DIARY FOR APRIL.

1. Thur. Local School Supt. term of office begins.
4. SUN. *1st Sunday after Easter.*
5. Mon. County Court of York Term begins.
7. Wed. Local Treasurer to return arrears of taxes due to County Treasurer.
10. Sat... County Court of York Term ends.
11. SUN. *2nd Sunday after Easter.*
18. SUN. *3rd Sunday after Easter.*
23. Fri... *St. George.*
25. SUN. *4th Sunday after Easter. St. Mark.*
30. Fri... Last day for non-residents to give list of lands or apportionments from assessment. Last day for Local Clerks to return occupied lands to County Treasurer.

The Local Courts'

AND

MUNICIPAL GAZETTE.

APRIL, 1869.

"SPECIAL" SUMMONS.

It is to be expected that when a new mode of procedure is introduced into any Court, difficulties, or, at least, apparent difficulties will present themselves—and this in a greater or less degree, according to circumstances. In Courts where the practice is so plain and simple as in Division Courts, one would expect that a change in the mode of entry of judgments would be very easily provided for, and more easily understood. When the changes made by the Common Law Procedure in the practice of the Superior Courts had to be worked out, comparatively little difficulty was felt by the judges or practitioners; and thus, comparing small things with great, it seems strange that, in such a simple matter as the recovery of a judgment in a Division Court in certain cases, at the expiration of a certain number of days instead of a day certain, any difficulty could arise. If half the care and ability displayed in the framing of the analogous clauses in the Superior Court Act had been spent on the late Division Court Act, there would be nothing for us now upon which to comment.

By the Act, as it stood before the passing of the late rules, it was doubtful whether it was the intention of the Legislature that judgments coming within the second section of the Act could, in case no notice of dispute should be filed within the proper time, be entered at the expiration of the time limited for the putting in such notice, or whether it was not necessary that the plaintiff should wait until the Court day—the former *return day* of a summons—before he could obtain a judgment. In fact, so doubtful was it that whilst we believe it was the intention of the *framer* of the Act to refer it to the former period, the ordinary rules for the construction of statutes might lead to to the supposition that the intention of the *Legislature* was to make a plaintiff wait until the Court day.

Under these circumstances the Board of County Judges came at once to the rescue, and under the ample powers given to them gave the Act a sensible interpretation. The forms given by the Act are altered by the Board, and rules have been made which in the matter spoken of carry out the reasonable intention of the framer of the fact. The special summons is now to be issued in any case coming within the second section of the Act, and is returnable on the eleventh, sixteenth or twenty-first day, as the case may be, after the day of service; and on the succeeding day the plaintiff, unless the defendent has filed a notice disputing the claim, may require the clerk to sign judgment for the amount claimed. This notice of dispute is not, we apprehend, necessary when the case is one not falling within the second section, as no judgment by default can be entered except it comes within the class of cases therein described. Some persons have been under the impression that the notice of dispute should be filed whenever it was the intention of the defendant to contest the plaintiff's right to recover, even though the claim did not come within the second section. But this is incorrect; there are now, in fact, two kinds of summons, one for all claims within the second section, under which judgment by default may be entered, after the time limited for notice of dispute, and another for all other cases, the practice as to which is the same as it was before the Act.

In another respect also the Board had to remedy not a defect, but rather a mistake in this Act. Section 17 repeals section 93 of the Division Courts Act and makes a provision in lieu thereof. Now it is quite evident that it was intended, as will be seen on comparing the sections, to repeal section 95, and not section 93. The effect was to do away with notices of statutory defences altogether. The Board of Judges, to prevent any mistake on the point and to keep alive the very proper

provisions of the 93rd section, have re-enacted, as it were, the repealed section and added to it a further provision.

Such are some of the results of a careless and hasty legislation. There may be too much even of a good thing. If alterations are to be made in the laws, let them be done after a careful supervision of those most competent to deal with them.

SELECTIONS.

EVIDENCE OF FOOTMARKS.

About four years ago, as we learn from a paragraph in the *Times*, a man named Harris was convicted of cutting out the tongue of a neighbour's horse by night. The evidence was solely that of footmarks. The sentence was eighteen months' imprisonment, which told so on the prisoner that he died. Since then his innocence has, it is said, been completely established.

Of all evidence habitually adduced before magistrates, at quarter sessions, and at assizes, there is scarcely any so common as that of footmarks, and certainly none so worthless. "I found footmarks,—I compared them with the prisoner's boot;—They corresponded exactly." If the tracks *do* exactly fit the boots, they are the strongest evidence that the boots, with probably the prisoner in them, assisted at whatever was done when the tracks were made. Unless the tracks fit *exactly*, they are no evidence at all. Now the value of the above statement, as usually received in evidence from the mouth of a rural policeman, or other witness, will be more correctly appreciated if you consider the process which would be requisite in order to determine that the tracks do fit exactly. A mere eye comparison of the shape of the sole with the edge of the track is clearly not enough, because scores of men may wear their boots into very much the same shapes, especially if made by the same maker. Nor is it enough to count the hob nails, because a country cobbler will very likely have a set pattern and a set number of nails for all boots of a certain size. The orthodox plan, when the print is yet plastic, in wet clay or garden mould for instance, is, we believe, to press the boot down into the print, and then stand aside and see if the fit looks all right. It is true that the sole is the crucial test, and that while in the print no one can see the sole; but the plan has this advantage, that the firm pressure in the soft soil produces in the old print a new one, which, *ex necessitate*, must correspond exactly with the boot. In many cases a very accurate admeasurement with compasses would be necessary to test the correspondencies of the two, and in many other cases, from the imperfection of the print the test is impraticable.

The prisoner's advocate ought always to examine the witness minutely as to the process by which he satisfied himself that the boot corresponded with the track. A few months ago a case occured in which a prisoner, being charged before a clerical magistrate, on the evidence of a constable who deposed in the usual form that the prisoner's boot fitted the footmark to a nicety, the worthy clergyman took the boot in his own hands and personally compared it with the marks. The first thing he did was to look at the nailmarks, when to his surprise he found that neither in number nor pattern did they correspond with the nails in the boot. The prisoner, of course, was acquitted; but, unless the magistrate had made this discovery, he would, in all probability have been committed on this blundering evidence.—*Solicitors' Journal.*

SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

Mortgages — Fraud—Assignment.—An insolvent person executed to his son a mortgage for $1000, of which $600 was a sum fraudulently pretended to be due to the mortgagor's wife.

Held, that, even if the remaining sum was really due to the mortgagee, his concurrence in the fraud as to the $600 rendered the mortgage void in *toto*.

The assignee of a mortgage is entitled to set up the defence of a purchase for value without notice.

A party intending to purchase a mortgage should communicate with the mortgagor before purchasing; and if he refrains from doing so, his assignment is subject to all equities there were between the mortgagor and the mortgagee, though the assignee may not have had actual notice of them.

The assignee of a mortgage, impeached as having been made without consideration and to defraud creditors, in setting up the defence of a purchase for value without notice, must deny notice that the mortgage was given without consideration; and a mere denial of notice of the claim of the impeaching creditor is insufficient.—*Totten* v. *Douglas*, 15 Chan. R. 126.

Mortgages—Improvements by Purchasers under void Sales—Arrears of Interest.—Improvements made by a defendant under the belief that he was absolute owner, are allowed more liberally than to a mortgagee who improves knowing that he is but a mortgagee.

A person purchased under a power of sale in a mortgage, but the sale was irregular, and was set aside:

Held, that, as a condition of relief against him, he should be allowed for all the improvements he had made under the belief that he was absolute owner, so far as these improvements enhanced the value of the property, but no further; and that he was not restricted to such improvements as a mortgagee in possession would have been entitled to make, knowing that he was a mortgagee.

During the lifetime of a mortgagor, the mortgagee has no lien on the mortgaged property for more than six years' arrears of interest; though he may have a personal action on the covenant for more; but, in this country as well as in England, after the mortgagor's death the mortgagee to avoid circuity may, as against the heirs, tack to his debt all the interest recoverable on the covenant.—*Carroll* v. *Robertson*, 15 Chan. R. 173.

Manufacture of Timber.—To make valid against creditors of the vendor, a sale of timber to be cut down by the vendor, there must be an actual delivery to the purchaser, after the timber is cut down, followed by an actual and continued change of possession as in the case of other chattels.—*McMillan* v. *McSherry*, 15 Chan. R. 133.

Will.—In the interpretation of a will, extrinsic evidence of surrounding circumstances, to shew what a testator intended by his will is admissible; but declarations by the testator of what he intended by his will, will not be received for that purpose.—*Davidson* v. *Boomer*, 15 Chan. R. 218.

Executors, Compensation to.—Since the passing of the Act authorizing the Judge of the Surrogate Court to allow compensation to executors and trustees, (22 Vic. ch. 93, sec. 47, Con. S. U. C. ch. 16, sec. 66,) it has been the settled practice of the Master here, in passing the accounts of executors to allow them compensation for their "care, pains, trouble, and time, expended in and about the executorship" without an order from the Surrogate Judge allowing the same:—Where, therefore, an executor, pending an account before the Master, obtained such an order from the Surrogate Judge, and the Master allowed the amount of compensation mentioned therein without exercising his own judgment as to its propriety or reasonableness; an appeal, on that ground, from the report of the Master by the creditors of the estate, was allowed and the executors ordered to pay the costs thereof.—*Biggar* v. *Dickson*, 15 Chan. R. 233.

Investigation of Title—Missing Title Deed—Title by Possession.—Where there was no other proof of the execution of a conveyance, which constituted a link in the chain of title, than a memorial purporting to be executed by the grantee in such conveyance, the Court refused to force the title upon a purchaser.

