rent up to the end of the month.

RECORDER'S COURT.

(Before the Recorder of the City of Toronto.)

In the matter of Bennet G. Burley.

Ashburton treaty—Fugitive felons—British subjects—Belligerent rights—Robbery.

Held 1. That the Ashburton Treaty as to the extradition of fugitive felons and our acts passed to give effect to it, extend to British subjects committing the offences named in the treaty, in the territory of the United States, and becoming fugitives to Canada.

Held, 2. That it is in the discretion of the magistrate investigating into a charge under the treaty against a person accused of one of the crimes mentioned in the treaty, to receive evidence for the defence.

Held 3. That under the circumstances of the case as shewn, as well on the part of the prosecution as the defence that the accused, who took the property of a noncombatant citizen by violence from his person, was guilty of robbery and liable to be surrendered under the treaty.

(Toronto, January 20, 1865.)

The prisoner, Bennet G. Burley, was charged with a robbery from the person of Walter O. Ashley, of a $20 treasury note of the United States, in use in the said States as current lawful money thereof.

The robbery was charged to have been committed in the State of Ohio, one of the United States of America, on the nineteenth day of September, 1864.

The charge was preferred, before the Recorder of Toronto, against the prisoner, under the laws in force in this province respecting the treaty between her Majesty and the United States for the apprehension and extradition, amongst others, of persons charged with the commission of the crime of robbery within the jurisdiction of the said United States.

From the evidence for the prosecution, it appeared that at the time of the committing of the acts complained of, viz., the 19th September, 1864, and for some time previous, civil war existed between the Confederate States of America and the United States of America. Johnson's Island is in Sandusky Bay, two miles from the city of Sandusky, in the State of Ohio, one of the United States of America, and is a military post of the government of the United States, having a military prison, reported and understood to contain between two and three thousand Confederate prisoners of war, and having the United States war vessel *Michigan* guarding the same. Ashley, the complainant, was a resident of the city of Detroit, in the State of Michigan, and a citizen of the United States, and owner jointly with other citizens of the United States of an American steamer called the *Philo Parsons*, an ordinary freight and passenger boat, running between the city of Detroit and the city of Sandusky, touching occasionally at the Canadian ports of Windsor, Sandwich and Amherstburg. Ashley was clerk on the boat. Whilst she was at her dock at Detroit, on the evening of the 18th September, the prisoner Burley had an interview with him on board, by which it was arranged that Burley should be a passenger in her next morning, for Sandusky, with three of his friends, who were to be taken on at Sandwich. The next day, being the 19th September, Burley came on as a passenger at Detroit, and his three friends at Sandwich. They had the address and manners of gentlemen. On the arrival of the boat at Amherstburg, about twenty men roughly dressed came on board and took passage for Sandusky, paying their fare. The only baggage brought on board here was an old trunk, which, as afterwards appeared, contained revolvers and axes. At about four o'clock, and after the boat had touched at Kelly's Island, in the State of Ohio, and had proceeded southerly about two miles towards Sandusky, having about eighty passengers on board, thirty of whom were ladies, the prisoner Burley appeared on deck, armed with a revolver, at the head of about twenty-five persons, who then armed themselves each with two large revolvers, and some with axes, from the old trunk, and took forcible possession of the boat and made prisoners of all on board. Burley threatened the life of Ashley if he refused to submit. A person called Bell, who took a leading part with the prisoner, came up to Mr. Nichol, the mate of the boat, enquired if he had charge, and said to him that as a Confederate officer he seized the boat and made him prisoner. It was declared among the party that the object in seizing the boat was to enable them to capture the *Michigan*, and to release their friends, the prisoners at Johnson's Island. The prisoner caused to be thrown overboard a portion of the pig-iron freight lying on the main deck, of which there were thirty tons, also a sulky. The iron might have interfered with the movements on that deck. The passengers had been assured that they should not be injured. Ashley had told some of the ladies that rebels had captured the boat. Subsequently this armed party arrived with the boat at Middlebass Island, in the State of Ohio, and there, under the command of the prisoner, captured the *Island Queen*, an American steamer, making her fast to the *Philo Parsons*, and making prisoners of all on board, including some twenty five unarmed United States soldiers,