In order to make a good title by possession it must be shewn that the *whole* of the land has been actually cleared or occupied for a period of at least twenty years.

A title by possession can only be made to so much of a parcel of land as has been actually cleared or occupied for twenty years.—*Wishart* v. *Cook*, 15 Chan. R. 237.

Landlord and Tenant.—It is not necessary to the validity of a notice to quit, given by the general agent of a landlord to a tenant, that the agency should appear on the face of the notice.—*Jones* v. *Phipps*, Law Rep. 3 Q. B. 567.

Master and Servant.—The defendant was engaged in constructing a sewer, and employed men, with horses and carts. The men were allowed an hour for dinner, but were directed not to go home or to leave their horses.. One of the men, however, went home, about a quarter of a mile out of the direct line of his work, to dinner, and left his horse unattended in the street before his door. The horse ran away, and injured the plaintiff's fence. *Held*, that the jury were justified in finding that the man was acting within the scope of his employment.—*Whatman* v. *Pearson*, Law Rep. 3 C. P. 422.

Misrepresentation.—It is not sufficient, in a bill praying to be relieved from a contract for shares in a company on the ground of being induced by misrepresentation in a prospectus, to allege generally that the prospectus contained false statements, by which the plaintiff was deceived and drawn into the contract; but the precise misrepresentation must be distinctly stated, and also that it formed a material inducement to the plaintiff to take shares.—*Hallowes* v. *Fernie*, Law Rep. 3 Ch. 467.

Railway.—1. A railway company are bound to take every reasonable care to prevent danger to their passengers from cattle coming on to the line, but they are not bound to maintain fences sufficient to keep cattle off the line under all circumstances.—*Buxton* v. *N. E. Railway Co.*, Law Rep. 3 Q. B. 549.

2. Where a railway company have diverted a road, *ultra vires*, but with a *bona fide* view to the convenience of the public, a court of equity wil

not compel them to replace the road, if the result will be to cause greater inconvenience to the public or to the complaining section of the public. In such a case, an information was dismissed, but without prejudice to a proceeding at law.—*Attorney General* v. *Ely, &c., Railway Co.,* Law Rep. 6 Eq. 106.

INTERPLEADER.—Bill of sale of merchandise examined by S. and G., the consideration of which was for a pre-existing debt and cash he then advanced by S. to them. It was admitted, that they were unable to pay their debts in full. S. and G. made the transfer at the request of the plaintiffs; and with the cash they received, they paid one debt they owed by 10s. in the £, and other small debts they paid in full in cash. The rest of the cash they offered, though not accepted, to pay 10s. in the £ to C. & C., who were holders of the notes sued on by the defendants in the original action.

The jury were told that if the object of the sale was merely to prevent other creditors from enforcing their claims, or of giving plaintiffs a preference as against the defendants or other creditors, it would be void.

Held, on the authority of *Wood* v. *Dixie*, 8 Q. B. 892, and *Graham* v. *Furber*, 14 C. B. 414, that it should have been left to them to say whether the sale to plaintiff was *bona fide*, for the purpose of relieving the execution debtors from the necessity of a forced sale of their goods, or for the mere purpose of protecting them from the claims of other creditors, in which latter case it would be void. But as the jury found generally for the plaintiffs, a nonsuit was refused.

Held, that it was no objection to the jurat of an affidavit that it did not shew that the two barginees were severally sworn.—*Snider* v. *Bank of Toronto*, 5 L. J., N. S., 100.

DEED—TESTAMENTARY PAPER—WILL REVOCABLE—CANCELLATION OF ADMINISTRATION—PROBATE.—One S. died in 1868, leaving his next of kin, who, believing that S. died intestate, obtained administration. G. afterwards found an agreement and will under seal of S. in the same paper in the possession of F. the only witness to its execution. By this paper S. agreed to convey part of a lot of land to G. on certain conditions, S. owned at the date of the paper, the other half of the same lot, and also some personalty. By this paper, in case the conditions were performed, S. devised *all his real* and personal estate to G. and his heirs. Some years after the date of the paper, S. conveyed the other half of the lot to G. the devisee, and took a mortgage for the balance of the unpaid purchase money.

Held, that this paper was a will and not a deed and therefore not revocable, but although the subsequent conveyance to G. and reconveyance by way of mortgage to S. might have the effect of revoking *pro tanto* the will relating to the realty—yet it had not the effect of revoking it as to the personalty.

Held, also, that it was a good will of the personalty, notwithstanding it devised real estate and had only one witness to its execution.

Held, also, that the letters of administration must be brought in and cancelled, and the paper admitted to probate.—*In re goods of Snider, deceased*, 5 L. J., N. S. 101.

MAGISTRATES, MUNICIPAL, INSOLVENCY, & SCHOOL LAW.

NOTES OF NEW DECISIONS AND LEADING CASES.

MUNICIPAL LAW—BILL BY RATEPAYER.—Where a by-law was passed by a township council for raising a loan for a special purpose, it was *held* to be contrary to the duty of the township Treasurer to apply the money to any other corporate purpose.

But where, in such a case, the application had been actually made before the filing of a bill by a ratepayer complaining of the application, and such application had been made in good faith, in discharge of a legal liability of the township, and the township council approved of and adopted the payment, a bill by a ratepayer to compel the Treasurer to repay the amount and personally bear the loss, was dismissed.—*Grier* v. *Plunket*, 15 Chan. R. 152.

TAX SALES.—After a sale of land for taxes for 1859 and following years, a subsequent sale for the taxes of 1858 was held invalid, and the purchaser under the first sale was held entitled to retain the land free from past taxes.

A municipal officer charged with some irregularities in the performance of his duty, but not guilty of any fraud or intentional wrong, is an improper party to a bill to set aside a tax-sale on the ground of such irregularities.—*Mills* v. *McKay*, 15 Chan. R. 192.

A wife cannot execute a deed; which is, perhaps, the reason why Shakspeare, who was a first-rate lawyer, made Macbeth do the deed, which lady Macbeth would have done so much better, had not a deed done by a woman been void to all intents and purposes.—*Comic Blackstone.*

ONTARIO REPORTS.

QUEEN'S BENCH.

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

In re Burrowes.

Division Court—Prohibition—Estoppel—Entitling of affidavits—Adjournment by Division Court Judge of hearing of cause to Chambers—Reading of written judgment by Clerk—Examination of parties under oath.

In an application for a prohibition against the Judge of a Division Court, for an alleged acting without jurisdiction in a cause before him in that Court, the affidavits upon which the rule *nisi* was granted were entitled, "In the matter of a certain cause in the First Division Court of the Counties of L. & A., in which E. A. M. is plaintiff, and B. D. is defendant:" *Held*, following *Hargreaves* v. *Hayes*, 5 E. & B. 272, that the entitling of the affidavits in this way was unobjectionable.

A Judge of the Division Court may, under the 86th section of the Division Court Act, *adjourn the hearing of a cause* from a regular sitting of the Court to his Chambers within the territorial limits of the division, and such adjournment of the hearing of the cause is in effect, if not objected to by the parties, *an adjournment of the Court to hear that cause.*

Where a Judge of the Division Court, at the close of the hearing of a cause before him, announced that he would take time to consider, and deliver judgment at his Chambers on a subsequent day, without naming an hour, and before that day sent a written judgment to the Clerk of the Court, who read it in his office to the agents of both parties on that day:

Held, a sufficient delivery of a written judgment within section 106 of the Division Court Act.

A Judge of the Division Court may, under section 102 of the Division Court Act, examine under oath plaintiff or defendant in any cause before him in that Court, although the demand exceed eight dollars.

Held, also, that an applicant for a prohibition against a Judge of the Division Court for excess of jurisdiction, who has appeared at the trial, cross-examined witnesses, argued the case before the Judge, and taken no exception, at the time, to the jurisdiction, is precluded by his own act from objecting to the jurisdiction after judgment entered and execution issued in the Court below.

Diamond obtained a rule *nisi* calling on J. J. Burrowes, Esq., Judge of the County Court of the County of Lennox and Addington, and Ezra A. Mallory, plaintiff in a certain cause in the First Division Court of the said County against Barnabas Diamond, to shew cause why a writ of prohibition should not issue directed to the said Judge and the said Ezra A. Mallory, prohibiting any further steps being taken for the enforcement of the judgment pronounced in the same cause, or the execution issued thereon, on the following grounds.

1. That the Judge exceeded his jurisdiction in hearing and determining the said cause, by adjourning the same from open Court to his Chambers to a subsequent day, and, before that day arrived, making a further adjournment to another day, on which latter day he heard evidence in the cause at his Chambers, which he had no power to do.

2. That the Judge exceeded his jurisdiction in pronouncing and delivering his judgment out of open Court, at the Clerk's office, without having first in open Court fixed a day and hour for pronouncing and delivering such judgment.

3. That the said Judge called plaintiff as a witness in his own behalf in said cause, wherein the claim or demand exceeded eight dollars.

4. That the written judgment so delivered did not fix any day on which defendant was ordered to pay the amount thereof, and was otherwise irregular, illegal and incapable of being enforced.

5. That said judgment was never duly pronounced and delivered, and the said Judge was *functus officio* when he did pronounce and deliver the same.

6. And on grounds disclosed in affidavits and papers filed.

The facts appearing from the affidavits filed were to the following effect: A summons was issued in the suit on 22nd February last, out of the First Division Court of the County of Lennox and Addington, in favor of Ezra A. Mallory against Barnabas Diamond, commanding the latter to appear at the sittings of the said Court, to be holden at the Town Hall, Napanee, on Saturday, the 21st March, 1868. On the return of the summons the defendant appeared and the cause was called on for hearing on that day, when several witnesses were examined on behalf of the plaintiff, and the case, together with the Court, was adjourned to the next Monday, the 23rd of March. On Monday, the 23rd, the defendant attended when other witnesses were examined, and the Judge again adjourned the cause until the Friday following, viz., the 27th March, to be heard at the Judge's Chambers in the Court House, in Napanee, and not in the Town Hall. The object of that adjournment was to obtain the attendance of the said Mallory, whom the County Court Judge wished to examine. Mallory had been subpœnaed to attend the sittings of the Court of Oyer and Terminer at Kingston, and could not be present on the day mentioned, the 27th March, on which the Judge, on or about the 25th March, directed the hearing of the case to be further postponed to the 3rd of April, at his Chambers in the Court House, and notice was given of the time and place to defendant's agent, who informed the defendant thereof.

On Friday, the 3rd of April, Mallory, with his counsel, and Diamond, with his counsel, attended before the Judge at his Chambers, and the Judge called Mallory as a witness, and swore and examined him, and he was cross-examined on behalf of Diamond. After Mallory had been sworn, the Judge asked Diamond if he would be sworn in the cause, but he declined, saying that Mallory had stated the matters of the suit correctly. After Mallory had been sworn, Diamond's counsel argued the case for him, and Mallory's agent argued on the other side. The Judge said he wished to consult the authorities referred to, and proposed that he should give a written judgment on Tuesday, 7th April, to which both agents and parties assented.

The Judge made up his judgment, and enclosed it in a sealed envelope, with the papers, to the Clerk of the Court, in the usual way, before 7th April, and the judgment was exhibited by the Clerk to the parties and their agents on that day. The Judge had endorsed on the summons, before it was sent to the Clerk, "Judgment for the plaintiff for ninety-nine dollars and three cents and costs, to be paid on the 18th day of April, 1868. Tax as many witnesses as are sworn to in affidavit of disbursements.

J. J. Burrowes."

There was also a written judgment, giving the grounds of his decision *in extenso*, a copy of which was filed on this application.

One of the parties who acted as agent for Diamond, stated in his affidavit that on the 23rd of March the Judge expressed his intention to

adjourn the cause to his Chambers and then and there adjourn the *further hearing* of said cause to his Chambers on Friday, 27th March, but the Court was not then adjourned by the said Judge, and other causes were afterwards, on the same day, immediately thereafter, called on and disposed of by the Judge in Court.

RICHARDS, C. J., delivered the judgment of the Court.

[After reviewing the authorities, the judgment continued.]

Here the affidavits are entitled, "In the Common Pleas. In the matter of a certain cause in the First Division Court for the County of Lennox and Addington, in which one Ezra A. Mallory is plaintiff, and one Barnabas Diamond is defendant."

After the decision of the Court of Queen's Bench, in *Hargreaves* v. *Hayes*, I think we cannot properly hold that the affidavits filed on moving the rule should be rejected. The decided opinion expressed by the majority of the Judges in that case, that the words there objected to would not prevent the affidavits being used as the foundation for an indictment for perjury, will apply in this case.

Some of the older cases say that the Court will not nicely weigh and discuss the question whether perjury will lie on an affidavit or not. If a party departs from the well-known established forms and rules as to entitling affidavits, the Court will reject them. Though inclined to think this is the safest, and perhaps best rule to abide by, yet I am not, as already intimated, prepared to reject these affidavits.

Then, as to the main question, whether the County Court Judge has so far departed from the proper usage and practice in relation to the proceedings in the Division Court that we must grant the prohibition now sought for, on the ground that his proceedings are entirely void.

No doubt, if he has acted beyond his jurisdiction we must interpose. It is indisputable in this matter that Judge Burrowes had jurisdiction over the subject matter of the claim between the parties in the Court below; that at the time the proceedings were instituted and the decision given by him he was the County Judge of the County within which the proceedings took place, and the whole adjudication and proceeding took place within the Division of the Court named of which he was the Judge; so that territorially, and in relation to the subject matter of the suit, he had jurisdiction; and up to the time of the adjournment of cause, on the 23rd of March, no objection can be taken to his proceedings. Let us see what took place then. On the 23rd of March he had heard all the witnessses that the parties were desirous of bringing before him. He called the plaintiff in the suit, who was not then present, whom he wished to examine under oath, and he then announced, in presence of the defendant, and his agent, who attended on his behalf, that he intended to adjourn the cause, and he did then and there "adjourn the further hearing of said cause to his Chambers, on Friday, the 27th day of March;" but the Court was not then adjourned. No objection was made at the time, or any dissent of any kind expressed to the proceedings. Defendant's agent thinks on 25th March he was notified by the plaintiff's agent that the Judge had further adjourned the hearing of the cause from the 27th of March to the 3rd of April, at the same place, and he advised defendant of this.

The further adjournment was caused by Mallory being obliged to attend at the Kingston Assizes as a witness. On Thursday, the 3rd of April, they all attended at the Judge's Chambers in the Court House, plaintiff and his agent, defendant and his agents, for he had in the meantime obtained the assistance of another professional gentleman of considerable eminence, Mr. Jellett, of Belleville. Mr. Mallory was examined by the Judge, and cross-examined by Mr. Jellett for the defendant. The Judge offered to swear the defendant, but he declined, saying Mr. Mallory's statement was correct. The agents and counsel for both parties then addressed the Judge.

The Judge stated he would consult the authorities, and give his judgment in writing on Tuesday, the 7th of April. To this no one objected.

The affidavits made by Mr. Diamond state that the Judge appointed Tuesday, the 7th of April, to deliver his judgment, but did not name any hour.

Mr. Preston, who acted as Diamond's agent, said the Judge appointed the following Tuesday, 7th April, to give his judgment in the said cause, in writing, at his Chambers aforesaid.

The first adjournment to the 27th March, made in open Court, in presence of the parties, is spoken of in the affidavits as adjourning the hearing of the cause to his Chambers. I presume he could have adjourned his Court to his Chambers. They were in the Court House, which was in the same village as the Town Hall where the Court was held, and I see no reason why he could not adjourn the Court, if he thought proper, to his Chambers, it being within the Division. We can suppose the Town Hall struck with lightning, and rendered incapable of being used; unless the Judge could adjourn the Court, the business could not go on. I see no good reason why he might not adjourn the Court and hold it in his Chambers, if need be, nor why he might not adjourn the hearing of a particular case to his Chambers, if it suited the convenience of all parties, and they did not object to it.

The 86th section of the statute refers to the Judge adjourning *the hearing of any cause* on such conditions as he may think fit, and for all practical purposes why may not that adjournment be held to constitute an adjournment of the Court as to that cause? The subsequent notice of a further adjournment to the 3rd of April being communicated to the parties, and virtually sanctioned by them by their attendance on that day, and without objection proceeding with the cause, seems to me to shew that all the parties interested considered *that* an adjournment of the Court for the purpose of going on with that cause, and they should not now be permitted to set up anything against that. If on the 3rd of April the defendant's counsel, whom he had probably brought there at considerable expense, had objected to the cause proceeding, because it had not been properly adjourned, the plaintiff could have discontinued his suit and brought another; but, when all parties viewed it as a proper adjournment at the time, they ought not to be allowed to allege anything to the contrary now.

As to *Smith* v. *Rooney* (12 U. C. Q. B. 661), to which reference has been made, under the

statute it is expressly declared that no motion for a new trial or non-suit in the County Court shall be entertained after the rising of the Court on the second day of the term, and a party obtaining a verdict may enter his judgment on the third day of the next ensuing term. No consent on the part of attorneys, or understanding with the Judge. could well be set up against this express provision of law, to justify setting aside a judgment entered according to the express terms of the Act of Parliament. But even in that case the learned Judge, now the Chief Justice of Upper Canada, who delivered the judgment of the Court, said: "The Court would not, unless perhaps under some extreme circumstances, listen to a party applying against proceedings taken in a cause by his own express consent, as, when a particular step was agreed on, or a particular objection was waived. But this is not a case of that description. The consent spoken of does not appear to be as to a particular step in a cause, or even to be limited to a particular cause, but is made with all legal practitioners with regard to the transaction of all their business."

In *Andrews* v. *Elliott* (5 E. & B. 502, same case in the Exchequer Chamber, 6 E. & B. 338) the facts were, that an issue stood for trial at the Summer Assizes for Surrey. It was proposed at *Nisi Prius*, before Wightman, J, that the cause should be tried without a jury before Mr., now Baron, Bramwell, whose name as a Q. C. was in the commission of *Nisi Prius*. The learned Judge approved of this, and the case was tried before Mr. Bramwell, the attorneys for both parties attending, and the plaintiff himself being examined as a witness. The verdict passed for the defendant. There was no summons, nor any written consent for the trial.

The authority to try the issue was under the Common Law Procedure Act of 1854, sec. 1, which enacts that, "The parties to any cause may, by consent in writing, signed by them, or by their attorneys, as the case may be, leave the decision of any issue in fact to the Court, provided that the Court, on a rule to shew cause, or a Judge, on summons, shall in their or his discretion think fit to allow such trial."