and had them all brought prisoners on board the *Philo Parsons*. Here a promise of secrecy for twenty four hours, as to what had occurred, was exacted from the ladies, and an oath to that effect from the male passengers—all of whom were then liberated and put ashore. They were not prevented from taking their baggage, and it did not appear that, beyond their imprisonment, any one of them had been molested or his effects interfered with. Here the prisoner and Bell went to Ashley, in the cabin of the *Philo Parsons*, and holding their revolvers in their hands, demanded his money. In peril of his life he took from his pocket a roll of bills, amongst which was the $20 bill in question, and which bills the prisoner and Bell took. They then also, in like manner, took about $10 more found in the drawer, consisting partly of silver. All of this money was the property of Ashley and his co-partners, owners with him of the *Philo Parsons*. Ashley was then, about nine o'clock at night, put ashore at Middle-bass Island. The *Philo Parsons*, with the *Island Queen* fastened along-side, at once steered for Sandusky. After proceeding for about half an hour they set the *Island Queen* adrift, it was said scuttled. They were then distant from Sandusky about fourteen miles, by the route they were pursuing. Nichols, the mate, who had been detained in the hold a prisoner for two or three hours after leaving the island, was then called up. He found that they had got the boat into a pond. Subsequently he was directed to steer for Detroit River. He observed a Confederate flag on board. The wind was high. It was said amongst the party that they intended taking the *Michigan*, if they could, but that they had not made much by their coming down. Some of Nichols' clothes had been taken by them. On returning up the Detroit River, one of the party said it was well for some of the vessels then near by that they were in Canadian water, as otherwise they would have boarded them. Some of them asked Nichols if a banker did not reside at Grosse Isle. He replied yes, that one Ives did. It was then said, if it had not been so late they would have gone and robbed him. The boat was next morning, at Sandwich, abandoned by the party, and some of its furniture, which had been removed on shore, was also found there.

At the close of the case for the prosecution, the prisoner asked an adjournment in order to procure testimony on his behalf, and denied on oath the fact of having committed the robbery. To this the prosecution objected, contending that, under the treaty and the acts passed to give it effect, the Recorder was not to try the case, but merely to inquire as to probable cause. The Recorder held that he was bound, under the statute, to receive evidence as to "the truth of the charge," and admitted the evidence.

On behalf of the prisoner, evidence was given of his being a British born subject of her Majesty. He had been at the city of Richmond, in the State of Virginia, one of the Confederate States of America, in May, 1863, also in February and March, 1864, then appearing in the uniform of a Confederate soldier, having a badge of military rank; also of the fact of a military prison existing at Johnson's Island, containing from two to three thousand Confederate prisoners of war, and of one of the prisoners therein in September being then aware of an anticipated movement upon the place for their relief. A document under the official seal of the Department of State of the Confederate States of America, signed by Jefferson Davis and by Judah P. Benjamin, Secretary of State, dated at the city of Richmond, 24th December, 1864, was proved. This instrument recognizes the prisoner as an acting-master in the navy of the Confederate States of America, and alleges that to him, in September last, had been confided an enterprise for the taking of the steamer *Michigan* and the release of the prisoners at Johnson's Island, and that such enterprise had been authorised by the Confederate Government, and it closed in these words:—"And I do further make known to all whom it may concern, that in the orders and instructions given to the officers engaged in said expedition they were specially directed and enjoined to abstain from violating any of the laws and regulations of the Canadian or British authorities in relation to neutrality, and that the combination necessary to effect the purpose of said expedition must be made by Confederate soldiers, and such assistance as they might (you may) draw from the enemy's country." A document under the official seal of the Secretary of the Navy of the Confederate States, signed by the Secretary, S. R. Mallory, was proved. It certified a copy of an appointment of the prisoner, September 11th, 1864, to the office of an Acting-master in the Confederate navy.

This closed the evidence for the defence.

M. C. Cameron, Q. C., for the prisoner, claimed his discharge from custody, and contended that the Ashburton Treaty in no way applied to British subjects; but admitting that it did, argued that the prisoner had done no more than exercise a belligerent right, for which he had the authority of the Government of the Confederate States, and that whether the act was in the first instance authorized by that Government or subsequently adopted by it, the prisoner as a mere political refugee was not within the Treaty. He cited Wheaton's International Law, 6 Edn. 179; 1 Black. Com. 137; *Brown* v. *United States*, 8 Cranch 133.

S. Richards, Q. C., for the United States, contended that what the prisoner did was to commit robbery, and was not justifiable as an act of war, and could not be and was not in fact ratified by the Government of the Confederate States. He cited Wheaton, part 4, cap. 2, s. 4, 5, p. 591 to 596, last ed.; Halleck, p. 412, 427, 456, 457, 458; 3 Phillimore, p. 74; Vattel, cap. 8, p. 165, 358, 359; *Reg* v. *Tunan*, 10 L. T. N. S. 499.