In argument for the plaintiff the case of *Lismore* v. *Beadle* (1 Dowl. P. S. N. S. 565) was referred to. There the plaintiff obtained a writ of trial to try before the Sheriff, and the verdict was for the plaintiff. The defendant obtained a rule to set aside the writ of trial and all subsequent proceedings, and it was made absolute, the Judge holding it made no difference that the plaintiff had obtained the writ of trial, and *Lawrence* v. *Wilcock* (11 A. & E. 941) decided that consent gave no jurisdiction. These cases are clearly such as the Sheriff had no right to try. In giving judgment in the case Lord Campbell said: "Mr. Bramwell was one of the Commissioners of *Nisi Prius*, and when sitting at *Nisi Prius* had the same general jurisdiction to try the cause that a Judge of the Superior Courts had. The Legislature requires that certain preliminaries shall be complied with before the Judge, having general jurisdiction to try causes, shall try a cause without a jury. Therein the case differs from those of writs of trial before the Sheriff; for the Sheriff has no jurisdiction except that derived from the writ of trial. Here, there was general jurisdiction, and the parties, who have consented to the exercise of that general jurisdiction in an instance in which they knew that the Statutable preliminaries had not been complied with, cannot be allowed to question the jurisdiction on that ground."

Coleridge, J., said: "One of the Commissioners of *Nisi Prius* tried this cause, having the same general jurisdiction for the purpose as any other Judge. I do not wish to lay down that the trial is good for every purpose; for example I express no opinion whether a witness might be indicted for perjury on the trial; but I decide on the ground that there was sufficient general jurisdiction to try the cause, and that the plaintiff is precluded, by his conduct, from taking this objection."

In the Exchequer Chamber it was urged, on behalf of the plaintiff, that although by consent the parties might have made Mr. Bramwell an arbitrator, then his decision would have taken effect as an award, and would not authorize a postea and judgment in the form of that brought before the Court. There would be no authority to order a verdict to be entered, unless that was expressly contained in the submission. The judgment of the Court of Queen's Bench was affirmed. Willes, J., said: "Nothing appears on the record shewing ground for invalidating this judgment: the case comes under the rule that *consensus tollit errorem.*"

Echoing the language of Coleridge, J., and applying it to the case before us, I say there was sufficient general jurisdiction to try the cause, and that this applicant is precluded by his conduct from taking this objection.

This brings me to the time of the Judge announcing his intention to deliver a written judgment on the following Tuesday, the 7th of April, at his Chambers, according to Mr. Diamond's statement.

The 106th section, which we were referred to, directs the Judge shall openly in Court, as soon as may be after the hearing, pronounce his decision; but, if not prepared to pronounce a decision instanter, he may postpone the judgment, and name a subsequent day and hour for the delivery thereof in writing at the Clerk's office. The Clerk is to read the decision to the parties or their agents.

Suppose, at the usual sittings of the Court, without any adjournment, the Judge had said, I will deliver a written judgment in this case on a certain day, and had omitted to say at the Clerk's office, or the hour, and the parties, or their agents, on the day went to the office and the Clerk read the judgment; or suppose they read it themselves, would the fact that the Judge had omitted to name the hour or to say that he would deliver the writing at the Clerk's office invalidate the judgment? I should think not. Then, wil the saying he would deliver the written judgment at his Chambers, instead of the Clerk's office, make the judgment void, when by the statute the Clerk's office was the proper place for the delivery of the judgment, and it was so delivered, as the affidavits show, and the defendant's agent we there on that day and took a copy of it, and never apparently raised any objection until after judgment was entered and execution issued, the Judge's Chambers and the Clerk's office both being in the same town, and the defendant's agent, as he shews, having been informed by

the Clerk on Saturday morning, the 4th April, that the Judge had delivered him the judgment in writing in the matter, which the agent examined on Tuesday the 7th, and made a copy of for the defendants?

Under the 107th section the defendant might, as I read the Act, at any time within fourteen days after the 7th April, have applied for a new trial for all or any of these irregularities, if he thought proper to do so. There is nothing to shew that he desired to make such application. He permits the plaintiff in the cause to enter judgment and issue execution before he takes any further steps.

I think the proceedings after the 3rd April would be irregularities in the sense most favorable to this defendant, and afford no ground for this motion.

We intimated when the rule was moved that the swearing of the plaintiff in the Court below was no ground for interfering with the proceedings of the Court below; that under the first part of the 102nd section the Judge might of his own mere motion, when he thought it conducive to the ends of Justice, examine either of the parties under oath. We consider the first part of the section a separate provision from the rest of the section, and the examination of a party at the instance of the Judge has nothing to do with giving a judgment for the sum not exceeding $8. By referring to the original sections of the statute before consolidation this appears very plain. There are two sections in the original statute, shewing clearly they are applicable to different matters.

As to the fourth objection, the affidavit of the Clerk shews that the endorsement on the back of the original summons, signed by the Judge, does fix the day, the 18th of April, on which the defendant was ordered to pay the money.

Ringland v. *Lowndes* (9 L. T. N. S. 479) is a recent case. There an arbitrator entered on his duties and investigated the matters in difference between the parties and began to act as arbitrator after the expiration of the time within which he was to have made his award, and when the defendant protested against his right to go on and attended befere him under protest, the Court held he was bound by the award, having examined witnesses and given evidence before the arbitrator, though under protest.

On the whole, I should consider it a reproach to our law, if an objection of this kind could prevail under the facts that have been brought before us.

If a party appears before Justices and allows a charge, which they have jurisdiction to hear, to be proceeded with, without objecting, he waives the want of an information or summons: *Reg.* v. *Shaw* (10 Cox, C. C. 66; 11 Jur. N. S. 415; 12 L. T. N. S. 470). That was in a criminal proceeding, when the party was brought before a Justice of the Peace charged with an offence, and there was no summons or information. One of the witnesses sworn was afterwards tried for perjury, and it was objected that the Magistrate, before whom the matter was brought, and by whom the oath was administered had no jurisdiction; the Court held otherwise. In *Turner* v. *Postmaster General* (10 Cox, C. C. 115 B. & S. 756) the same principle is enunciated.

See the remarks of Willes, J., in the *Mayor of London* v. *Cox*, L. R. 2 H. L. Cas. 239, 282, cited in *Pollock* and *Nicol's* Practice of the County Court, pp. 237, 238.

We think this rule should be discharged with costs.

Rule discharged, with costs.

CHANCERY.

(Reported by ALEX. GRANT, *Barrister-at-Law, Reporter to the Court.)*

MALCOLM v. MALCOLM.

School law.

Where a Board of School Trustees passed a resolution professing to adopt a permanent site for the School and the resolution was confirmed at a special meeting of the ratepayers duly called, these proceedings were held not to prevent a change of site in a subsequent year.

Where School Trustees selected a new site for the School house, and at a special meeting of the ratepayers duly called, those present rejected the site so selected and chose another, but neither party named an arbitrator: *Held*, that an arbitrator might be appointed by the ratepayers at a subsequent meeting.

The power of a County Council to change the site of a Grammar School is not lost by the union of the Grammar School with a Common School; though, if the new site is not also adopted by the means provided by law for the case of a Common School, the change may render necessary the separation of the Schools.

Where the Joint Board of a Grammar and Common School, after the site for the Grammar School had been changed by the County Council, wrongfully expended School money granted for a Grammar School building; and a bill was filed against the Trustees to restrain further expenditure, and to make them refund what had been expended, the defendants were ordered to pay the costs, but were allowed time to ascertain if all parties concerned would, undes the special circumstances, adopt again the old site.

It is contrary to the rule of this Court, in dealing with persons who have not acted properly, to punish them more severely than justice to others renders necessary; and therefore, where School Trustees wrongfully expended money in building on a site which had been changed by competent authority, relief was only granted to a ratepayer who complained of the Act, subject to equitable terms and conditions.

[15 U. C. C. R. 13.]

Hearing at Brantford in the Spring of 1868.

Hodgins, for the plaintiff.

S. H. Blake, for the defendants.

MOWAT, V. C.—This is a suit by an assessed freeholder and householder of a certain Union School section described in the bill, and which comprehends the Village of Scotland and some adjoining lots in the County of Brant. The bill is on behalf of the plaintiff and all the other assessed freeholders and householders of the section, and complains of the improper expenditure of a grant of $1000, made in 1856 by the County Council to the Trustees of the Grammar School in the village, and which had lain unexpended until last year. The defendants are, the Trustees as a corporate body, and the individual Trustees whose conduct is complained of. The case turns on a controversy in regard to the site of the School.

The County Council established the Grammar School in question on the 4th March, 1856. 16 Vic. ch. 186, sec. 14; Consol. U.C. ch. 63, sec. 17. The grant of money is said in the bill to have been made on the 13th September, 1856. The money was received by the Trustees on the 13th December, 1856. The County Council did not until lately name the place in the village where

the School should be held; 16 Vic. ch. 186, sec. 15. leaving this, I presume, to be arranged by the Trustees. A union of the Grammar School with one of the Common Schools was effected; Ib. sec. 27 pl. 7; but at what date does not appear. Afterwards, viz., on the 4th May, 1864, it seems to have been determined to make use of the grant which had been received from the County Council so many years before; and with this view, the following resolution was passed by the Joint Board of the Grammar and Common Schools: "That the present site of the Grammar School house be selected as a permanent site for the new Grammar School building." The Board also resolved to call a special School section meeting for the 14th of the same month "for the purpose of receiving a report of the Trustees on the selection of a site for the new Grammar School building." This meeting took place accordingly; and two resolutions were moved—first, that the meeting do adjourn until it should be ascertained whether more land could be purchased adjoining the present Grammar School; and, in amendment, "that the resolution adopted by the Trustees selecting the present Grammar School site for a permanent site, be adopted by this meeting." The latter resolution was carried.

It appears to have been subsequently ascertained that A. Glover, who owned the adjoining land, would not part with any of it; and the Board on the 16th August, 1865, resolved, "That a public meeting be called for the purpose of deciding whether the Board shall proceed to build upon the present site, or not; as Mr. Glover refuses at present to sell more land." This meeting took place accordingly, on the 23rd August, and a majority of the ratepayers then voted against building on the present site.

Afterwards Henry Glover, who owned a corner lot not far from the present site, having offered this lot to the Board on terms which were satisfactory, the Board on the 30th August, passed a resolution accepting his offer; and subsequently called a meeting of the ratepayers. The object of this meeting was stated in the offcial notice of the meeting to be, "for the purpose of considering the matter of selecting a new School site. The Trustees having chosen the lot owned by Henry Glover, known as the corner lot, as being the most central and eligible, and another lot having been offered near the grove, the ratepayers are requested to say which they prefer; and should both prove unacceptable to them, to make choice of some other." The meeting took place on the 13th September,—when a majority of the voters present voted against the choice of the Board, and in favour of a lot which the plaintiff had offered. Neither party appointed an arbitrator to settle the difference which thus arose between the Board and the ratepayers; Ib. ch. 64, sec. 30. The resolution of the meeting was transmitted to the County Council: and on the 12th January, 1866, the Council passed a by-law reciting the resolution, and a petition from the ratepayers founded upon it; and enacting and declaring the site so chosen to be, "the site to erect a County Grammar School thereon for the Scotland Grammar School." The Board do not appear to have taken any steps to complete the purchase of the land thus selected; and on the 18th March, 1867, they determined to build on the old site. On the 10th May, the plaintiff's solicitors wrote to the Board threatening a suit if this resolution was proceeded with; but the Board declined to desist; and on the 11th June this bill was filed, praying for an injunction against proceeding with the work; that the Trustees who were parties to the alleged wrong should refund what School money they had expended on the building; and for other relief. The building was begun in May, was finished in September or October, and has been occupied since December (1867).

The by-law of the County Council fixing the site is not mentioned in the bill, and both the bill and the answer treat the case as if the School had been a Common School instead of a Union School, and as if the money had been granted for the erection of a Common School. This is not correct; but so viewing the case, it was contended on behalf of the defendants, on various grounds, that the proceedings were ineffectual to change the existing site. It was argued, that the existing site having been adopted in May, 1864, by the Board and by the ratepayers, it could not afterwards be changed. I think there is no ground whatever for that contention. In support of it reference was made to the case of *Ryland* v. *King*; 12 U. C. C. P. 198. See also *Williams* v. *The School Trustees of Plympton*, 7 Ib. 559; but all that the Court of Common Pleas held there was, that after a difference of opinion beween the Trustees and a meeting of ratepayers, the question between them must be decided by arbitration; and that a resolution passed a subsequent meeting of ratepayers in the same year adopting the view of the Trustees was of no force. That decision was not concurred in by the Court of Queen's Bench in the subsequent case of *Vance* v. *King*; 21 U. C. Q. B. 198; and whether it was a correct decision or not, it has no application to the present case.

Then it was argued, that the proceedings went for nothing, because the ratepayers did not appoint an arbitrator to decide the point of difference between the meeting and the Board. It was as much the duty of the Trustees to appoint their arbitrator as for the ratepayers to appoint one; and as the matter was overlooked by the ratepayers at the meeting in question, perhaps from assuming that the Board would acquiesce in the decision of the meeting, another meeting might have been called by the Trustees to have the omission supplied. Some other points that were urged, I expressed my opinion upon at the hearing.

The County Council has power to change the place of holding any Grammar School established since 1st January, 1854; Consol. U. C. ch. 63, sec. 3; and I think this power is not destroyed by the Union of the Grammar School with a Common School; though, if the change has not the sanction of the authority required in the case of the Common School, it may render necessary a separation of the Union. The defendants, therefore, had no right to expend this money for the building of a Grammar School on the old site. But as the by-law of the Council was not mentioned in the bill, the defendants should have an opportunity of shewing by affidavit that they were prejudiced by the omission; and in that case I shall make such order as may seem just. Failing this, I think the defendants should

pay the costs of the suit, as their prceedings appear to have been sharp, as well as wrong in point of law. But having reference to the evidence before me of the comparative convenience of the rival localities; to the division of opinion amongst the ratepayers, as testified by the votes on each side at the meetings which have taken place; to what occurred at the general meeting last January; and to the fact that the money has actually been expended,—I think that before ordering repayment of the money, I should give the Trustees an opportunity, if they desire it, of ascertaining whether under all the circumstances a majority of the ratepayers, at a special meeting properly called for the purpose, may not be disposed to adopt once more the old site, and to regard the costs of the suit as a sufficient punishment for the wrong which the defendants have committed. I presume the County Council in that case would pass the necessary by-law, as their only object has evidently been to adopt the site which the people of the locality prefer.

Should the selection of the plaintiff's lot be adhered to, he must do what is equitable towards the defendants, as the price of getting relief in this Court. Part of the consideration he was to receive for his lot is the old site of the School; and he should be content on getting it, either to pay the defendants for the building which they have put up, according to what it is worth, not for a School, but for any other purpose it may be useful for; or to allow the defendants to have the lot at its fair value exclusive of their building. But on this point I will hear the parties, in my Chambers or otherwise, if necessary. Though the defendants have not acted properly, it would be contrary to the rule of this Court to punish them more severely than justice to others renders necessary.

The delay in filing the bill was relied on as a bar to relief; but I think no such delay occurred as had that effect.

It was also urged, that the bill was not such as a ratepayer could file. Many bills by ratepayers have been entertained. I have not thought it proper to delay my judgment for the purpose of considering whether the principle of those cases is strictly applicable to a case of this kind, in view of the various enactments in the School Acts, and of the numerous English and Canadian authorities on like questions; as the objection was not taken when the demurrer to the bill was argued before the Chancellor; and, though the objection was taken before me at Brantford, it was not argued, or any reference to authorities made.

COMMON LAW CHAMBERS.

(*Reported by* HENRY O'BRIEN, Esq., *Barrister-at-Law, Reporter to the Court.*)

IN RE RUMBLE v. WILSON.

Contract or tort—Jurisdiction.

A plaint charging that the defendant hired of plaintiff a horse, &c., to go from A. to B. and back, and agreed to take good care of same as a bailee, &c., with an averment that the defendant so carelessly, &c., drove said horse, &c., that horse was killed, &c., is a plaint in contract and not in tort.

[Chambers, March 10, 1869.]

Summons issued on 29th January last, calling on parties to shew cause why a writ of prohibition should not be issued after judgment pronounced. The statement of the cause of action was as follows:

"For that the defendant hired of plaintiff a horse, harness, and buggy, in October, 1868, to go from Maple Village to Pine Grove and back, and undertook and agreed to take good care of the same as a bailee, and the plaintiff alleges that the law required him so to do, and to return the said property in safety to him again. And the plaintiff further states that the said Albert Wilson so carelessly drove and used the said property that the said horse, harness, and buggy, were not returned in safety to him, nor were the same used with care, but on the contrary with negligence and carelessness, in consequence of which the horse was killed, the buggy was broken to pieces, and the harness broken, whereby further the plaintiff saith he hath suffered damage to the amount of $85" The cause was tried before a jury who found for the plaintiff.

It was said that a new trial was moved for but refused, and that this was the second action that had been brought, the plaintiff having been non-suited in the first because he happened unavoidably not to be present; and that no question of want of jurisdiction was ever raised.

Boyd shewed cause, and contended that the plaint was not in tort, but in contract: *Mayor of London* v. *Cox*, L. R. 2 E. & I. app. 280; *Morris* v. *Cameron*, 12 U. C. C. P. 422; *Jennings* v. *Rundell*, 8 T. R. 335; *Jones* on Bailments, pp. 69 to 68; *Story* on Bailments, 411; *Lloyd's* C. C. Prac. 221; *Noys*' Maxims, (Bythewood's ed. 791.) If objection had been taken at the trial the particulars could have been amended.

F. Wright, in support of the application, argued that the Division Courts Act recognizes the distinction between contracts and torts, and that the question was whether the action was maintainable without reference to any contract, and is founded on contract though framed in tort: *Bullen & Leake*, 102, notes 2nd ed., 121 3rd ed., citing *Pozzi* v. *Shipton*, 8 A. & E. 963; *Marshall* v. *York &c., R. W. Co.*, 11 C. B. 655; *Tatton* v. *G. W. R. Co.*, 2 E. & E. 844; *Legge* v. *Tucker*, 1 H. & N. 500; *Ansell* v. *Waterhouse*, 6 M. & S. 385; and in such a case the Judge should look at the actual facts as well as at the plaint and particulars: *In re Miron* v. *McCabe*, 4 Prac. Rep. 171.

A. WILSON, J.—In *Jennings* v. *Rundall* it was decided that a cause of action founded on contract cannot be declared on as a tort so as to exclude the plea of infancy; that to such a tort infancy may be pleaded because it is founded on contract. In that case the defendant was charged with immoderately driving the plaintiff's horse, by means of which it was injured. The count was, "that the plaintiff on, &c., at the request of the defendant, delivered to the defendant a certain horse of the plaintiffs, to be moderately ridden, yet defendant contriving and maliciously intending, &c., wrongfully and injuriously rode the horse, &c."

The authorities to which I have been referred, shew that the plaintiff could not have proved his case without first of all proving a contract for the particular act of hiring. In this respect an action against a common carrier differs from ordinary bailments, for against the common carrier there is a special customary common law obliga-

tion, which renders him liable upon his duty independently of contract altogether.

In this case, suppose there had been two persons who had hired the horse, and only one had been sued, could he not have pleaded the non-joinder of the other? I think he could.

The plaint or particulars here shew that the defendant "undertook and agreed to take good care, &c.," which is certainly a contract: *Chitty* on Pleading (6th ed. 87.)