Robert A. Harrison, for the Canadian Government, argued that Burley and those with him had violated the neutral territory of Canada, and could not therefore be allowed to say in the courts of that country that what he did were acts of legitimate warfare, that under any circumstances the property of non-combatants in time of war was protected; that the taking of such property by violence from the person was robbery, and that evidence if any, to excuse the act, could only be weighed before a jury in the tribunals of the foreign country. He cited *Two Brothers*, 3 C. Robinson 164; *Lucas* v. *Bunce*, 4 Am. Reg. 98; *In re Anderson*, 11 U. C. C. P. 60; *Reg* v. *Tunan*, 10 L. T. N. S. 499; *In re Bennett*, 11 L. T. N. S. 488; *In re Kane*, 14 Howard U. S. 103, 137; the case of

the *Chesapeake* in Nova Scotia; the case of *McLeod*, 6 Webster's Works, 247, S. C. 25 Wendell, 483.

Duggan, *Recorder*.—On behalf of the prisoner it is urged—first, that being a British subject, he is not within the provisions of the Extradition Treaty; second, that before and at the time of the committing of the acts charged as the robbery, war existed between the United States of America and the said Confederate States; that such act was one which the prisoner, then engaged in a belligerent enterprise, had by the law of nations a right to commit.

With regard to the first point the language of the treaty, as recited in our Act 22 Vic., chap. 89, of the Consolidated Statutes of Canada, is as follows:—"That Her Majesty and the said United States should, upon mutual recognition by them or their ministers, officers or authorities, respectively made, deliver up to justice *all* persons who, being charged with the crime of murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either of the high contracting parties, should seek any asylum or be found within the territories of the other."

The terms employed are plain and most comprehensive, embracing all persons, without exception or qualification of any kind. What persons, in the words of the treaty, are to be given up? Expressly "all persons who being charged," &c. That the treaty includes, and was intended to include, without exception, all persons, irrespective of country or nation, I entertain no doubt, and therefore hold that the prisoner, on the ground of his being a British subject, is not exempt from its provisions.

Then, as to the existence of war, I consider the existence of war proved. This important *status* is by the Supreme Court of the United States of America, in the judgment given on March 19th, 1863, in the case of the *Hiawatha* and *Amy Warwick*, distinctly recognized to be that of the contending parties. And I do not say that, taking into account the whole proceedings of the prisoner, as shown in the evidence for the prosecution, it may not be justly presumed that he was engaged in the enterprise which he and others acting with him professed. But I do say that it appears clear to me, upon the evidence, that the prisoner's arrangements for the alleged enterprise, the collecting of men and arms, were clandestinely made in this country, and were partially acted upon within this country, by proceeding from it direct with these men and arms into the adjoining territory of the United States of America, and that therein, and by these means, acts of hostility and violence were waged upon its non-combatant inhabitants—this country being happily at peace and in amity with the United States of America and with its people. I consider the above acts a flagrant violation of the public law and a gross injustice done to our country

Then as to the taking from Ashley of his money by violence, and the putting him into peril of his life, the avowed object of the alleged enterprise was the release of the prisoners at Johnson's Island. Johnson's Island is in the State of Ohio, and far away from the scene of war and warlike hostilities. The country around is the abode of non-combatant people, engaged in the ordinary peaceful avocations of every day life, and it was through this country and amongst these people that the alleged enterprise was attempted to be carried out. Would it be lawful for the belligerent enemies of the nation to which these people belong, simply on the ground of being such enemies, without any necessity for the acts by violence, and at the peril of the lives of these people, to despoil them of their effects and plunder them at will? It is said by writers on international law that by the modern usage of nations, which has now acquired the force of law, private property on land is exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field or in besieged towns, and military contributions levied upon the inhabitants of the hostile territory. It is not pretended that the prisoner committed the act complained of under any of the circumstances suggested. Ashley, when deprived of his money by violence, and at the peril of his life, was to the knowledge of the prisoner such a non-combatant as I have described If the prisoner on the occasion in question had an absolute right, without necessity of any kind, then to take Ashley's money at the peril of his life, would he not equally have had the right in like manner by violence to despoil of his money and effects every other non-combatant United States citizen whom he might happen to meet and choose to attack under colour of carrying out, or because of being engaged in, a belligerent enterprise? I do not find that such a right exists, or is sanctioned by the code of Christian and enlightened nations.

I have herein endeavoured to give all the facts and circumstances material on this proceeding, and I have now to state, in conclusion, that I find and determine that the evidence taken before me, according to the laws of this Province, on the charge of robbery here preferred against the prisoner, Bennett G. Burley, would justify the apprehension and committal for trial of the said Bennett G. Burley, according to the laws of this Province, for the said robbery, if the same had been committed in this Province.

Order for committal.

GENERAL CORRESPONDENCE.

Judges—Their pay and their labors.

To the Editors of the Law Journal.

Gentlemen,—I was much pleased to read your correspondent "Observer's" remarks respecting "Our judges, their labors and pay," in your last issue; but at the same time with yourselves, I do not endorse all his views.