The fact that the defendant got a non-suit on this same complaint, which he could not properly have got if the court had no jurisdiction, and the fact that he moved for a new trial—which he could not have got either—shew, as the fact is alleged, that the defendant never set up the want of jurisdiction, and therefore that no want of jurisdiction ever appeared by the evidence, and none, I think, appear on the face of the proceedings, but the contrary.

I have delayed this in consequence of the pressure of term business, and not for any difficulty in coming to a conclusion, for the opinion I express now is the same as that which I stated during the argument.

Summons discharged without costs.

INSOLVENCY CASES.

Sharp & Secord v. Robert Mathews.

Insolvent Act 1864, sec. 3, cl. c. and sub-sec. 7—Writ of attachment—Grounds for—Affidavit—Form of, and who can make.

The mere intention on the part of a debtor to dispose of his property, and the apprehension of his sole creditor that he will not then, although perfectly able, and owing no one else, pay the creditor his debt, does not bring the debtor within sec. 3, clause c., of the Insolvent Act, 1864.

In entitling affidavits for an attachment under the Insolvent Act, 1864, form F. should be followed.

Sec. 3, ss. 7, is complied with, although the creditor or his agent who swears to the debt is also one of the two persons testifying to the facts and circumstances relied on as constituting insolvency.

[Chambers, Jan. 26, 29, 1869.]

On the 6th of January, the Judge of the County Court of the county of Wentworth made an order for a writ of attachment to issue out of that Court against the above named defendant, as an insolvent, at the suit of the above plaintiffs. On the 7th of January the writ was served. On the 9th of January the defendant filed his petition in the County Court praying that the writ of attachment might be set aside. The petition was accompanied with the affidavits of the defendant, and of two other persons, testifying to the *bona fides* of the transaction, which the plaintiffs assailed as exposing the defendant to compulsory liquidation under the Insolvent Act. The petition also assailed the proceedings of the plaintiffs as defective in the following particulars: 1st. That the affidavits filed by plaintiffs disclosed no grounds to warrant the order and writ of attachment. 2nd. That they shewed that defendant was not insolvent. 3rd. That they afforded no sufficient evidence that he had parted with his estate and effects with intent to defraud, defeat, or delay creditors. 4th. That the said affidavits are entitled in a cause, whereas there was not, until the issuing of said writ, any cause in Court.

Upon this petition a summons was issued, calling upon the plaintiffs to shew cause why the writ of attachment should not be set aside. Upon this summons being heard, the Judge, on the 19th day of January, made an order setting aside the writ of attachment, and all subsequent proceedings on the merits.

Notice of an application for allowance of an appeal from this order was given. On its return,

J. B. Read opposed the allowance, as well on the grounds stated in the defendant's petition in the County Court as on the merits disclosed in the affidavits filed by the defendant with that petition.

Gwynne, J.—I am of opinion that no appeal should be allowed in this case, and that the order of the Judge setting aside the writ of attachment was a proper one to be made in the premises. The affidavits filed, on which the writ of attachment issued, do not, in my opinion shew that the estate of the defendant has become subject to compulsory liquidation. It appears by the affidavit of the plaintiff, George Reid Secord, that the plaintiffs are the defendant's sole creditors: that within a few days preceding, the defendant had sold and disposed of real estate in the city of Hamilton for $1,900, receiving in payment therefor cash and mortgages, and that he is now about to assign said mortgages with intent, as the deponent believes, to defraud the plaintiffs of their said debt: that the defendant has not, to the best of deponent's knowledge and belief, any other assets or property of any value that are or can be made liable for the payment of the said debt: that the debt has been overdue for some time—that, in brief, he has the means of paying the plaintiffs' debt, which is the only debt due by him, and that he refuses to pay it, or to give the plaintiff any satisfaction as to what he is going to do with the proceeds of the sale of the land further than that he would pay his debts, and that, with reference to the plaintiffs' claim, defendant said that he would pay just as much as he had a mind to. The affidavit has attached to it a copy of a letter from a gentleman acting as solicitor of the defendant, in which the defendant disputes the correctness of the amount of the plaintiffs' claim and offers, without prejudice, $200 for a discharge in full. There was also an affidavit of the plaintiffs' book-keeper, deposing to the correctness of the amount claimed by the plaintiffs, viz., $500. This deponent also swears as follows: "I am credibly informed and verily believe that the defendant has lately disposed of his property and is now about to assign and dispose of the mortgages taken by him for the balance of the purchase money thereof, with intent to defraud the plaintiffs of their debt." There was also an affidavit of Mr. Gibson, a solicitor, who deposes as follows: "I am aware of the defendant having, during the past week, sold lot number three in Moore's survey of this city, a portion thereof to one George Matthews for the sum of $700, and the remainder of the said lot to one Robert Kelly for the sum of $1200. The said Robert Kelly paid in cash the sum of four hundred dollars and gave a mortgage to the said defendant for the balance of $800. I am not aware what amount was paid down by the said George Matthews, but I think there was about $300, and a mortgage was given by the said George Matthews to the defendant for the bal-

ance. In the carrying out of said sale I acted for Robert Kelly, one of the purchasers, and in the course of the transaction, Mr. Sadleir, solicitor for said defendant, said, in my presence, that he would want to have access to the abstracts of title as he was going to negotiate the mortgages."

Now these affidavits show that the sale of the land was *bona fide* for value, and all that the application for the attachment rests upon is the affidavit of the plaintiff Secord and that of his book-keeper, that in their belief the defendant is about to assign them with intent to defraud the plaintiffs of their claim, without any facts or circumstances being stated or at all shewn to lead to that belief, unless it be what is stated in Mr. Gibson's affidavit that Mr. Sadleir said he would want to have access to the abstracts of title as he was going to negotiate the mortgages. Now if the intended disposition of the mortgages is by actual sale of them and not a *fraudulent* disposition of them, I apprehend that the entertaining such an intent to make an actual sale would no more expose a person to compulsory liquidation than the actual sale itself would. The whole gist of the affidavits of plaintiff and his book-keeper must, I think, be taken to be merely that the defendant intends to make sale of his property, that is, an actual out and out sale; but that they apprehend he will not then, although perfectly able and owing no one else anything, pay the plaintiffs their debt. I do not think the entertaining such an intent brings the party entertaining it within the clause *c* of the 3rd sec. of the Insolvent Act. But then, in his petition to set aside the writ of attachment, the defendant swears that he sold the land to pay off a mortgage upon it, by which he was subject to 10 per cent interest: that he has paid off that mortgage, and that he does intend to sell the mortgages taken by him for balance of purchase money for the purpose of paying the plaintiffs what he believes he owes them and of supporting his family, and he denies that he owes the plaintiffs anything like the amount claimed by them to be due. This affidavit is accompanied by affidavits of George Matthews and Kelly, who swear that their purchases were *bona fide* and made for full value. I can see nothing in the affidavits to justify a suspicion of fraudulent disposition of property, of an attempt fraudulently to dispose of property within the meaning of the Insolvent Act.

I have been asked to express my opinion upon two minor points which in the view I take are not necessary to be decided in this case, namely, whether the affidavits filed in the application for the attachment are properly entitled, and whether sub-sec. 7 of sec. 3 requires that the two persons to speak to the facts and circumstances constituting insolvency within the meaning of the Act, must or not be other persons than the creditor or his agent testifying to the debt. I entertain no doubt that it is proper to entitle the affidavits with the names of the plaintiffs and defendants as in the form F given in the statute. The 13th sub-sec. of sec. 11 enacts that the forms appended to the Act, or other forms in equivalent terms, shall be used in the proceedings for which such forms are provided, and it appears to me to be always best to follow the forms given by an Act. The very first paragraph of the affidavit speaks of a cause, although, strictly speaking, there is none until the writ issues, and of a plaintiff in the cause. The second speaks of "the defendant" as likewise does the third. These expressions plainly point to the cause in the title of the affidavit, and if this should be omitted the frame of the body of the affidavit would be insensible.

It appears to me also that sub-sec. 7 of sec. 3 is complied with, although the creditor or his agent deposing to the debt should be also one of the two persons testifying to the facts and circumstances which are relied upon as constituting the insolvency. I see no reason why we should introduce into the statute the word "other," which the legislature has not thought fit to introduce between the words "two" and "credible persons" so as to make it read "and also shew by the affidavits of two other credible persons," &c. It might be that a creditor and his clerk could give the clearest evidence of insolvency and liability to compulsory liquidation from the lips of the debtor himself to them in private which could not be established otherwise, and in such case, although there were two credible persons, the attachment might be deferred injuriously to the creditors, but whether it would be desirable or not desirable to have two persons other than the creditor to speak to the acts of insolvency it is sufficient to say that, in my opinion, the statute does not say that it is requisite. It is said that the preceding clause indicates the intention of the legislature that in Upper Canada the creditor should not be one of the two because it provides that in Lower Canada the creditor alone may prove the debt and the acts of insolvency. Why the creditor alone should be deemed sufficient in Lower Canada and not in Upper Canada I cannot say, but I see no necessary inference from that, that he cannot be one of the two required in Upper Canada. If the legislature intended to exclude him it would have been very easy to have done so by the insertion of the word "other," moreover the form of affidavit given is the same in Lower Canada and Upper Canada for the creditor to make, and plainly contemplates that he may state the facts relied upon as rendering the debtor insolvent.

ENGLISH REPORTS.

COMMON PLEAS.

CHORLTON v. LINGS.
MARY ABBOTT'S CASE.

A woman cannot, either at common law or by statute vote for a member of Parliament to represent a borough. *Semble*, it is the same in the case of a county.

[17 W. R. 284, C. P. Nov. 7, 9,]

This was an appeal from the decision of the Revising Barrister. The following was the case:—

At a court held at the town hall in the city of Manchester on the 15th day of September, 1868, for the revision of the list of voters for members of Parliament in the parliamentary borough of Manchester, before John Hosack, Esq., the Revising Barrister, Mary Abbott, ap-

* The defendant shortly afterwards sold the mortgages and absconded from the country.—REP.

pearing on the list published by the overseers of claimants to votes in the township of Manchester, was duly objected to by Matthew Chadwick, a person on the list of voters for the said parliamentary borough.

The name of the said Mary Abbott appeared upon the list of claimants in the following manner:—

Abbott, Mary	51, Edward-st.	House	51, Edward-st.

It was admitted that the said Mary Abbott was a woman of the age of twenty-one years and unmarried, and that she had for twelve months previously to the last day of July, 1868, occupied a dwelling-house stated in the said claim with the said claim within the said township for such occupation, and that she had paid the rates for the relief of the poor assessed in respect of such dwelling-house before the 20th day of July last, and in other respects had complied with the requirements of the Registration Acts.

On behalf of the claimant it was contended that under the existing statutes the claimant was duly qualified and entitled to be registered as a voter and when registered to vote in the election of a member of Parliament, and that women for the purpose of being registered electors and voting in elections for members of Parliament are not subject to any legal incapacity.

It was maintained, on the part of the objectors, that under the existing statutes the claimant was disqualified on account of her sex.

The revising barrister held that Mary Abbott, being a woman, was not entitled to be placed on the register, and her name was erased from the said list of claimants.

There were also struck out of the list the names of 5,346 whose names and qualifications are set forth in the schedule, and as the validity of their claims depends on the same point of law as that raised in the case of Mary Abbott the appeals were consolidated.

If the Court shall be of opinion that the said Mary Abbott is not entitled to have her name inserted in the list of voters for the said borough of Manchester then such names and the names referred to and set forth in the schedule above mentioned will remain erased; but if the Court shall be of opinion that the said Mary Abbott is entitled to have her name inserted in the said list of voters then her name and the said names referred to and set forth in the schedule are to be restored.

The following are the appellant's points for argument:—

1. That there is no disability at the common law whereby a *feme sole* otherwise duly qualified is prevented from voting in the election of a member or members of Parliament.

2. That the Representation of the People Act, 1867, section 3 confers the right to be registered, and when registered to vote for a member or members to serve in Parliament for a borough, on every man who is qualified as in such section is mentioned.

That in the 13 & 14 Vic. c. 21 (Lord Romilly's Act), it is declared by section 4, 'that in all Acts words importing the masculine gender shall be deemed and taken to include females unless the contrary is expressly provided.' That the words 'every man' denote the masculine gender, and that in the Representation of the People Act, 1867, the contrary is not expressly provided. Therefore, the words include 'every woman' and that a *feme sole* duly qalified according to the provisions of the said last mentioned Act is entitled to be registered, and when registered to vote for members of Parliament.

Coleridge, Q. C., (*Dr. Pankhurst* with him), for the appellant.—My main argument is this—women have this right at the common law, they have in ancient times exercised it, and no statute has ever taken it away. This is my main argument, and I shall enter upon it at once, though, of course, I also rely upon the construction of the word "man" in the Representation of the People Act, 1867. I shall, however, make that point last. Now, as to the position that at common law women have this right, and have in ancient times exercised it, the argument as to sex cannot be local; if, therefore, I can satisfy your Lordships that in counties the right was anciently exercised by women, that argument will avail for the present case, though it is the case of a borough. The first statute affecting the franchise in counties is 7 Hen. 4, c. 15. The words are, "From henceforth the elections of such knights shall be made in the form as followeth; (that is to say) at the next county to be holden after the delivery of the writ of the Parliament, proclamation shall be made in the full county of the day and place of the Parliament, and that all they that be there present, as well suitors duly summoned for the same cause as other. shall attend to the election of the knights for the Parliament, and then in the full county they shall proceed to the election freely and indifferently, notwithstanding any request or commandment to the contrary; and after that they be chosen, the names of the persons so chosen (be they present or absent) shall be written in an indenture under the seals of all them that did choose them, and tacked to the same writ of the Parliament, which indenture so sealed and tacked shall be holden for the sheriff's return of the said writ, touching the knights of the shires."

Now, here the suitors are those who are to have the franchise, and why not female suitors as well as male suitors? In 1 Hen. 5, c. 1, again, the words used are large enough to include both sexes. and I shall show as a matter of evidence, that women did in fact exercise the franchise. Now the elections for counties were held in the county court: 1 Bl. 178. What was this county court? It was a court where the freeholders were judges: 1 Reeves, 47. [Bovill, C. J.—In Saxon times there is no mention of anything in their Parliaments except of wise *men.*] I am not speaking of the Witenagemote, but of the county court, to which clearly women as well as men must have been suitors, and it was in these county courts that the elections for the knights of shires were held. Now I contend that it is for my learned opponents to show that the county court held for the election of the knights of shires was different from the ordinary county court which tried causes. If the statute of Marlbridge, 52 Hen. 3, c. 10, be referred to, it will be seen that women attended the county court on some occasions, for the following passage is to excuse the attendance of nuns on certain occasions, namely, when members of Parliament were to be elected: "De turnis vicecomitum provisum est, ut necesse

non habeant ibi venire archiepiscopi, episcopi, abbates, priores, comites, barones, nec aliqui viri religiosi, nec mulieres, nisi eorum presentia ob aliquam causam specialiter exigatur." Now if we go back to early parliamentary history, we shall find that the method of returning members was by indenture; the electors, or some of them, executing the indenture. Copies of such indentures are to be seen in Prynne's Brevia Parliamentaria Rediviva, 152, 153. I have also here certified copies of such indentures from the Record Office, one or two of which I refer to. They contain the names of women as returning the members. The several dates of these returns are, 13 Hen. 4; 2 Hen. 5; 7 Edw. 6; 1 & 2 P. & M.; 2 & 3 P. & M. [WILLES, J.—In the last case, the woman is the only person who executes the indenture. That looks rather as if she was the returning officer, which she undoubtedly might be]. But that will not account for the case in 7 Edw. 6. There, the woman is mentioned in conjuuction with others as sending up the members. [BOVILL, C. J.—The writ in the case in 2 & 3 P. & M., is directed to the lady. Would not that make her the returning officer?] It is not so in the case in 1 & 2 P. & M. Heywood, in his treatise on County Elections, 2nd ed, p. 255, says that it is usual to cite Coke's 4th Inst. against the right of women to vote. Now, I maintain that all the other exceptions in that passage (4 Inst. 5) are erroneous. For example, he says that clergymen labour under a legal incapacity to vote. [BOVILL, C. J.—Have you any example of clergymen voting before Lord Coke's time?] There is an archbishop in one of the writs I have cited. I am speaking without book, but I think there is no doubt that the clergy had given up their right to tax themselves separately before 1664 (3 H. C. H. 243, 10th ed.). I have the most unfeigned respect for Lord Coke's learning, but he had his weaknesses like other men, and one of them may have been a dislike of the clergy. He had no special reason to like women. Heywood goes on to say that notwithstanding my Lord Coke's opinion, women have as a fact in ancient times exercised the franchise, and in the note to p. 256 he gives at length a return for a borough by dame Dorothy Packington in the 14 Eliz. [BOVILL, C. J.—There is another passage in Heywood, at p. 255, in which he states what the law was in 1812, and that is against you.] In 2 Luders, 13, there is cited a burgess and freeman's roll of the 19 Eliz. for the borough of Lyme Regis on which the names of three women stand as burgesses and freemen. This is important, because this list would have been used to prove the right to vote at elections. [BOVILL, C. J.—Yes, but these entries of the women's names might have been for the mere purpose of securing the right of voting for their future husbands.] Supposing the right to have once existed, I now come to the question, has any statute ever taken it away? Because if not, mere nonuser cannot have such an effect. The statute 8 Hen. 6, c 7, is the well known statute restricting the right to vote in counties to forty-shilling freeholders. Assuming that up to this time a woman had the right to vote, what is there in this statute to deprive her of that right, if she but had a forty-shillang freehold? There is nothing. The word in the statute, which of course is in Norman-French, is "Gens." [BOVILL, C. J.—Have you read the title of the statute? Yes. It is there "men." But the title is in English; it was probably added later on. You cannot rely on translation in such a case, and even though the heading were made in English at the time the statute was passed, yet it forms no part of the enactment. [WILLES, J.—Treby, J., says that the old statutes had no headings.] Now this statute being in restraint of the franchise, had it been in view to take it from women, that would have been expressly done. As to the subsequnt statutes dealing with the franchise, while I do not contend that they specially refer to women, I yet maintain as to all of them, that they contain words large enough to include women. Such statutes are 10 Hen. 6 c. 2; 7 & 8 Will 3, c 4, 25; Anne c. 23; 2 Geo. 2, c. 24; 20 Geo. 3, c. 17. Next, as to the construction of the word "man" in the Representation of the People Act, 1867. There is a vast number of statutes in which the word "man" is used in the sense of both man and woman. Hence if no reason be shown in the present case why it should have a different meaning the more ordinary statutory sense must be given to it. Consider sections 18 and 19 of the Reform Act, 1832; 2 & 3 Will. 4, c. 45. If we compare the phraseology of the sections I think we must conclude that where women already had votes as freeholders or burgesses they were meant to retain them, but that where fresh votes were conferred on copyholders, then women copyholders were not to acquire the right of voting, but men only were to do so. The late Reform Act, I contend, leaves the rights of women as compared with those of men where it found it. The great point which will doubtless be made on the other side is that for centuries no woman as a fact has voted. All that Lord Coke's opinion and the opinion of those lawyers who have followed his dictum amonnt to, is this, that for centuries the current of opinion has been against the right of women to vote, not throughout all the time, but at the particular time when the particular opinion was given. But it is hardly necessary to maintain that if the right once existed, non-user could not take it away. As to the application of Lord Romilly's Act, 13 & 14 Vict. c. 21, s. 4, to the interpretation of the word "man," as used in the Representation of the People Act, 1867, we must remember that Lord Romilly's Act was passed in 1850, some time after the Reform Act of 1832, and therefore at a time when the claims of women to vote had at least been heard of and discussed in modern times. Lord Romilly's Act may, therefore, be said to have been passed with a consciousness that it might very probably be employed before long to the very purpose to which I seek to apply it to-day. [KEATING, J.—Does is appear on the case that the appellant here claims under the franchise created by the Act of 1867?] [*Mellish, Q. C.*—It does not appear on the case, but it is the fact.] In *Olive* v. *Ingram*, 7 Mod. 263, Stra. 1114, the decision did not require the *dictum* upon which I rely; but in the judgment of Lee, C. J., a MS. case is cited in which the *dictum* was necessary. The case of *Olive* v. *Ingram* decides that a woman may be a sexton, and may vote for the election of a sexton. Now, I admit that of 7 Mod, is not of high authority. But the case was so *decided*, as we learn from Strange, who was then Solicitor-General, and in the case. [WILLES, J.—Have you any case where a woman,