It is not true that "the present state of things does not afford sufficien inducemen: to men of the highest rank in the profession to accept judicial offices." Mr. John Wilson and Mr. Oliver Mowat, both with a great

future before them in the profession, accepted judgeships under the present régime. Who would he call men of the "highest rank," if not Mr. Morrison, so long solicitor-general, Mr. Adam Wilson, or Mr. Hagarty? I say nothing of the two Chief Justices, or the Chancellor! This cry that the "highest rank" are not to be had has been so long reiterated as to be almost believed. I know of no refusals of the *honor*—for it is the *honor* which seduces them, regardless of consequences. So in the County Courts, many of our old M. P.'s are there—men who have gone through the ordeals of popular elections again and again, men who have assisted in making laws from year to year—and it is rather too bad that this continual sneer should be kept up that they necessarily take subordinate rank in town or country—in Toronto or elsewhere. I know that some of them repel the idea with considerable energy. Offer any number of the profession, in or out of Parliament, these openings, and you'll see. They will accept without much hesitation.

Let me say that I do not blame "Observer" for the remark. It is one of those popular fallacies floating about which he is not to blame for adopting.

In many of his other observations he is entirely correct. The government have the deaths of Sir James B. Macaulay and Sir John B Robinson on their souls. Like true and well-tried servants, they stood out to the last, but nature could not do otherwise than succumb. Pray look at it. What these judges and their colleagues had to do, would have required thirty judges to accomplish in the State of New York! With all the desire of economy in the separate States of the Union, a principle of humanity seems to dictate a careful distribution of labor in all the departments, so that all men can live through the operation of becoming an official. As for county judges, there is a neglect of them by the Government, and a piling on of work upon them by the Parliament, which seems incomprehensible. If I have been correctly informed, one-third of them are ground down to the lowest possible point in respect to salary, even when the present law enables partial justice to be done them in this respect. Is there one of them who does not regret having accepted the honor of being selected from his fellows for a judicial position? Some do resign, to again try their fortune among their juniors, under many disadvantages, and it is to be hoped that the contempt with which they view the manner in which they and their former colleagues have been treated, may impel them to action in the matter, now that their hands are untied. Mr. Miles O'Rielly, and Mr. Kenneth Mackenzie, could each of them lend valuable aid in putting their old confreres, who dare not risk following their example, upon some fair footing.

Yours, &c.,

December 12, 1864. Coke.

Articled clerks acting in lay employments—Salaries—Effect thereof.

To the Editors of the Law Journal.

Gentlemen,—Will you be kind enough to answer the following questions in your next Journal.

Can an articled clerk during the time of his service hold the office of treasurer, or collector, of a municipality?

Can he act as an official assignee under the Insolvent Act of 1864?

Can he act as an agent of an insurance company?

Can an articled clerk receive a salary?

See Con. Stat. U. C. cap. sec. 3, sub-sec. 1.

Yours, &c.,

A Member of the Law Society, U. C.

St. Thomas, Dec. 8, 1864.

[No person is entitled to be admitted an attorney unless he has, during the whole of the term specified in his contract of service, been actually employed in the proper practice or business of an attorney. Where an articled clerk held the office of surveyor of taxes during the time for which he was bound, although it appeared that this occupied but an eighth part of his time, and that the remainder was devoted to the study of his profession, the service was held not to be sufficient (*Re Taylor*, 5 B & Ald. 538). The court, in disallowing the service, said the service intended by the statute is a service to the master, continuing during the time and term of years specified in the contract of service, and not a service broken by devoting days and hours to a *different* employment accepted by the clerk (*In re Taylor*, 4 B. & C. 344, per Abbott, C. J. See

also *Ex parte Carr*, 3 Q. B. 447; *Ex parte Ridout*, T. T. 2 & 3 Vic: R. & H. Dig., Attorney I. 1, 4; *Ex parte Hume*, 19 U. C. Q. B. 373; *Ex parte Smith*, El. & El. 928; s. c. 5 Jur. N. S. 515; 7 W. R. 451).

The nature of the employment, whether treasurer, collector, official assignee, agent of an insurance company, or otherwise, so long as *not* that of the attorney to whom the clerk is articled, is a matter of no consequence. All such are prohibited if they interfere with that of the due prosecution of the study of the law. The student is not to serve two masters. But we must add that in one case, where an articled clerk had accepted the office of auditor of a poor law union, the duties of which were performed by him as extra labor, *after* the close of business hours, it was held no objection to the service (*Ex parte Llewellyn*, 2 Dowl. N. S., 701). Mr. Justice Williams, in giving judgment, said: "If a man chooses to work extra time, and to make two days out of one, I do not see why he should not be at liberty to do so. The damage is to his own constitution, and not to his master" (*Ib.*). We do not find that this case has been followed in any subsequent case, and would not recommend it to be allowed as a precedent.

We know of nothing which, in Upper Canada, at present, prevents an articled clerk receiving a salary. It is, however, we believe, contemplated by the Benchers to make some regulation on the subject.—Eds. L. J.]

Profession of the law—Multiplication and deterioration—Remedies proposed.

To the Editors of the Law Journal.

Gentlemen,—There is a very general feeling in the profession throughout the Province that something should be done to stop the influx into its ranks, and restrain it within legitimate limits; but no one seems to care about doing anything to prevent it.

The reason for such is, perhaps, with the majority of lawyers, a selfish one, but there are reasons of a far higher nature. It is the duty of every member of the profession to do all he can to elevate the tone and public standing of the profession; and it cannot be denied but that many are admitted, and many seeking admission into its ranks, who are not calculated to raise the standard in public estimation. Many wanting ability to assure an honorable practice are driven to various devices to earn a livelihood, which not only bring their own names into discredit, but also reflect disparagingly upon the profession to which they belong. I have heard it said that a leading counsel remarked "They are only fit to give briefs to a barrister." Granted. But the reputation of the body as a whole suffers from the pettifogging of its members, and each one is injured in the public estimation by the low practices of his brother professionals. Besides, the profession necessarily occupies a very prominent public place, and exerts a very powerful influence upon the community. It follows that the profession owes to the public the duty of admitting to its ranks only such as are capable of fulfilling their duty to that public. No system could be adopted which would secure this in every instance, but we think something might be done to lessen the evil.

There are enough already in the profession to meet the requirements of the public for many years, and a system much more stringent than that now in force might be adopted without injury to the public; and, whatever be the ordeal, many there will be who will pass it.

The public would gain in another respect. Many young men who are better fitted for another place in our social and political fabric, finding the road to the profession less easy of travel, would turn their attention to something else, and add so many more to our mercantile, manufacturing, agricultural, &c., population. And the wants of the country will be better satisfied by increasing these classes than the professions. There must be lawyers. They are as necessary a class as doctors, mechanics, farmers, or any portion of the community which go to make up the whole. No one but a lawyer can tell how much the community is injured by incompetent lawyers.

Assuming, then, that the evil exists, how is it to be remedied? It is said to be in contemplation to require every candidate to make affidavit, in addition to that now required, that he had served five years without fee or reward. This certainly would be a very effectual mode. It would be unfair, however, to such as have commenced their studies, if such a rule were to be adopted, to take effect at once; but no one could com-

plain if the rule were passed now, to take effect immediately after the expiration of five years. New students could not then complain that they had been unfairly treated. I think, however, that the interests of the public, as well as those of the profession, would be better served by fixing a shorter limitation, and requiring every applicant for admission, after a period of, say, two years, to swear that since that time he has not received fee or reward. As to those who have already commenced their time, another rule might also be adopted affecting them, having a shorter period of limitation, after which it would become operative—one requiring a greater amount of legal knowledge for call or admission. Such a rule might be framed to take effect after six or nine months, thus giving intending applicants ample notice to prepare themselves for the extra books. The fees on all of the examinations might also be increased with profit to the Society—suppose double what they now are. It is probable that would prevent half the present average from going up. I am opposed to monopolies, or any class system of rules or government; freedom of thought and action and competition is absolutely necessary for the development of professional ability; but there are limits to everything human. Go beyond these limits and that which before wrought good will now work evil. A small dose of arsenic will sometimes invigorate life, a large dose destroy it. There is no danger in Canada of a lawyer's talents becoming rusty for want of opposition. Contrast the difficulties attendant upon the acquiring the profession in England with our own Province. The simile is bad, for in truth there are no attendant difficulties here. Witness the illustrious names which in every generation the bar has given to England's glory. The way they have to travel is no smooth, easy one like ours. The more difficult a thing is of attaining, the more it is prized when attained, the more valuable it is. There is another auxiliary, one in the hands of the lawyers themselves, but it has passed into a proverb, that he who is his own lawyer has a fool for a client. It is truly surprising the amount of indifference the profession as a body show by their supineness to this state of facts, when so much is said by them about the rapid increase in numbers of their body. Every one talks about it, No one tries to remedy it. No aspirant experiences any difficulty in being articled. There may be some attorneys who exercise a discretion in entering into articles with clerks, and have a choice in whom they will admit into their offices, and permit *to fit themselves* for admission as attorneys. If any such portion there be, the number is few. As a general rule, an attorney will enter into articles with any one who applies, be he gentleman or vulgarian, black or white, educated or ignorant, intelligent or stupid; the rector's son or a stable boy, it makes no difference. The result is that the ranks of the profession are constantly receiving not very desirable recruits. I am no advocate for exclusiveness or caste, according to merit its due wherever found, but the gradations of society are as necessary a result of our existence as a race as is the alternation of day and night of the existence of the earth as part of the solar systems. The position of barrister is an honourable one. This is not, however, the proper place to discuss these questions; but I submit that there should be other requisites for call (and admission also) than mere ability to pass the examinations and pay the fees.