as the suitor to the county court, acted as judge?] I am not aware of one. Again, in *King* v. *Stubbs*, 2 T. R. 395, the question was whether a woman might be overseer of the poor. Now, the case itself does not carry the matter any further; but the reason given by the Court for its decision is most important. The decision is put on the ground of the phraseology used in the 43 Eliz.—"The only qualification required by 43 Eliz. is that they shall be *substantial householders;* it has no reference to sex:" 2 T. R. 406. Again, in *R.* v. *Crosthwaite*, 17 Ir. C. L. Rep. 157, 463, women were held entitled to vote for a town commissioner, as being included in the description "every person of full age who, &c.," contained in a certain section of a certain Act. That case was, it is true, reversed on appeal to the Irish Exchequer Chamber. But of the entire Bench taken together it will be seen that a majority were in favour of the original decision. If the present question be regarded as one of constitutional law, and it is difficult to see how that can be avoided, we must remember that all great constitutional writers make English freedom to depend to a great extent on the connections between the right to vote and the liability to taxation. Why are women to form a striking and un unfair exception to this rule?

[The learned counsel then proceeded to discuss the fitness of women for the exercise of political rights; but as in this part of his argument he did not introduce any additional legal matter, it is not here given.]

(To be continued.)

CORRESPONDENCE.

To the Editors of the Local Courts' Gazette.

Sirs,—I notice that in some instances a very wide difference of opinion exists among acting magistrates, as to their duties under the various statute laws giving them jurisdiction. It is a disgrace that more uniformity of practice does not exist. Some magistrates in this county consider it to be their duty, to make a return of conviction under section 9, cap. 55, 29 & 30 Vic., wherein two magistrates are empowered to give certificates on the Municipal Councils, for damage sustained by dogs killing sheep, the owners of which are unknown. It seems to me, that as no person is either tried or convicted, that a return is not required. Neither is any complaint laid against any one. The form of schedule return given by the statute, should, I think, of itself convince us that "certificates" for damages on the councils, are neither "orders" nor "convictions," as there is neither prosecutor or defendant. There is no fine imposed; no money goes into the justices' hand, nor is any paid out by them. Now the form of return implies, "a prosecutor," "a defendant," "nature of charge," "date of conviction," "penalty," "when received," "when paid out," and "who to," none of which takes place under the "certificates" given under the 9th section of the Act referred to. Some cautious magistrates may say, "that even supposing the return not required, it is the safest way, and wont do any harm;" but he must remember that one dollar is charged for the conviction, and if no return should be made, the council are paying fees which they should not do.

The clause in the Act reads "that if the party injured by having his sheep killed, makes oath that upon diligent search and enquiry, he has not been able to discover the owner or keeper of the dog or dogs, or *to recover the amount of damages or injury adjudged from the owner or keeper of such dog or dogs, if known for want of distress*, the justice shall *certify* to the facts that such owner cannot be found, or that there are no goods found upon which to levy the same, and the amount of damages, &c." Now it is plain that there are two distinct "certificates," two justices are empowered to give under section 9. One is when the owner is unknown; the other, when a conviction has taken place under section 8, but from whom the constable cannot collect the amount. Now it appears to me, that if the magistrates makes a return of a conviction on one certificate, they should on the other—and if on the other—two convictions would represent the same case. The Act of 27th of August, 1841 (see *Law Journal* of March, 1860), recites, "that for the more effectual recovery and application of penalties, fines, or damages, shall make a due return thereof to the General Quarter Sessions of the Peace." Now, as I said before, these "dog certificates" imply no application of penalties, fines, or forfeitures, as none pass through their hands. However, after this, magistrates will be relieved from returning convictions upon these "sheep certificates," as the last session of our Ontario Legislature, gives that part of it to our Municipal Councils, where the owners are unknown, and very properly too, if magistrates charge for returning a conviction on these certificates.

I think it would result in much good, if the acting magistrates in each county would hold periodical meetings, say once or twice a year, for the purpose of discussing different points that occur in their practice, and thereby secure a greater uniformity of practice. Of course

those who *know it all*, a few in each county, would not be expected to attend. I feel satisfied that such meetings would result in much good even to the wisest of them. Let some of the oldest magistrates move in the matter, and give it a trial. Yours,

S. P. MABEE, J. P.

Port Rowan, April 23, 1869.

REVIEWS.

THE LAW OF RAILWAY COMPANIES, COMPRISING THE COMPANIES CLAUSES, THE LANDS CLAUSES, THE RAILWAY CLAUSES CONSOILDATION ACTS, THE RAILWAY COMPANIES ACTS, 1867, AND THE REGULATION OF RAILWAYS ACT, 1868. With notes of all the decided cases on these Acts, &c. By Hy. Godefroi, of Lincoln's Inn, and John Shortt, of the Middle Temple, Barristers-at-Law. London: Stevens & Hagues, Law Booksellers and Publishers, 11 Bell Yard, Temple Bar, 1869.

We have to thank the publishers for an early copy of this work. The editors appear to have acquitted themselves well. The notes are terse and yet sufficiently full to give the desired information as to judicial interpretation of the sections annotated. Annotated editions of important acts of Parliament are of great service to the profession, and for purposes of ready reference are preferable to treatises. The aim of an editor of an annotated edition of a statute should be to avoid loading his notes with details as to facts. What the reader of such a work wants is the marrow of the decision, and that expressed in the fewest possible words. The editors of the work before us have not been unmindful of this requisite. By observing it they have succeeded in presenting to the profession a great body of law on subjects of very general importance in a portable form, considering that our Railway Clauses Consolidation Act is in great part taken from the English Act, the value of this work to all interested in Canadian railways is obvious; with many railways constructed, others in course of construction, and yet others projected, there is already much "railway litigation" among us. The duties and obligations of railway companies to "adjoining proprietors," and the public are not at all times easily ascertained or easily defined. The consequence is daily increasing litigation, and daily increasing necessity for a work like that now before us. Its cost is so moderate as to place it within the reach of all. The facility it affords for reference to decided cases is so great that the possessor of it must save time, and "time saved" to a man of good practice in our profession is "money made." The index is truly exhaustive. By means of succinct notes and an elaborate index no real difficulty can be experienced in finding that which is sought. The volume proper contains no less than 552 pages. Added to this is an appendix, 364 pages, containing all material acts relating to railways and the standing orders of the Houses of Lords and Commons, and the index. The latter alone is so comprehensive as to embrace 80 pages. The mechanical execution of the work by the law publishers, under whose auspices the work is issued is all that could be expected from a firm so well known and so eminent as Messrs. Stevenson & Hagues. Their agents in Toronto are Adams, Stevens & Co. and Messrs. W. C. Chewett & Co. Orders left with either firm will receive prompt attention.

MR. DICKENS AND THE PEERAGE.—It is the privilege of literary men to blunder about legal matters, but Mr. Charles Dickens has abused the privilege. In his speech at the Liverpool banquet he vindicated himself from the charge of disparaging the House of Lords, and explained to his audience that he enjoyed the friendship of many members of that House, not least among whom was *Lord Chief Justice Cockburn.* Now Mr. Charles Dickens has known Sir Alexander Cockburn for many years, and even if for a portion of that time he had imagined that the Chief Justice was a peer, we should have supposed that the truth might have dawned on him in December last, when his illustrious friend was offered and declined a peerage. Up to the delivery of the Liverpool speech we had believed that the celebrated 'Pandects of the Benares' could not be eclipsed; but anything is possible when a *littérateur* of the loftiest pretensions does not know whether the man 'whom he loves more than any other in England' is a commoner or a peer.—*Law Journal.*

What an attorney is, everybody who has got an attorney will no doubt be aware, but those who are ignorant on the point may feel assured that ignorance is unquestionably bliss, at least in this instance. We, however, are far from intending to stigmatise all attornies as bad—and the race of roguish lawyers would soon be extinct if roguish clients did not raise a demand for them. No man need have a knave for his attorney unless he chooses; and when he g es by preference to a roguish lawyer, it must be presumed that he has his reasons for not trusting his affairs to an honest one.—*Comic Blackstone.*