If lawyers were to adopt a uniform rule, and receive no articled clerks without a fee, and then only such as may be a credit to the profession, paying no salaries to articled clerks, a great boon would thereby be conferred upon both the public and the profession. What salaries they do pay, let them pay to clerks not under articles. True, higher salaries would have to be paid, salaries equal to what are paid to clerks in stores and counting rooms; but more time and work could be demanded from such clerks—as much as is demanded from clerks in stores and counting rooms. One such clerk would do the work of two under the present system, and the lawyers, individually, would be the gainers by such a change in the system. But I fear this is too much to expect. Lawyers get their work done by three or four clerks who do not feel themselves under any obligation to do more than six or seven hours' work a day, and the general impression is that the the present system is more economical. I do not think it is. Viewing it either as a present or future gain or loss, there cannot be a doubt but that it will be a

gain in the long run, inasmuch as it would diminish the number of practitioners, and it would be a gain for the time being as well. The leading offices would always get clerks, even if a heavy fee were demanded. If a few lawyers could be induced to adopt this system, others would soon follow. Each one will perhaps say, "I am willing, but what is the use of one trying such a plan." Every individual exercises some influence. Let one or two try it, and others will follow. We would suggest that practitioners in each locality form themselves into a sort of club, and adopt some system in this matter, to which all will agree to conform. It is not much to say that, under the present system, the profession must at least double every five years. It is suicidal to permit the present system to continue. I advocate a thorough change. For admission, let the practising attorney enter into articles with no clerk who does not bind himself to serve his full time without fee or reward, directly or indirectly, and who does not pay a fee to the attorney. Let the fees to the Law Society be doubled, and ditto of the examinations. For call, let fees and examinations be trebled. There is not sufficient distinction between the two professions here. Let there be a greater difference between the requisites for each, and the distinction will soon become more marked. Students, and those intending studying, may say, "Oh, it is all very well for you who are in the profession to talk this way!" This is no argument. Amongst those now in, as well as those who come in, the most able will get the best business. If the system is wrong, it is but a poor answer to say, "It has been so for thirty years, *ergo* it must continue for ever," for if such an argument were a good answer now, it would be equally so in five, ten, fifty, or a hundred years. Our colony is rapidly approaching manhood: let us do all we can for its welfare. If a system which may have worked quite well enough while the colony was in its infancy is found not suitable to our more advanced years, let us not permit any whining sentiment to prevent our applying the pruning knife. Both the country and the profession demand a change; the sooner one is effected the better for both country and profession. Let it be thorough, inaugurating such a system as will answer the wants of this generation.

In making these remarks I am actuated by no selfish motives, but offer them as one of the community, believing it to be for the weal of the community that a thorough change be made. And, granting that individual hardships might result from such a change, it is better that one of the community should suffer, if thereby the community as a whole be the gainer, than that the community should suffer and one be the gainer. And if young men find it easier to earn a living in some other walk in life, they will turn their attention to something else. There is ample scope, our country is young. Commerce, manufactures, agriculture, mechanics, mining, all present wide fields for enterprise and energy. There is no necessity for leaving the country, none other presents better prospects for young men of perseverance and application—given the will, the way can be made. Our resources are ample, requiring but individual thought and effort to develope them. If a portion of the community were forced to turn its attention to something else, the whole would be a gainer.

Much of the foregoing is applicable to the sister profession of medicine. Both professions are too easily obtained. The Law Society is in the hands of able and competent men; if, however, the profession is indifferent, the benchers may well be excused in letting things alone. If the governed are satisfied, the governor may well be quiescent.

December 20, 1864. A Barrister.

[The elevation of our profession as a whole is a praiseworthy object. People may differ as to the means of attaining that end, but all will agree as to the desirability of the object proposed. Without committing ourselves to all the views of our able correspondent, we sincerely recommend his communication to all who have the welfare of our profession at heart, and in this instance the welfare of the profession and of the public is one and the same. But, while endeavouring to redress an evil of one kind, we must be careful not to go too far, and so fall into one of an opposite character. Many men of acknowledged ability have become members of our profession who would have been excluded had there been no salaries and high fees for admission. The standard of excellence may

be, and often is, attained by men whose youth is a struggle with poverty. Let the examination test be raised by all means, but we much doubt the propriety or necessity of raising the money test. We certainly think the examination test is not sufficiently strict. We believe that the facilities for calls to the bar, and for admission as attorneys, are too many. We should commence with increasing the standard of qualification, and if that were not found sufficient, should then be disposed to try some of the other means suggested by our correspondent. The whole subject is deserving of earnest and serious consideration, and no doubt at an early date will receive the attention of the benchers.—Eds. L. J.

REVIEW.

The Insolvent Act of 1864, with Tariff, Notes, Forms, and a Full Index. By James D. Edgar, of Osgoode Hall, Barrister-at-Law. Toronto: Rollo & Adam, Law Publishers, King Street East, 1864.

This little volume must command an extensive circulation. The Act which it contains, and which it explains in annotated form, is as yet little understood, and many are interested in the speedy and correct understanding of it.

To attempt a comment upon an Act which has only been a short time in operation, in the absence of decisions to guide in its interpretation, is no doubt, as the compiler states, "a hazardous undertaking." But we have carefully examined his notes, and find that he has creditably acquitted himself. Some of his notes are of necessity speculative; but the greater part of them are practical.

The note to s. 2, as to persons entitled to make voluntary assignments, is well considered and carefully written; and, so far as we can judge, the conclusion at which the compiler arrives is undoubtedly correct. His note to s. 3, sub-sec. 2, as to the meaning of the word "trader," is one of the best on that subject that we have seen in any work of a similar kind to the one before us. We have not space to transcribe these notes, or we should be glad to do so for the information of our readers and as good examples of what they who become purchasers of this work may expect to receive. The two notes to which we have referred are, perhaps, the most elaborate in the work; but there are many others no less valuable for learning, and as repositaries of decisions early and late bearing upon the points suggested. We have been agreeably surprised to find to what a late period the compiler has brought down his cases. We observe reference to cases reported in current volumes of the *Law Times Reports* and *Jurist*; and at pages 35 and 81 we find noted the decisions of his honor Judge Logie in *Bagwell* v. *Thompson* and *Worthington* v. *Taylor*, as reported in 10 U. C. L. J. 304, 305.

This book, for the purposes of the Upper Canada lawyer, is more suitable than that of Mr. Abbott, which was reviewed by us in our last issue of the *Law Journal*. It would be well for all who can do so to become possessed of both; but those in Upper Canada who require one only cannot hesitate to prefer the work of Mr. Edgar. Those in Lower Canada who require one only will have as little hesitation in choosing Mr. Abbott's work. This might naturally be expected. The laws of Upper and Lower Canada, in regard to civil rights are so essentially different in their origin, that works in relation thereto, written in either section of the Province, must partake largely of the peculiarities in law of that section in which it is compiled. Hence in Mr. Abbott's work will be found many references to French law of as little service to the practical lawyer of Upper Canada as many of Mr. Edgar's references to English decisions will be to the practical lawyer of Lower Canada.

We are disappointed with the Tariff of Fees framed by the judges of the superior courts of Common Law and Chancery in Upper Canada, as compared with the Tariff framed by their brethren in Lower Canada, published in Mr. Abbott's work. Upon turning to Fees to Counsel in the Upper Canada Tariff, we read as follows:—

COUNSEL.

"Fee on arguments, examinations, and advising proceedings, to be allowed and fixed by the judge as shall appear to him proper under the circumstances of the case."

If there were only one judge in Insolvency the rule might not be very objectionable. But when we reflect that there are more than thirty, of different degrees of liberality, having different views as to amounts of fees that ought to be paid to counsel, we have little hope that there will be anything like uniformity. Perhaps there is no subject upon which ever the judges of the superior courts so little agree as on the fees proper in amount for counsel, and certainly no subject more distasteful to them than applications for counsel fees. Whenever they can they throw upon the master the responsibility of settling the quantum of fees to be paid to counsel. We have known one judge *ex parte* to allow and to order a counsel fee of $50 to counsel for defendants at a Chancery hearing postponed at instance of plaintiffs owing to absence of witnesses, where nothing was done beyond opposing the application. We know other judges who would as soon sign warrants for their own committal to close custody as make such an order under such circumstances. We do not undertake to say who is right and who is wrong. We simply advert to the fact to shew how differently men high in authority view remuneration to counsel. This being so, it is hopeless to effect a uniformity of prac-

tice in this matter among county judges, chosen from different sections of the country, and who have little communication with each other in matters appertaining to their office.

We have looked cursorily through the Tariff of Fees for solicitor or attorney as between party and party, and also as between attorney and client. It is in detail, and appears to be framed in a fair and liberal spirit. There are, however, many proceedings authorized in the Act to be done by attorneys and solicitors for which no remuneration is fixed by this Tariff. But in such cases it is declared that the charges are to be the same "as for like proceedings in the Tariff of the superior courts." The analogy afforded is a proper one, and if closely followed will meet the expectations of those who framed the Tariff, and of those for whose benefit it is intended. So fees to sheriff and witnesses are to be the same as in proceedings in the superior courts. The fees to clerks are apparently unobjectionable. So the fees directed to be paid to the "Fee Fund."

We understand that Mr. Edgar's work was for a long time delayed in order to enable him to present the Tariff of Fees to his readers. He could not have done without it. The Act without it was incomplete. Now, however, the volume contains all that is necessary to make it a useful, complete, and reliable manual of our insolvency law. Not the least valuable part of it is the thorough index at the end of the work. A book without an index is a casket, more or less valuable, without a key. Mr. Edgar has done good service by furnishing to his patrons an index which is not merely very full but most skilfully prepared. It is not every man who is capable of preparing a good index. We could name more than one standard legal work which is shamefully defective in respect to its index. The value of a good index to a work of practical utility cannot be over estimated, and we are glad to announce that Mr. Edgar has not been unmindful of this element of value in the book before us. The mechanical execution of the work is also all that can be desired, and reflects credit upon the enterprising publishers—Messrs. Rollo & Adam.

The work is, by permission, dedicated to the Honourable William Henry Draper, C. B., Chief Justice of Upper Canada, as a slight tribute to those varied talents that adorn his high position. No man in Upper Canada is so deserving of the honour. If the judges whose duty it will be to administer the provisions of the Act, while in the discharge of their duties endeavour to emulate the patient industry, dignity, affability and learning of the Chief Justice, much good will be accomplished throughout the several counties of Upper Canada.

INSOLVENTS.

Strobridge & Botham	Brantford.
Sidney Smith	Peterboro'.
Joseph James Inglis	Brantford.
Henry Wilkinson	Brantford.
Amos James Fisher	Peterboro'.
George P. Brewster	Montreal
Hiram Sedgwick	Peterboro'.
John Struthers	Brantford.
Robert H Gardner	Bayfield.
George S Pickell	Belleville.
John C McNaughton	Tp Whitby.
Remy & Co.	Montreal
Samuel Irvin	Woodstock.
Hugh Miller	Toronto
H R Macdonald	Hamilton
Edgar & Melville	Hamilton
Donovan Sills	Tp Fredericksburgh.
Marshall P Rollin	Napanee
Owen S Robbin	Newburgh.
T. McCrossin	Toronto
Robert J. Hamilton	Hamilton.
Milton Davis	Hamilton.

(To be continued.)

CHANCERY SPRING CIRCUITS, 1865.

The Hon. Vice-Chancellor Mowat.

Toronto	Monday	20th March.

The Hon Vice-Chancellor Spragge.

Hamilton	Monday	3rd April.
Brantford	Tuesday	11th "
Guelph	Friday	14th "
Barrie	Wednesday	19th "
Whitby	Monday	24th "
Lindsay	Friday	28th "
Niagara	Wednesday	3rd May.

The Hon The Chancellor.

Sarnia	Thursday	20th April.
Sandwich	Saturday	22nd "
Chatham	Tuesday	25th "
Woodstock	Thursday	27th "
Goderich	Tuesday	2nd May.
London	Friday	5th "
Simcoe	Thursday	11th "

The Hon. Vice-Chancellor Mowat.

Belleville	Friday	5th May.
Kingston	Monday	8th "
Brockville	Thursday	11th "
Cornwall	Saturday	13th "
Ottawa	Tuesday	16th "
Cobourg	Monday	22nd "
Peterborough	Friday	26th "

APPOINTMENTS TO OFFICE.

QUEEN'S COUNSEL.

Nesbitt Kirchoffer, Albert Prince, John Roaf, and Edward D Blake, of Osgoode Hall, Esquires, Barristers-at-Law, to be Queen's Counsel in Upper Canada. (Gazetted, December 31, 1864.)

NOTARIES PUBLIC.

Julius P. Bucke, of Ottawa, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted, December 31, 1864.)

John Cook, of Newmarket, Esquire, to be a Notary Public in Upper Canada. (Gazetted, December 31, 1864.)

Warren Totten, of Paris, Esquire, Barrister at Law, to be a Notary Public in Upper Canada. Gazetted, Dec. 31, 1864.)

ISSUERS OF PASSPORTS.

Joseph Wilson of Sault Ste Marie, Esquire, and Alonzo P Dana, of Brockville, Esquire, to issue Passports and Certificates to British Subjects, about to travel in foreign parts. (Gazetted, December 3, 1864.

David Burn of Cobourg, Frederick Jno Preston, of Chilton, Hugh Richardson, of Woodstock, John Twigg, of Picton, William Grant, of St. Catharines, Chas E Pegley of Chatham, John Alexander, of Barrie H. K. Sanders, of Port Hope Joseph R. Brown, of Dunnville, and Samuel S Macdonnell, of Windsor, Esquires, to issue Passports and Certificates to British Subjects about to travel in Foreign Parts. (Gazetted, December 31, 1864.)

TO CORRESPONDENTS.

"Coke," "A Barrister," under General Correspondence.

"Lex" too late for this number.